

The Year of Pitched Battles: How the ACA Got Through Congress

POSC 459 — Social Welfare Politics and Policy

Week 10 · Wednesday, October 28

Jacobs and Skocpol, chapters 2–4. Page numbers are from the chapter files on Canvas; each chapter starts at page 1.

Today

1. Who led, and what tools each had
2. The deals with the health industry
3. Pressure from the right and the left
4. Why no Republican voted for it
5. Scott Brown's election, and the way around it
6. What the law delivered, and what came undone
7. Tonight's brief

The story in one slide: February 2009 to March 2010

When	What happened
Feb.–Mar. 2009	Obama asks Congress for health reform and holds a White House summit with both parties and the industry
Spring–summer 2009	Five congressional committees write bills; the White House cuts deals with hospitals, doctors, and drug makers
August 2009	Congress goes home; angry Tea Party crowds take over members' town-hall meetings
Sept. 9, 2009	Obama addresses Congress: "I am determined to be the last" president to take this up
Nov. 7, 2009	The House passes its bill, 220–215
Dec. 24, 2009	The Senate passes a different bill, 60–39, with exactly the 60 votes it needs
Jan. 19, 2010	Republican Scott Brown wins a Massachusetts Senate seat. Democrats now have 59. Reform looks dead
Mar. 21–23, 2010	The House passes the Senate bill plus a package of fixes, 219–212. Obama signs the Affordable Care Act

Words you'll need today

Term	Plain meaning
Filibuster / cloture	In the Senate, any 41 senators can block a bill by refusing to end debate. Ending debate ("cloture") takes 60 votes. The House has no such rule
CBO score	The Congressional Budget Office's official estimate of what a bill costs over ten years. Members often won't vote for a bill that "scores" badly
Individual mandate	A requirement that everyone carry health insurance or pay a penalty
Exchange	A marketplace where people without job coverage shop for private plans, with government subsidies to help pay
Public option	A government-run insurance plan, like Medicare, that would compete with private plans on the exchange
"Cadillac tax"	A tax on very expensive employer health plans
Reconciliation	A budget procedure that needs only 51 Senate votes, but can change only taxes and spending, not rules

Testing Monday's explanation against the story

Hacker said reform passed because of three things: a bad **economy**, an industry that **split** instead of uniting against reform, and Democrats who **agreed** on one plan.

Which of the three do you see in today's story?

Which one almost failed?

Were the deals with the industry corruption, or how laws get made?

Hacker (2010), pp. 864–867

1. Obama let Congress write the bill, because Clinton hadn't

What happened: In 1993 President Clinton had a task force of 500+ experts spend nine months writing a detailed plan and sent it to Congress. It never got out of committee, and Democrats lost Congress in 1994. Obama did the opposite: he set broad goals and left the writing to the committees.

	Clinton, 1993	Obama, 2009
Who wrote the bill	A White House task force	Five congressional committees
Result	No bill passed either chamber	Both chambers passed bills in under a year
The cost	A big, early target for opponents	Missed deadlines; supporters unsure what he wanted

The point: A president can't order Congress to pass a domestic law. Obama traded control over the details for a better chance of getting any bill at all.

Jacobs and Skocpol, ch. 2, pp. 2–6

Pelosi needed a majority; Reid needed every single Democrat

Who they are: Nancy Pelosi was Speaker of the House. Harry Reid was the Senate's Democratic leader.

	House: Pelosi	Senate: Reid
Votes needed	A simple majority, 218	60 , to stop a filibuster
What she/he had	255 Democrats, 75 more than Republicans	58 Democrats + 2 independents = exactly 60
What that meant	Could lose dozens of Democrats and still win	Could lose no one

The point: With exactly 60, every Democratic senator was the deciding vote, so each could demand a price. Two did: extra Medicaid money for Nebraska (Ben Nelson) and for Louisiana (Mary Landrieu).

Jacobs and Skocpol, ch. 2, pp. 1–2, 6–8

Why liberals had the least bargaining power

- Moderate Democrats could walk away from reform, and some would gain votes at home by doing it
- Liberal Democrats wanted a bill more than anyone, so they would give things up to save it
- Everyone knew this, including Max Baucus, chair of the Senate Finance Committee, who wrote the Senate's bill

The point: In a negotiation, the side that wants the deal most has the least power over its terms. That is why the Senate bill leaned toward the moderates.

The budget scorekeepers had a veto too

- Moderate Democrats would not vote for a bill unless the **CBO** said it didn't add to the deficit
- Democrats prepared for years: Peter Orszag built up CBO's health staff, then became Obama's budget director
- CBO stayed independent and would not give private previews
- "That's what it's going to say on my tombstone: 'He was waiting for C.B.O.'" — Senator Dick Durbin

The point: Provisions that "scored" well got into the bill even when the public disliked them, like the mandate and the Cadillac tax. Remember this at the end of class.

2. The deals: the industry gave a little to gain a lot

What happened: The White House and Senate Finance negotiated with each health industry in private. The pitch: reform brings **32 million** new paying customers. In return, give back some money and don't attack the bill.

Group	What it gave up	What it got
Hospitals (American Hospital Assn.)	\$155 billion in future Medicare payments	~\$171 billion from newly insured patients
Doctors (American Medical Assn.)	~\$80 billion in payment cuts	~\$228 billion; it backed even the House bill
Drug makers (PhRMA)	\$85 billion in discounts and fees	New customers; no imports of cheaper foreign drugs
Insurers (AHIP)	Accepted new rules on how they sell insurance	The mandate : everyone must buy coverage

The point: In 1993–94 these groups killed Clinton's plan. In 2009 most of them stayed quiet or paid for ads *supporting* reform. The White House's rule: "no peace, no reform."

Why the insurers turned against the bill: too *little* government

What happened: The insurers negotiated all year. Then in September 2009 the Senate Finance Committee, under Republican pressure, **cut the penalty** for not buying insurance.

- New rules would force insurers to sell to sick people. With a weak penalty, healthy people could wait to buy coverage until they got sick.
- So the insurers' trade group (AHIP) paid PricewaterhouseCoopers for a study predicting soaring premiums. The study left out the subsidies, on AHIP's instructions.
- The White House attacked the study within a day; PwC backed away; the rules on insurers got *tougher*.

The point: Insurers ran ads against a "government takeover," but what pushed them into open opposition was a mandate too weak to deliver healthy customers.

Vote: were the deals corruption, or how laws get made?

Jacobs and Skocpol, ch. 2, pp. 14–16

3. Pressure from the right: the Tea Party

Who they were: about **25%** of adults; older, richer, and whiter than the country; the most conservative part of the Republican base. **90%** disapproved of Obama on health care (the public overall: 51%).

- August 2009: activists packed members' town halls. Sean Hannity's website: "Become Party of the mob!"
- Sept. 9: Republican Rep. Joe Wilson shouted "You lie!" during Obama's speech to Congress
- Many protesters were on **Medicare**, which they saw as earned. Coverage for younger, poorer people looked like "handouts"

The point: The Tea Party's power over Congress ran through Republican primaries. Any Republican who bargained with Democrats risked losing to a challenger from the right.

Jacobs and Skocpol, ch. 2, pp. 17–18, 21

Pressure from the left: the fight for a public option

What happened: Liberals had already given up on single payer. Their compromise was the **public option**, a government plan to compete with private insurers. A coalition of 1,000+ groups (Health Care for America Now) pushed for it, and polls showed majorities in favor.

- The House passed a weak version that would have covered only **2%** of the insured, 3–4 million people
- In the Senate it never came close to 60; Jacobs and Skocpol count **52** at best
- A substitute, letting people 55–64 buy into Medicare, died when Senator Joe Lieberman refused at the last minute

The point: The left lost the public option but used it as a bargaining chip. In exchange for dropping it, liberals won larger subsidies and higher taxes on the rich.

Jacobs and Skocpol, ch. 2, pp. 18–21

4. Why no Republican voted for it

What happened: All summer, Max Baucus negotiated with a "Gang of Six" senators, three Democrats and three Republicans (Chuck Grassley, Mike Enzi, Olympia Snowe). They met 31 times.

- Grassley himself put the mandate, Medicare savings, and subsidies on the table
- By late summer he was warning of "death panels," a false claim about a provision paying doctors for voluntary end-of-life counseling
- In October one Republican, Snowe, voted for the Finance bill. On final passage: **zero** Republicans in either chamber

The point: Social Security and Medicare both passed with Republican votes. No major social law since the New Deal had passed with none.

Jacobs and Skocpol, ch. 2, pp. 21–23

The Republican strategy was unanimous opposition

"If we're able to stop Obama on this, it will be his Waterloo. It will break him." —
Senator Jim DeMint, July 2009

Mitch McConnell, the Senate Republican leader, told his members it was "absolutely critical that everybody be together," so Democrats could never call the bill bipartisan.

The point: The bill was full of Republican ideas (the mandate and exchanges came from Mitt Romney's Massachusetts law). Republicans opposed it anyway, betting it would win them the 2010 election, as killing Clinton's plan had in 1994.

Jacobs and Skocpol, ch. 2, pp. 23–24

5. Two bills, two ways to pay

What happened: There was never an "Obama plan." Obama set four goals (cover more people, regulate insurers, pay for it, slow costs), and each chamber wrote its own bill.

Issue	House bill, Nov. 7	Senate bill, Dec. 24
How to pay	Tax incomes over \$1 million	Cadillac tax on expensive job-based plans
Employers	Firms of 50+ must provide coverage or pay	Much weaker
Exchange	One national exchange	50 state exchanges
Public option	A weak one	None
Medicare cost commission	No	Yes
Vote	220–215	60–39

The point: The House taxed the rich and employers. The Senate cut costs. In January the two had to be merged.

Side fights that nearly sank it

- **Abortion:** the House bill passed only after Rep. Bart Stupak won an amendment restricting abortion coverage
- **Immigrants:** could undocumented people buy insurance with their own money? Compromised toward no
- **Medicare:** cuts to private Medicare Advantage insurers were sold as cuts to all seniors; three-quarters weren't in those plans
- **State deals:** the "Cornhusker Kickback" for Nebraska, the "Louisiana Purchase"

Jacobs and Skocpol, ch. 2, pp. 1–2, 27, 32

6. January 19, 2010: Democrats lose their 60th vote

What happened: Ted Kennedy, the Senate's leading health reformer, died in August 2009. In the special election for his Massachusetts seat, Republican **Scott Brown** beat Democrat Martha Coakley. Brown ran as the **41st vote**, the one that would let Republicans filibuster the bill.

- Massachusetts had zero Republicans in Congress, and 8 in 10 voters there liked their own state's version of this reform
- Union households voted for Brown, 49–46, angry about the Cadillac tax on their health plans
- "ObamaCare went into the emergency room in Massachusetts and didn't make it out alive." — Fred Barnes, *Weekly Standard*

The point: The House and Senate bills agreed on 85% of their provisions, but they still had to be merged and passed again, and the Senate could no longer reach 60.

Jacobs and Skocpol, ch. 3, pp. 1–4

You are Nancy Pelosi. January 20, 2010.

What you know: The Senate passed its bill, but can't pass a new one. The Senate bill includes the Cornhusker Kickback, the Cadillac tax unions hate, state exchanges, and abortion language your pro-choice members resent. Every House member faces voters in nine months.

Option	Vote you lose	Vote you need
A. Rush a merged bill through the Senate before Brown is sworn in		
B. Have the House pass the Senate's bill exactly as is		
C. Shrink it: children's coverage and a few insurer rules		
D. Something else. Say what.		

Groups of three, 5 minutes. Pick one and fill in its row

Five weeks of panic, then a restart

- Democrats froze. Rep. Barney Frank said reform was dead; the White House said little
- February: Anthem Blue Cross announced a **39%** rate increase in California, a reminder of what unregulated insurance looked like
- Obama finally put out his own plan (Feb. 22) and held a seven-hour televised summit with Republicans at Blair House (Feb. 25). No Republican votes came of it

Jacobs and Skocpol, ch. 3, pp. 4–9

The solution: the Senate bill plus a "sidecar"

What happened: The House passed the Senate's bill unchanged, plus a second bill of fixes. The Senate passed the fixes by **reconciliation**, with 51 votes. But reconciliation can change only taxes and spending.

Could be fixed (money)	Stuck as the Senate wrote it (rules)
Cornhusker Kickback removed	State exchanges, not one national exchange
Cadillac tax reduced and delayed	The abortion language
New 3.8% tax on investment income; new taxes on health industries	Anything else that wasn't taxes or spending
Student-loan savings of \$60 billion+, about half used for the bill	

The point: Losing the 60th vote *strengthened* the bill in places. At 51 votes, Ben Nelson's vote no longer mattered, so Nebraska lost its deal.

Jacobs and Skocpol, ch. 3, pp. 9–12

March 21, 2010: 219–212

- The last holdouts were Stupak's anti-abortion Democrats; Obama promised an executive order barring federal abortion funding
- Catholic hospitals and leaders of 60,000 Catholic nuns backed the bill; the Catholic bishops opposed it
- House Republican leader John Boehner: "Armageddon"
- Final count: **zero** Republican votes in either chamber. Obama signed it March 23

Jacobs and Skocpol, ch. 3, pp. 2, 12–13

7. What the law promised (as Jacobs and Skocpol saw it in 2015)

Share of Americans insured	83% → 92% projected; 26 million more people
Medicaid	Open to all low-income adults up to 138% of poverty, not only parents and children
Exchange subsidies	Help up to 4× poverty; premiums capped at 2% to 9.5% of income
New rules for insurers	No denying coverage for preexisting conditions; no canceling policies when people get sick; no lifetime caps
Young adults	Can stay on a parent's plan until 26

The point: Chapter 4 argues for the law. Read it like any advocacy document: a claim, its evidence, and who is making it.

Jacobs and Skocpol, ch. 4, pp. 2–9, 14

Who pays

- Couples earning over \$250,000 (individuals, \$200,000): a higher Medicare tax, **1.45% → 2.35%**, plus a new **3.8%** tax on investment income
- Insurers lose **\$156 billion** in Medicare Advantage overpayments
- Drug, device, and insurance companies pay new fees
- CBO: the law **reduces** the deficit, about \$140 billion in its first ten years

"Conservative means to pursue progressive ends" (p. 8): private insurers and tax credits, with the benefits going to people of modest income

The painful parts were delayed. Did they survive?

What Jacobs and Skocpol said: reformers postponed the cost controls that would hurt someone specific. Will future officials keep them? "We think they will" (p. 17).

Provision	Why it was in the bill	What happened later
Individual mandate penalty	Kept healthy people in the pool; scored well	Penalty cut to \$0 from 2019 (Tax Cuts and Jobs Act, 2017)
Medicare cost commission (IPAB)	Projected savings	Never appointed; repealed 2018
Cadillac tax	Revenue and cost control	Delayed twice; repealed Dec. 2019, never collected

The point: The benefits (coverage to 26, preexisting conditions, Medicaid, subsidies) survived. The three provisions that cost someone something were all undone, and each was in the bill because it scored well with CBO.

Jacobs and Skocpol, ch. 4, pp. 15–17; "What happened later" is from outside the readings

Next week

Mon 11/2: *Poverty, Politics and Profit* (PBS Frontline, 2017, 54 min.), on the companies that profit from running safety-net programs

Fri 11/6, 11:59 p.m.: Discussion Paper 4, on the film with the welfare reform and ACA units

The question: which reform better survives its own politics?

Tonight, 11:59 p.m.: the policy brief

- Your program, your two columns from the memo, now as a brief
- Every claim has a source you **read**, with a page or a table
- The scaffold rubric and the student guide are on Canvas
- After you submit: the **Dialectical Partner** opens in PapyrusAI. It argues back. It will not write for you.

By 2:15 you should be able to say

The White House bought the industry's cooperation with new customers; the insurers turned against the bill only when the mandate was weakened.

Republicans voted as a bloc against a bill built on their own ideas, and when Scott Brown's election took away the 60th vote, Democrats passed the fixes with 51.

The law's benefits survived; the cost controls that scored best with CBO were later repealed.

Tonight: the brief at 11:59