With the election of Joe Biden, the US will have a president who actively embraces the Affordable Care Act (ACA). During his campaign, Biden competed against progressive Democratic candidates who advocated for a Medicare-for-all plan, as well as an incumbent president who promoted less government involvement in health care.

President-elect Biden plans to use the ACA as the basis for expanding health care coverage. This approach extends a policy he supported as Vice President to Barack Obama and reflects his political approach of using incrementalism as a means to advance policy objectives. However, despite Biden’s victory in the presidential race, he will face considerable challenges in his ability to follow through on his plan.

First, there is the issue of whether the ACA will remain intact long enough for Biden to build upon it. On November 10, 2020, the US Supreme Court heard arguments in the case of California v Texas. In this case, Texas, with the support of the Trump administration, questions the legitimacy of the ACA following the elimination in 2019 of the financial penalty associated with the individual mandate. Although the Supreme Court has twice previously affirmed the legitimacy of the law, a major wild card is that with the replacement of former Justice Ruth Bader Ginsburg with newly appointed Justice Amy Coney Barrett, the Court is more conservative in its political orientation than it had been when considering the earlier cases. However, Justice Barrett raised the possibility during her confirmation hearing that even if the individual mandate is found to illegitimate, the rest of the law could remain intact. During the Court proceedings, other conservative justices made similar comments. A decision from the Court is expected by June 2021.

Second, even if the Supreme Court upholds most or all of the ACA, many of the changes Biden envisions to build upon it will require Congress to pass legislation. For example, Biden wants to increase federal financial support to help individuals purchase health insurance and create a federal public option to increase competition and provide a source of free coverage for individuals who are income eligible for Medicaid but living in a state that has not expanded Medicaid coverage. Even though these policies are substantially less disruptive than a Medicare-for-All plan, a provision for a public option failed to pass in the US Senate when the Democrats held a majority under Obama.

The party in control of the Senate will not be resolved until the outcomes of 2 Senate runoff elections in Georgia in January 2021. The Democrats will gain control of the Senate if they win both of these races, but that still will not guarantee that Biden will be able to pass his legislative agenda because the traditional threshold for passing legislation in the Senate is 60 votes. Biden could recommend that a Democratic majority leader use the same budgetary maneuver called reconciliation that was invoked during the passage of the ACA. In such a case, only a simple majority of senators is needed for passage—but even then, it would only take 1 Democratic senator to defect for the legislation to fail.

The legislative path is significantly more challenging if Republicans win at least 1 of the runoff Senate races, which would result in Republicans controlling that chamber. Biden has a history of working on legislation across the political aisle, but the stakes will be higher with him in the role of President. Senate Republicans may be unwilling to negotiate a compromise that could be perceived as a political win for Democrats.

If Biden is unable to navigate a legislative change in the ACA, his alternatives for achieving an expansion in health care coverage are to issue executive orders, to promote regulatory changes
within federal executive agencies, or to support states’ efforts aligned with this goal. Trump used these same policy levers to sabotage the ACA after he failed to convince Congress to repeal the law. For example, he used executive orders and regulatory changes to erode private insurance coverage by decreasing the duration of the federal health insurance marketplace’s open enrollment period, curtailing the resources dedicated to advertising the open enrollment period, and reducing the availability of navigators to help individuals enroll for coverage. Trump also took actions to decrease the likelihood that individuals eligible for Medicaid would enroll. His administration approved Medicaid state waivers that would require individuals to demonstrate their effort to obtain employment in order to qualify for Medicaid, and he moved to have Medicaid included in an assessment of “public charge”—the likelihood a person would rely on public assistance—when immigrants were being considered for permanent residency status in the US.

Reversing Trump’s executive orders and regulatory changes can happen relatively quickly, but they may not be sufficient to return health insurance coverage to levels existing when Trump took office. One of the incentives for coverage, the tax penalty associated with the individual mandate, cannot be reversed without a change in law. The number of US residents without health insurance coverage has increased by more than 2 million during Trump’s presidency. Restoring coverage to levels in place at end of the Obama administration would be an achievement, but it pales in comparison with what could be accomplished through legislation. For example, a federal public option would cover the approximately 5 million individuals who have an income that would qualify them for enrollment in Medicaid in the states that have not adopted the ACA’s Medicaid expansion.

If there is relative gridlock in expanding coverage at the federal level, some states may look to take the lead. For example, California has already approved state funds to supplement federal affordability credits with the goal of increasing the financial help available to individuals who purchase coverage through the state’s health insurance exchange. California has also created a commission with the task of informing state policy makers on how they could take steps to achieve universal coverage through unified public financing.

California and other states may look to use Medicaid and section 1332 waivers established under the ACA to expand coverage. Biden can direct the Centers for Medicare & Medicaid Services to be permissive in approving state requests for waivers that aim to increase insurance coverage, but the financial opportunity this provides to states might be limited because state waivers are required to be cost neutral to the federal government. Nonetheless, states may be able to use Medicaid and section 1332 waivers as building blocks for something more substantial if they are also able to contribute their own funds. That will be challenging to states, at least in the near term, because unemployment related to the coronavirus disease 2019 (COVID-19) pandemic is eroding their tax base and they are hemorrhaging funds to manage the public health crisis.

The COVID-19 pandemic has been a stark reminder of how everyone is vulnerable to health challenges and the importance of health insurance for financial and health security. The Biden campaign emphasized that everyone in the nation is in this crisis together. The challenge will be for him to turn the poetry of his ideals into practical accomplishments.