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MS. ROBERTS: This week on *To the Contrary*, first, women, children, families, and their health care bills. Then, on the eve of a new Supreme Court term, I sat down with Sandra Day O’Connor. She became the first woman Supreme Court justices 30 years ago. We’ll have that interview.

(Musical break.)

MS. ROBERTS: Hello, I’m Cokie Roberts, sitting in for Bonnie Erbe. Bonnie will be returning for next week’s show. Welcome to *To the Contrary*, a discussion of news and social trends from diverse points of view. Up first, the rising cost of health care.

Health insurance premiums are up 9 percent in 2011, according to new research from the Kaiser Family Foundation, in the sharpest increase since 2005. Many people are left wondering what impact the Affordable Care Act has on their rising insurance cost. The report shows what some call ObamaCare is responsible for only 1 to 2 percentage points of the increase. That’s due largely to the provisions allowing children to stay on their parents’ insurance until age 26 and providing no cost preventative treatments.

Meanwhile, health care reform is scheduled to appear in front of the Supreme Court, with the United States Justice Department asking the court to overturn a ruling that called the law unconstitutional. And the court is expected to rule before the 2012 election.

Many Republican candidates are using health care as a key point in their campaigns.

Congresswoman Norton, you’re a lawyer, what’s the Supreme Court likely to do?

DEL. NORTON: Cokie, the Affordable Health Care Act will be approved if the court adheres to the long-held presumption in favor of an act of Congress.

MS. WOOD: I think if the Supreme Court looks at what’s constitutional and what is unconstitutional – and sometimes it’s questionable if they figure out the two well – I think they will make the right call that ObamaCare is unconstitutional. And I frankly think that’s how the court’s going to rule.

MS. CARNAHAN: I think this is going to be very difficult to predict. There’ve been many legal scholars who have said they believe it’s constitutional. However, this is a very political court. And it’s been brought up at a very political time.

MS. SETMAYER: I will not presume to know what the Supreme Court will do, but one federal court said it’s unconstitutional. One said it isn’t, which is why the court is going to take a look at it, and I hope for the future of this country that at least the individual mandate aspect of this is ruled unconstitutional.
MS. ROBERTS: You know, it’s politically risky that the Obama administration pushed for the court to hear it in this term because this debate will be going on all through the campaign. Do you think that was wise?

DEL. NORTON: I don’t think they had much choice. That’s the way in which appeals operate. You had had just about every federal court that was going to consider it consider it. Now, if you wanted to be real political about it, you’d try to delay it in some way, but that is really not the way to behave. The court doesn’t like it and I don’t think the Justice Department wants to get into that business. So I think they moved ahead because the timing of the lower court appeals suggested that you really had to do it.

MS. SETMAYER: And also the timing of when most of the law becomes operational. I think it’s 2013-2014. So they need to find out – you know, businesses, companies, insurers, everyone needs to know are we supposed to move forward with this behemoth of a law, yes or no, which is another reason why I think that –

MS. ROBERTS: But you talk about it going into effect and we just talked about this Kaiser Family Foundation survey about employer benefits. In interest of full disclosure, I am on the board of the Kaiser Family Foundation. But the 9 percent increase is an enormous increase. And what the study found was only maybe 1 to 2 percent was because of the – of ObamaCare as it’s called by its opponents. What do we think? Why else would it be there then?

MS. WOOD: Well, I think it’s – I mean health care has been – the costs have been going up year after year and faster than wages and inflation for years. This is nothing – this is nothing new. And I think the fact that 1 to 2 percent – let’s say it’s 1.5 to be fair – added 9 percent is still fairly significant. And let’s keep in mind, only one provision of ObamaCare has been put in the place, which is that people who have kids that are 26 and don’t have insurance have to be added to their health care plans. I mean that’s how this year that you’re getting into HSAs were effective. Well, most Americans don’t have health savings accounts. It will be next year that people who have Medicare Advantage, about 20 percent of senior, star seeing it being impacted. The following year, another regulation. The following year is when families will really see their health care –

MS. ROBERTS: Although Medicare Advantage has gone down and those premiums have gone down. And some people think it’s because the health care law is coming into effect. So you know, it goes both ways.

MS. CARNAHAN: Well, there’re some studies that show that the insurance agencies actually thought that it was going to be more expensive. So they raised the rates. And then the other thing that I think is very interesting, as it shows for the first time in like 10 years, the employers’ contribution has gone down. And that did not increase.

MS. ROBERTS: And deductions way up.
MS. CARNAHAN: So when you look at that 1 to 2 percent, that’s speculation that insurance companies –

MS. ROBERTS: But again, you know, politically – politically these are – the provisions that have gone into effect are very popular. People who have children, 26 – I tend to think of them as grown ups, but I guess not –

DEL. NORTON: They’re not so many of those, but I hope we will keep in mind the theory of the Affordable Health Care Act. And we – it is – and let’s be clear. It is not in effect yet.

MS. ROBERTS: Right.

DEL. NORTON: And when it becomes effective, the whole point that the risk – you have now virtually the entire population in the risk pool, and economics 101, if you spread the risk that broadly, you bring down the cost of health care. You can’t expect – you’re not going to bring it down because you’re absolutely right. There is an inflationary structure in health care and a lot more has to be done, but you are going to see this even out, the more people that are in the plan. That is why getting the mandate out would be the most terrible thing that you could do.

MS. WOOD: But also economics 101 is called the free market. And government already controls over 50 percent of the dollars in health care now with Medicare, Medicaid, and other health care programs. Now, we’re asking the government to take on even more, hasn’t worked in the past. This – I don’t see it working in the future.

(Cross talk.)

MS. WOOD: – and let me just say, back to your point of why this is so important. Now, over 26 states have said this is unconstitutional. States are the ones having to distribute all the Medicaid dollars. They’re all – many of them, not – maybe not every single one, but the majority of states are having huge deficits right now. And if we didn’t get this economy turned around and jobs started again, we got to get it clear about where –

MS. SETMAYER: Well, here’s a – here’s a perfect example of one of those states – Ohio. Their insurance commissioner just came out with a report recently saying this ObamaCare, when these provisions take place, it’s going to bankrupt our states. They already said that individual premiums have gone up between 55 and 85 percent in the last year. And then they also said that the amount of people that are going to be dumped on to the Medicaid and the government-run health care because small businesses can’t afford the increase in the mandates is devastating.
MS. ROBERTS: But you see, this again, this is the political argument that we’re going to be hearing throughout the campaign. And to have it before the court, to be even more argued, how’s that going to work for your party?

DEL. NORTON: Well, first of all, I’m not sure that the court is going to be through with the bill just because it comes up to be considered now. So I think the court ought to think twice about getting in –look, *Bush v. Gore*, let’s think twice about getting straight into the middle of our presidential campaign. I wonder if the court is going to do it that way.

MS. CARNAHAN: Yes, I agree. I don’t think it’s actually going to hurt our party. I’m not concerned about it. I think what people are concerned about are jobs, and I don’t think that they’re going to be talking about the Supreme Court cases much. You can make the arguments that you make, and we can go back and forth and back and forth. It’s going to do this. It’s going to do that. You know, the bottom line is the Supreme Court’s going to hear it and they’re going to decide whether it’s constitutional or not. There’s a political process to change it if you want to undo it, which I know Republicans have tried to do.

MS. WOOD: And I think, to Cokie’s point, this is right. I don’t – look, what this does is it put it back on the radar screen and again in a way that wasn’t. And when it was on the radar screen, you saw what happened in 2010. Those were a lot of people voting against ObamaCare. And so to have it back up again, regardless of what the court does – if it doesn’t take it up because maybe they won’t –

MS. ROBERTS: Well, there’s a counterargument, though, that if the court blocks it, that voters could think, well, there go those Republicans again not letting any progress happen.

MS. SETMAYER: Well, perhaps, but if the Republican nominee, whoever that is, if they are smart in the way they frame this debate, they will make the connection between how the ObamaCare mandate is hurting job creation in this country because so many businesses, particularly small businesses are afraid to move forward and hire people because they have to pay all these regulations and they have to comply, and people are – that lack – that lack of clarity and uncertainty is hurting job creation in the country. And that’s weird.

MS. CARNAHAN: Companies have money. The money is there. It’s not ObamaCare that is stopping it. It’s spending and people not spending.

MS. ROBERTS: We will see how this plays out in the 2012 election, but right now, we’re going to turn to Sandra Day O’Connor. Thirty years ago, O’Connor became the first woman to sit on the bench of the United States Supreme Court, making women’s history and becoming a role model to millions of women and girls. Though Justice O’Connor is no longer on the Supreme Court, she’s still keeping very busy. I recently spoke with her about what she’s doing now, as well as what is like to be a pioneer.
(Begin video segment.)

MS. ROBERTS: Justice O’Connor, for us ladies of a certain age who were so excited when you were nominated for the court, it is impossible to believe that it’s 30 years ago.

MS. SANDRA DAY O’CONNOR: It’s been long time.

MS. ROBERTS: Can you tell us the story? What was it like when you found out?

MS. O’CONNOR: Well, it was a shock. I mean who would think for a moment that some cowgirl from southeast Arizona would be asked to serve on the Supreme Court? It was a shock.

MS. ROBERTS: That’s how you see yourself, a cowgirl from southeastern?

MS. O’CONNOR: Well, that’s what I was. I mean I had a little education along the way, so I hope I learned something in the process, but I never expected to be asked to serve on the Supreme Court. I was very honored. I wasn’t sure I should do it. I had never argued a case at the court. I had not been a law clerk at the court.

MS. ROBERTS: Did the president himself call you?

MS. O’CONNOR: He did. My phone rang and it was Ronald Reagan on the phone. And he said, Sandra, I’d like to announce your nomination for the court tomorrow. And frankly, my heart sank.

MS. ROBERTS: Really?

MS. O’CONNOR: Yes, it really did because I was not at all sure that I could do the job well enough. I didn’t know if I could. I told my husband. And he said, oh, that’s ridiculous, of course you can. And he was more certain and enthused than I was.

MS. ROBERTS: So then you came to Washington and –

MS. O’CONNOR: I did.

MS. ROBERTS: Do you think they treated you differently because you were a woman?

MS. O’CONNOR: Well, they were very curious to meet me, those who didn’t know me. So number one, they were curious. Number two, they weren’t sure. And number three, women are half of our voting population, aren’t they? And I think there was a certain hesitation on the part of elected officials to say, oh, we can’t have a woman.
They didn’t want to do that because they didn’t know what effect that would have on voters.

MS. ROBERTS: So you think that in some ways they treated you a little bit with kid gloves you’re saying, because –

MS. O’CONNOR: I think a little bit. I don’t know if I’m accurate on that, but that’s the sense I have.

MS. ROBERTS: Do you think that that’s still true? Do you think that now –

MS. O’CONNOR: Oh, no, I think, oh, my goodness, I sat in a courtroom before the summer adjournment, and I looked up at the bench. There were three women on it. That’s incredible.

MS. ROBERTS: Did that make you happy?

MS. O’CONNOR: Oh, it certainly did. I didn’t think I’d see it in my lifetime.

MS. ROBERTS: But do you think that they still need to be more qualified?

MS. O’CONNOR: Well, I wouldn’t say more, but a woman as I came along had to be pretty well-qualified or she wouldn’t be considered for anything.

MS. ROBERTS: Well, you talk about being law school classmates with Justice Rehnquist.

MS. O’CONNOR: Yes.

MS. ROBERTS: And of course, he ended up number one in the class and you were number three in the class.

MS. O’CONNOR: Well, now look, the law school kept no record of how we were ranked. They know what our grades were. They can go look at the grades.

MS. ROBERTS: But then you couldn’t get a job in a law firm and he could easily.

MS. O’CONNOR: No, it was a strange story. At Stanford’s bulletin board for students, it was full of little notices from law firms all over California saying Stanford law graduates, call us. We want to talk to you about work. There must have been close to 40 of them. I called every single number on the bulletin board. I could not get a single interview. I knew a girl of my age at Stanford, not in the law school, but her father was a partner at one of the big California firms. He got me an interview. The headquarters was in Los Angeles. I made the trip down and he looked at my résumé, oh, Ms. Day, you have a fine record in law school, but he said, Ms. Day, this firm has never
hired a woman lawyer. I don’t see the day when we will. Our clients wouldn’t stand for it. And I was very disappointed as he could see. And he said, well, Ms. Day, maybe I could get you on here as a legal secretary. Would you like to talk to us about that? And I said, no, thank you. So that ended that pursuit.

MS. ROBERTS: Did that experience make a difference in your view of the law?

MS. O’CONNOR: Probably. I don’t know. I didn’t come away as a big campaigner for women’s issues. I just wanted to see improvement. I wanted that for myself. I wanted that for others in my shoes. But I didn’t become some wild-eyed advocate.

MS. ROBERTS: You talk about the group of nine, you know, it’s a very small group.

MS. O’CONNOR: Yes.

MS. ROBERTS: And then another woman was appointed, Justice Ginsburg –

MS. O’CONNOR: Finally. I think it was close to 10 years after.

MS. ROBERTS: Is that right?

MS. O’CONNOR: Yes.

MS. ROBERTS: And you became close.

MS. O’CONNOR: Oh, sure, we liked each other. It was nice to have another woman on the court.

MS. ROBERTS: You made the point that when you came on the court it was divided four-four.

MS. O’CONNOR: Oh, it was on many cases.

MS. ROBERTS: The fact that they were so evenly divided and –

MS. O’CONNOR: On some areas.

MS. ROBERTS: – right, and predictable, frankly, on a lot of areas and you were not predictable, was that because you’re just practical?

MS. O’CONNOR: Probably. (Laughs.) Yes, I grew up on a ranch, you know. And I’m sure that that affected me because anybody growing up on a ranch or a farm, in a situation like that, you have to make things work. You have to make things run.
MS. ROBERTS: You retired because your husband was sick.

MS. O’CONNOR: Yes, he had Alzheimer’s.

MS. ROBERTS: That was a very hard thing to do.

MS. O’CONNOR: It was terrible. Well, it’s just heartbreaking. I think John began to have some evidence of it for as long as 17 years.

MS. ROBERTS: Really?

MS. O’CONNOR: Yes. But it was slow progressing and he was able to function fairly well for a long time. And he reached a point, where he no longer could take a metro or a bus or get himself around. Two of our three sons and their families live in the Phoenix area. I think if he were at a place there, they could go visit him often and that I should get off the court and locate at least a good part of the time in Arizona, so that we could all take care of him there. That’s what we did.

MS. ROBERTS: Do you think a man would do that?

MS. O’CONNOR: I hope so.

MS. ROBERTS: It was a very hard thing to do.

MS. O’CONNOR: Well, it wasn’t hard at all. There wasn’t a doubt in my mind about doing it. We’ve been – we were married 57 years. And John had been wonderful, just wonderful. And he had to give up his whole law practice in ’81, when I was put on the court because his firm didn’t have a Washington office. He had to give up everything and come here with me and start a new life, go with a different firm. That wasn’t easy for him at that age, but never a complaint, never oh, why did you do that, oh, I wish I – he was totally supportive the whole time. He couldn’t have been nicer.

MS. ROBERTS: You talked about the works that you’ve done with schools, and I’d like you to talk a little bit about the work you’ve done since you’ve retired.

MS. O’CONNOR: The public is not sufficiently well-educated about the role of a judge, the role of a court.

UNIDENTIFIED FEMALE: The court is about to hear an important case about the students’ rights in school

MS. O’CONNOR: I thought it might help to set up a website focused on middle schoolers and see what we could do. We have a number of games on there. And they’re fun. The young people get on. It’s designed for that grade level up to high school. And they just have a really good time. And in the process, they’re learning. We’ve had it tested to see how much they learn and it’s remarkable.
MS. ROBERTS: So is this a good, a good time of life?

MS. O’CONNOR: Well, it’s not good to be without my husband John. He was just dear and that’s said. And I probably will never stop thinking how sad that is, but it’s all right to be away from the court. I was here 25 years. That’s a long time. And what I end doing now is trying to teach young people by this website I have. And I think that’s very worthwhile. And I also am sitting on the courts of appeal, and that’s all right, too. I have a voice in some panels in different circuits. And that’s fine.

(End video segment.)

MS. ROBERTS: Debra, you were a judge.

MS. CARNAHAN: Yes.

MS. ROBERTS: Were you – did you see Sandra Day O’Connor as a role model?

MS. CARNAHAN: I did early on. She became a judge two years before I went to law school. I went to a law school party one time for Halloween and I put on a robe and I had her name on my back and it said Sandy O. (Laughter.) But she definitely broke the glass ceiling for women and in a very conservative profession, which law. Law is not really forward thinking very much. Usually society has gone ahead of us and then the laws catch up. Not always, but in many cases. So it’s very exciting when that happens. Yes, so –

DEL. NORTON: Kudos to Ronald Reagan.

MS. ROBERTS: Yes, right.

DEL. NORTON: Because Republicans seldom take the opportunity to break the glass for women and he certainly did it and he did it with a woman, who, I have to tell you, as a Supreme Court watcher, I would say half the cases Sandra is wrong this time – (laughter) – but this is a woman who enjoyed my enormous respect. Yes, she voted on, quote, “my side of the issue,” some of the time and perhaps that’s one of the reason, but you heard it in this clip. This is a woman of enormous candor, modesty, and practicality. So when a decision came down, unlike decisions of, I don’t know, Thomas or Scalia, who had saw and still see as ultimately ideological, I had to believe this is how she saw it. I had to make me look at the other side of the case as well.

MS. SETMAYER: Well, I’m glad to see that it was Ronald Reagan who did break the glass ceiling with Sandra Day O’Connor. I was in the first grade when that happened and I remember it plain as day, though, I remember that and just along with Sally Ride, being the first female astronaut. And for me, my mother always taught me never to take no for an answer and to – you know, you can achieve whatever you want, just carry yourself with excellence. And it was women like that that you could turn to
and say, you know what? They did it. I can do it. Even Geraldine Ferraro, when I was – I volunteered to be her – God forbid now – in fourth grade – vice presidential candidate, the first one, you know–

MS. WOOD: Everybody has a moment.

MS. SETMAYER: Yes, yes, God forgave me, but no, but those types of things affect young girls. And I know for me it did. And just another note, another thing that she’s involved in. She’s involved in helping the judicial system in Afghanistan, right now on the public diplomacy with the State Department there’s a project going on. So she has her hands in things still at her age and she’s fantastic and I wish her the best.

MS. WOOD: Yes and I just have to say. I mean my favorite part of the interview, which was in a way the most emotional part, in which she’s talking about her husband, the decision she made. I mean that’s the most important decision she made. I mean it’s up there with any other vote she took at the Supreme Court, of knowing what’s really the most important. And it was the integrity of her family and her marriage. And I think that is – that’s a great role model for anybody. I mean to your point, I think you asked her would a man have done that. I think everybody can learn from that.

DEL. NORTON: That was about what we now really say we all want, the reciprocity in marriage. Look what he did for me. That is certainly the least I could have done for him.

MS. CARNAHAN: I’d also like to bring up something that’s very interesting that you all have been talking about, especially you, on her decisions. You know, when women got the right to vote, everybody said, oh, they’re going to clean up politics and this will change. They didn’t really change a whole lot of things. You know, you didn’t – you couldn’t go the women’s vote. And with her, a lot of people felt, well it’ll be all on women’s issues. It’ll all be favored towards feminism. And it wasn’t. And I think it was kind of a shocker for a lot of people, but that was a good thing because it shows it’s all about up here.

DEL. NORTON: Wait a minute. Wait. I do have to say this – (laughter). This woman forgot she was a woman. She was not like Clarence Thomas. And if you look at her gender cases, most of the time, she came down on the side of women.

MS. ROBERTS: Well, I mean, she said her experience did make a difference. And of course, the question of the law is what’s so important here. I mean we were saying off air, as you know, it was the 1964 Civil Rights law when you said you mother says you can do anything you want. Well, you couldn’t have actually because you needed the law to be on your side. And she does understand that. I mean that was something very clear in her decision. She also had breast cancer and stayed on the bench, working through her illness. And I think that also served as a model for a lot of people, saying, if she can do it, I can do it.
MS. SETMAYER: And she had a family as well. You know, I think – I don’t think the current – the youngest – Sotomayor, she’s not married with children, right?

MS. ROBERTS: Right.

MS. SETMAYER: I think that also shows that even back in those days where the traditional role of the woman seemed to take precedence over anything else, she broke the barrier even with that, like having a family and still made it.

DEL. NORTON: Her family was grown and –

MS. ROBERTS: Grown by then.

(Cross talk.)

MS. ROBERTS: But through the years, when she was lawyering and in the state legislature, she had –

MS. WOOD: I thought it was interesting, too. I mean, looking at her confirmation hearings, I think I was in seventh grade. I can’t remember exactly, but the point being –

MS. ROBERTS: This is very depressing for me.

MS. CARNAHAN: Yes, me too.

MS. WOOD: Well, no, but all to say – I mean it isn’t that long ago. I mean when you think of 1980s, this not that long ago. We don’t have confirmation hearings like that anymore. I mean that is a very different looking – much more civil and like – look, I’m all for calling out what needs to be called out. But it’s just amazing how much that has changed in basically a 30-year period.

MS. ROBERTS: Well, everything was a lot more civil. Very quickly because we’re about out of time, this question of does the public know about the court, this is her object now – very – one quick answer. You want to –

DEL. NORTON: The public does not know about the Congress, much less the court. The court is still quite sequestered and I think too sequestered.

MS. ROBERTS: Well, her website is quite interesting and we will put a link to it up on our website because the little tidbit you saw of the cartoon is just a little bit and it’s really very worthwhile. So we will put a link up on the website for us. But that’s it for this edition of *To the Contrary*.

Next week, our second of a two-part series with Governor Jennifer Granholm and her husband on making marriage work in politics. So check out our website for TTC
Extra on Saudi women’s rights, and whether your views are in agreement or to the contrary, please join us next time.

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