



# FEDERALISM ISSUE: WHAT ROLE SHOULD THE STATES PLAY IN HEALTH CARE POLICY?

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The Patient Protection and Affordable Care Act was signed into law by President Obama in March of 2010, and sought to improve access to health insurance for citizens and to remedy cost-shifting problems in the insurance market. Questions arose regarding Congressional authority to mandate an individual to purchase health insurance. In *National Federation of Independent Businesses v. Sebelius* (2012), the Supreme Court evaluated the constitutional merits of the Affordable Care Act (ACA). The Court determined that, while Congress could not mandate insurance purchase using the Commerce Clause, Congress had the authority to penalize, in the form of a tax, individuals who did not purchase insurance. The court also concluded that the federal government could not mandate states to accept expanded Medicaid coverage, especially because failure to expand coverage meant states could lose all of their federal Medicaid funding.<sup>1</sup> The ruling changed the expansion from a mandate to an opt-in preference decided by each state. Though the ruling in *Sebelius* limited the ability of Congress to pressure states into accepting more Medicaid funding, it generally preserved the federal government's power to become involved in national health care. The case changed the conversation about the ACA away from a discussion of constitutionality towards a question about the states' role.

The ACA has elicited strongly polarized responses from Congress and from state governors. States with Democratic governors have generally chosen to accept the Medicaid expansion, and about half of them have chosen to host their own state-centered health-care marketplaces instead of relying on the federally-run exchange. Republican governors have general-

ly refrained from accepting the Medicaid expansion, and tend to rely on the federally-run marketplace.<sup>2</sup> While the federal exchange, [healthcare.gov](http://healthcare.gov), was met with criticism during its troubled first year online, some state exchanges have also run into problems with implementation. Oregon, Hawaii, and Nevada have all switched from running their own exchanges to using the federal exchange, citing technical and, in Hawaii's case, financial difficulties.<sup>3</sup> Kentucky's Governor Matt Bevin recently announced that Kentucky would also follow suit, despite the relative success of Kynect, their exchange website. After numerous attempts in the House of Representatives, Congress as a whole voted to repeal the ACA in January 2016, only to have the repeal vetoed by President Obama.<sup>4</sup> The presidential and congressional elections of 2016 will help decide whether the ACA survives and, if not, what will replace it—specifically, what role states will play in the health system to come.

Renewed pressure on the future of the ACA emerged in August, 2016, when Aetna, one of the largest insurance companies in the Obamacare marketplace, announced it would no longer offer plans in 11 of the 15 states where it currently operates.<sup>5</sup> This withdrawal, which follows similar moves by insurers United Health Group and Humana, may leave 17% of those who qualify for coverage under the ACA with only one insurance option in 2017.<sup>6</sup>

## THE CANDIDATES

Hillary Clinton has professed support for the foundations of the ACA, including the existing ACA mandates, promising to maintain and expand the

health care coverage created by the ACA.<sup>7</sup> She has also proposed reforms to certain details of the ACA, including the repeal of the so-called “Cadillac tax,” an excise tax on high-cost plans provided by employers, which was designed to help offset the funding necessary for the expansive health care program.<sup>8</sup> The recent announcement by Aetna has reinvigorated pressure on Clinton to propose a more inclusive health insurance plan.<sup>9</sup> Proponents of a single-payer healthcare system, advocated by Bernie Sanders during his campaign, wish to see coverage brought further under the federal purview. This would move the ACA away from state-centered markets in an attempt to avoid further withdrawals by private insurers. As of September, 2016, Clinton’s official policy proposal includes a call for a public-option insurance plan available to all.<sup>10</sup> Clinton made calls for universal health care coverage in her speech to the Democratic National Convention in July, echoing the 2016 Democratic Platform.<sup>11</sup> While the Democratic Platform also calls for universal coverage, it additionally seeks to grant more freedoms to the states in their implementation of the ACA, including “removing barriers to states which seek to experiment with plans.”<sup>12</sup>

When discussing the national health care system, Republican candidate Donald Trump has called the Affordable Care Act “a complete disaster,” advocating for a more free-market centered health care system. At the Fox News Debate in August, 2015, Trump suggested that getting rid of traditional health care markets centered in the states would create more competition, and thus result in better health care prices for consumers.<sup>13</sup> His official policy proposal suggests he will: “Modify existing law that inhibits the sale of health insurance across state lines. As long as the plan purchased complies with state requirements, any vendor ought to be able to offer insurance in any state.”<sup>14</sup> Trump expressed his desire to repeal the ACA at the Republican National Convention in July, aligning himself with the 2016 GOP Platform, which promises to “return to the states their historic role of regulating local insurance markets, limit federal requirements on both private insurance and Medicaid, and call on state officials to reconsider the costly medical mandates.”<sup>15</sup> ■

<sup>1</sup> Chicago-Kent College of Law at Illinois Tech. “National Federation of Independent Businesses v. Sebelius.” Oyez. Accessed January 5, 2016. <https://www.oyez.org/cases/2011/11-393>.

<sup>2</sup> Dropp, Kyle A., Molly C. Jackman, and Saul P. Jackman. *The Affordable Care Act: An Experiment in Federalism?* Center for Effective Public Management at Brookings. October 2013. <http://www.brookings.edu/~media/research/files/papers/2013/10/affordable-care-act-experiment-in-federalism/droppjackman-and-jackmanaca-experment-in-federalism102213.pdf>.

<sup>3</sup> Roubein, Rachel. “How to Dismantle an Obamacare Exchange.” *National Journal*, January 13, 2016. <http://www.nationaljournal.com/s/286610/how-dismantle-obamacare-exchange?mref=scroll>.

<sup>4</sup> Goodnough, Abby. “With Health Care Switch, Kentucky Ventures Into the Unknown.” *The New York Times*, January 13, 2016. <http://www.nytimes.com/2016/01/14/us/affordable-care-act-kentucky-insurance-exchange.html>.

<sup>5</sup> Stewart, Alison. “Aetna Announces It Will Leave Exchanges in 11 States.” *PBS NewsHour*. August 20, 2016. Accessed September 17, 2016. <http://www.pbs.org/newshour/bb/aetna-announces-will-leave-exchanges-11-states/>.

<sup>6</sup> Abelson, Reed, and Margot Sanger-Katz. “Obamacare Options? In Many Parts of Country, Only One Insurer Will Remain.” *The New York Times*, August 19, 2016. Accessed September 18, 2016. [http://www.nytimes.com/2016/08/20/upshot/obamacare-options-in-many-parts-of-country-only-one-insurer-will-remain.html?\\_r=0](http://www.nytimes.com/2016/08/20/upshot/obamacare-options-in-many-parts-of-country-only-one-insurer-will-remain.html?_r=0).

<sup>7</sup> “Health Care.” Hillary Clinton. Accessed January 5, 2016. <https://www.hillaryclinton.com/issues/health-care/>.

<sup>8</sup> Pear, Robert. “Hillary Clinton’s Proposed Changes to Health Law Zero in on Affordability.” *The New York Times*, October 6, 2015. <http://www.nytimes.com/2015/10/07/us/politics/hillary-clintons-proposed-changes-to-health-law-zero-in-on-affordability.html?mtrref=undefined&gwh=BCC5D80F415E81FEB23DA87CDD9C18EF&gwt=pay>.

<sup>9</sup> Meckler, Laura. “Hillary Clinton Pushed From Left and Right on Health Care.” *The Wall Street Journal*, August 18, 2016. <http://www.wsj.com/articles/clinton-pushed-from-left-and-right-on-health-care-1471512604>.

<sup>10</sup> “Hillary Clinton’s Commitment: Universal, Quality, Affordable Health Care for Everyone in America.” *The Briefing*. Accessed September 19, 2016. <https://www.hillaryclinton.com/briefing/factsheets/2016/07/09/hillary-clintons-commitment-universal-quality-affordable-health-care-for-everyone-in-america/>.

<sup>11</sup> “Full Text: Hillary Clinton’s DNC Speech.” *Politico*, July 28, 2016. Accessed September 21, 2016. <http://www.politico.com/story/2016/07/full-text-hillary-clintons-dnc-speech-226410>.

<sup>12</sup> “2016 Democratic Party Platform.” *Democratic National Convention*. July 21, 2016. Accessed September 21, 2016. <https://www.demconvention.com/wp-content/uploads/2016/07/Democratic-Party-Platform-7.21.16-no-lines.pdf>.

<sup>13</sup> “Donald Trump in Fox News 2015 GOP Primary Debate.” *On the Issues*. Accessed September 18, 2016. [http://www.ontheissues.org/Archive/2015\\_Fox\\_GOP\\_Donald\\_Trump.htm](http://www.ontheissues.org/Archive/2015_Fox_GOP_Donald_Trump.htm).

<sup>14</sup> “Healthcare Reform to Make America Great Again.” Donald J. Trump for President. Accessed September 19, 2016. <https://www.donaldjtrump.com/positions/healthcare-reform>.

<sup>15</sup> “Full Text: Donald Trump 2016 RNC Draft Speech Transcript.” *Politico*, July 21, 2016. Accessed September 21, 2016. <http://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974>. ;” *Republican Platform 2016*. 2016 Republican National Convention. Accessed September 21, 2016. [https://prod-static-ngop-pbl.s3.amazonaws.com/media/documents/DRAFT\\_12\\_FINAL\[1\]-ben\\_1468872234.pdf](https://prod-static-ngop-pbl.s3.amazonaws.com/media/documents/DRAFT_12_FINAL[1]-ben_1468872234.pdf).