

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
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**MEMORANDUM**

**August 1, 2013**

**To: Committee on Energy and Commerce Democratic Members and Staff**  
**Fr: Committee on Energy and Commerce Democratic Staff**  
**Re: Ten Ways Republicans Have Acted to Undermine the Affordable Care Act**

Republican leaders fought the passage of the Affordable Care Act in Congress; they were outvoted. Republican attorneys general continued the fight in the courts; they lost when the Supreme Court upheld the law. The National Republican Party tried to make the 2012 elections a referendum on health reform; President Obama won handily. It is now clear that the Affordable Care Act will remain the law of the land. The Act's health care marketplaces that guarantee affordable and accessible health insurance coverage will open for enrollment on October 1, 2013.

In response, Republican leaders at the state and federal levels have acted in an unprecedented fashion to undermine the Affordable Care Act and ensure that it is a failure. Nonpartisan analysts have accused Republicans of trying to "sabotage" the law.

This memorandum describes ten ways that Republicans have acted to undermine the Affordable Care Act. These actions have, in several cases, run counter to long-standing Republican doctrines such as favoring state action to federal control. These obstructionist policies will prevent millions of their poorest constituents from receiving health insurance coverage. They will also mean higher costs for taxpayers in their states. And Republicans have taken these actions while failing to provide any legislative alternatives to provide the uninsured with health insurance coverage.

Republican leaders have acted to undermine the Affordable Care Act by:

- **Casting 40 votes to repeal the law**, futile efforts that have done nothing but create uncertainty and confusion in the mind of the public about the law's implementation.

- **Refusing to expand Medicaid coverage in over 20 states**, preventing millions of Americans from receiving health insurance coverage.
- **Refusing to establish state-based health insurance marketplaces**, complicating HHS efforts to implement the law and “increas[ing] federal involvement in ... state affairs.”<sup>1</sup>
- **Undermining enrollment in health insurance marketplaces** via a multimillion-dollar campaign to “dissuade uninsured Americans from obtaining health coverage.”<sup>2</sup>
- **Refusing to provide funding requested by the Obama Administration to implement the law.**
- **Attacking efforts to educate the public about the Affordable Care Act.**
- **Intimidating potential participants in public education efforts about the law.**
- **Insisting that the Affordable Care Act be defunded as a condition of preventing a government shutdown.**
- **Threatening to deny basic, Affordable Care Act-related constituent service requests from citizens** who request help with understanding or signing up for health insurance benefits under the law.
- **Misinforming citizens about the impact of health care reform on insurance premiums**, leading many to believe that premiums will skyrocket by failing to provide accurate assessments of the true costs in 2014.

Respected, nonpartisan analyst Norm Ornstein reached the following conclusion with regard to these Republican efforts, writing:

What is going on now to sabotage Obamacare is ... sharply beneath any reasonable standards of elected officials with the fiduciary responsibility of governing. ... [T]o do everything possible to undercut and destroy its implementation -- which in this case means finding ways to deny coverage to many who lack any health insurance; to keep millions who might be able to get better and cheaper coverage in the dark about their new options; to create disruption for the health providers who are trying to implement the law, including insurers, hospitals, and physicians; to threaten the even greater disruption via a government shutdown or breach of the debt limit in order to blackmail the president into abandoning the law; and to hope to benefit politically from all the resulting turmoil -- is simply unacceptable, even contemptible. ... That the effort is spearheaded by the Republican leaders of the House and Senate ... takes one's breath away.<sup>3</sup>

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<sup>1</sup>Office of Gov. Butch Otter, Health Insurance Exchange Myth, Fact (Jan. 18, 2013) (online at [www.cdapress.com/news/local\\_news/article\\_d4bea2c6-619f-11e2-9e5b-001a4bcf887a.html](http://www.cdapress.com/news/local_news/article_d4bea2c6-619f-11e2-9e5b-001a4bcf887a.html)).

<sup>2</sup>*Republicans Prepare for ‘Obamacare’ Showdown, With Eye to 2014 Elections*, Reuters (July 25, 2013) (online at [www.reuters.com/article/2013/07/25/us-usa-healthcare-republicans-idUSBRE96O0EJ20130725](http://www.reuters.com/article/2013/07/25/us-usa-healthcare-republicans-idUSBRE96O0EJ20130725)).

<sup>3</sup>*The Unprecedented, Contemptible GOP Quest to Sabotage Obamacare*, Norm Ornstein, The Atlantic (July 25, 2013) (online at [www.theatlantic.com/politics/archive/2013/07/the-unprecedented-contemptible-gop-quest-to-sabotage-obamacare/278098/](http://www.theatlantic.com/politics/archive/2013/07/the-unprecedented-contemptible-gop-quest-to-sabotage-obamacare/278098/)).

## I. INTRODUCTION

Republican members of Congress have opposed the Affordable Care Act since its passage in March 2010, and they have repeatedly tried and failed to repeal the law. Despite these repeated failures, they are now trying to undermine the implementation of the health care law.

Political analyst Chuck Todd accused Republicans of “trying to sabotage the law.”<sup>4</sup> A *USA Today* editorial stated:

Having lost in Congress and in court, they're now using the most cynical of tactics: trying to make the law fail. Never mind the public inconvenience and human misery that will result.<sup>5</sup>

These actions stand in stark contrast to the actions of Democratic members of Congress after passage of the 2003 Medicare Part D law. Most House Democrats opposed this law and were concerned about the process by which it was passed. They objected to the unprecedented three-hour House roll call vote; they protested when they learned that the Republican House Majority Leader offered political favors in exchange for votes; and they felt misled when they learned that a Bush Administration official threatened to fire a government actuary if he provided accurate cost estimates to Congress. But despite these concerns, Democratic members ultimately worked hard to ensure that the Part D bill was a success.

The Republican approach is different, relying on failure of the law rather than constructive changes. One analyst describes this approach in the following way:

The GOP really, truly hates Obamacare. They believe that their best chance to repeal it is to make it as big a mess as possible. Anything that makes it easier to live with makes it harder to get rid of. ... [T]his is a theory that requires Republicans to knowingly damage America's health-care system on the off-chance the damage is severe enough to help them accomplish a much larger policy goal. It's a theory that requires them to choose to let problems fester because the pain is more politically useful than the cure.<sup>6</sup>

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<sup>4</sup>*Sabotage Governing*, The Washington Post (July 9, 2013) (online at [www.washingtonpost.com/blogs/plum-line/wp/2013/07/09/sabotage-governing/](http://www.washingtonpost.com/blogs/plum-line/wp/2013/07/09/sabotage-governing/)).

<sup>5</sup>*GOP Poisons ObamaCare, Then Claims Its Sick*, USA Today (July 9, 2013) (online at [www.usatoday.com/story/opinion/2013/07/09/affordable-care-act-obamacare-nfl-editorials-debates/2504207/](http://www.usatoday.com/story/opinion/2013/07/09/affordable-care-act-obamacare-nfl-editorials-debates/2504207/)).

<sup>6</sup>*Wonkbook: The GOP's Dangerous Obamacare Strategy*, Washington Post (May 28, 2013) (online at [www.washingtonpost.com/blogs/wonkblog/wp/2013/05/28/wonkbook-the-gops-dangerous-obamacare-strategy/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/28/wonkbook-the-gops-dangerous-obamacare-strategy/)).

## **II. REPUBLICAN EFFORTS TO UNDERMINE AND SABOTAGE THE AFFORDABLE CARE ACT**

### **A. 40 Votes to Repeal the Affordable Care Act**

After this week, House Republicans will have voted 40 times to repeal or defund Obamacare. These votes began when Republicans took control of the House of Representatives in 2011; they continued after the November 2012 election when President Obama's reelection made repeal unrealistic.

Although the Republican repeal bills have no chance of passage, they do generate confusion, which may be their purpose. One analyst explained:

This slew of three dozen repeal votes have changed both how the Affordable Care Act works and how the public perceives it. ... [T]he Kaiser Family Foundation polled Americans on whether the Affordable Care Act is still law. Twelve percent of Americans — that's about one in eight people — think that Congress repealed the Affordable Care Act. Another 23 percent aren't sure or refused to answer the question. Congress' repeal votes get media attention and coverage, which probably explains where these numbers come from. After hearing so much about congressional repeal, it's hard to blame Americans who think that the efforts have succeeded. The uncertainty that these repeal votes have created can have real consequences for the Affordable Care Act. ... It's easy to write off the repeal votes as inconsequential but, from a policy standpoint they're not. They've effected what the Affordable Care Act looks like nationally and locally in ways that will matter for years to come.<sup>7</sup>

### **B. Republican Governors' and State Legislatures' Refusal to Expand Medicaid Coverage**

The Affordable Care Act provided for an expansion of the Medicaid program that was designed to help millions of low-income Americans receive health care coverage. Under this provision, states could cover individuals with incomes of up to 133% of the Federal Poverty Level, with the federal government reimbursing states for all of the costs for the first three years and then covering 90% of the costs in 2020 and beyond. The Congressional Budget Office (CBO) estimated that approximately 15 million low-income citizens would receive coverage as a result of this expansion.

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<sup>7</sup>*Yes, the 37<sup>th</sup> Obamacare Repeal Vote Matters*, Washington Post (May 16, 2013) (online at [www.washingtonpost.com/blogs/wonkblog/wp/2013/05/16/yes-the-37th-obamacare-repeal-vote-matters/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/16/yes-the-37th-obamacare-repeal-vote-matters/)).

However, in June 2012, the Supreme Court ruled that states could opt out of the Medicaid expansion. Twenty-one states – all with Republican governors or Republican-controlled legislatures – have chosen to take this route and opt not to expand their programs.<sup>8</sup>

The impact of these decisions is to deny 6.4 million Americans health coverage in a particularly unfair fashion by blocking some of the poorest Americans from obtaining coverage.<sup>9</sup> Under the Affordable Care Act, individuals with incomes above 100% of the Federal Poverty Level have the option of receiving coverage through the health insurance marketplaces, where they can qualify for tax credits and subsidies to ensure that coverage is affordable. But this option is not available to those with incomes below 100% of the Federal Poverty Level. Their only option for coverage is through Medicaid. In the states that are refusing to expand Medicaid, these very low-income individuals will be stranded without health insurance coverage. They will be unable to receive coverage through their state Medicaid programs or through the marketplaces.

Republican governors have described these decisions under the guise of financial responsibility. Texas Governor Rick Perry, a Republican, stated that “it would benefit no one in our states to see ... our economy crushed as our budget crumbled under the weight of oppressive Medicaid costs.”<sup>10</sup> But nonpartisan analysts have concluded that expanding Medicaid would be the more fiscally responsible policy for the states because it would be almost entirely federally funded and would reduce the costs imposed on states, localities, and healthcare providers for uncompensated care for the uninsured, and increase state tax revenues. An analysis by the Rand Corporation concluded that states and localities opting out of the Medicaid expansion would spend more than \$1 billion a year paying for the costs of uncompensated care. The study concluded that “it’s in the best economic interests of states to expand Medicaid under the terms of the federal Affordable Care Act. Choosing to not expand Medicaid may turn out to be the more costly path for state and local governments.”<sup>11</sup>

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<sup>8</sup> Of the 21 states that have not expanded the Medicaid program, 19 have Republican governors. In Missouri and Montana, Democratic Governors Jay Nixon and Steve Bullock supported Medicaid expansion but were blocked from doing so by Republican-controlled state legislatures. (*Vote that Killed Medicaid Bill Was a Mistake, Lawmaker Says*, The Missoulian (Apr. 20, 2013) (online at [missoulian.com/news/local/vote-that-killed-medicaid-bill-was-a-mistake-lawmaker-says/article\\_28deaa2e-a92e-11e2-903e-001a4bcf887a.html](http://missoulian.com/news/local/vote-that-killed-medicaid-bill-was-a-mistake-lawmaker-says/article_28deaa2e-a92e-11e2-903e-001a4bcf887a.html)), *Missouri Lawmakers Torpedo Medicaid Expansion*, Politico (May 8, 2013) (online at [www.politico.com/story/2013/05/missouri-lawmakers-torpedo-medicaid-expansion-91040.html](http://www.politico.com/story/2013/05/missouri-lawmakers-torpedo-medicaid-expansion-91040.html))).

<sup>9</sup> Kaiser Family Foundation, *Analyzing the Impact of State Medicaid Expansion Decisions* (July 2013) (online at [kaiserfamilyfoundation.files.wordpress.com/2013/07/8458-analyzing-the-impact-of-state-medicaid-expansion-decisions2.pdf](http://kaiserfamilyfoundation.files.wordpress.com/2013/07/8458-analyzing-the-impact-of-state-medicaid-expansion-decisions2.pdf)).

<sup>10</sup> Governor Rick Perry, quoted in *GOP Governors Play Politics with Life and Death*, U.S. News and World Report (June 4, 2013) (online at [www.usnews.com/opinion/blogs/pat-garofalo/2013/06/04/study-rejecting-obamacare-medicaid-expansion-costs-gop-governors-money](http://www.usnews.com/opinion/blogs/pat-garofalo/2013/06/04/study-rejecting-obamacare-medicaid-expansion-costs-gop-governors-money)).

<sup>11</sup> *States that opt out of Medicaid expansion stand to lose billions*, BMJ (June 4, 2013) (online at [www.bmj.com/content/346/bmj.f3651.full](http://www.bmj.com/content/346/bmj.f3651.full)).

The states that reject the Medicaid expansion will turn down an opportunity to improve economic growth and increase revenues. An expansion of Medicaid will create more jobs as the health needs of low-income families are met, leading to a stronger economy and more revenue for state governments, and the coverage provided by Medicaid will save money in other state safety net health care programs. In fact, the state of Ohio could see budget savings of \$1.8 billion over the next decade by participating in the Medicaid expansion, and Florida's participation could increase revenues by \$100 million annually – the exact opposite of what Republican governors have predicted.<sup>12</sup>

### **C. Refusal to Establish State-Based Health Insurance Marketplaces**

Republican leaders have often stated that they oppose the Affordable Care Act because it does not allow for sufficient state flexibility. For example, Governor Bob McDonnell of Virginia, a Republican, has criticized the law as “a one-size-fits-all cumbersome mandate from D.C.”<sup>13</sup> But when given a key opportunity to tailor the application of the Affordable Care Act to meet the needs of their own states, 26 Republican governors or state legislatures have refused to do so.<sup>14</sup>

The Affordable Care Act is implemented primarily through health insurance exchanges – open, transparent marketplaces where consumers can purchase insurance coverage. The law gives states the authority to set up their own marketplaces, which allows states to maintain autonomy over their health insurance industries while designing the marketplace so that it can meet individual state needs. The law also provides generous funding to cover state costs.<sup>15</sup> If states decide not to establish marketplaces, the law directs the federal government to establish a marketplace to be used by residents of those states.

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<sup>12</sup> Center for American Progress, *10 Frequently Asked Questions About Medicaid Expansion* (Apr. 2, 2013) (online at [www.americanprogress.org/issues/healthcare/news/2013/04/02/58922/10-frequently-asked-questions-about-medicaid-expansion/](http://www.americanprogress.org/issues/healthcare/news/2013/04/02/58922/10-frequently-asked-questions-about-medicaid-expansion/)).

<sup>13</sup> Bobby Jindal, *Bob McDonnell Slam Obamacare as a Job Killer*, Daily Caller (June 29, 2013) (online at [dailycaller.com/2012/06/29/bobby-jindal-bob-mcdonnell-slam-obamacare-as-a-job-killer/](http://dailycaller.com/2012/06/29/bobby-jindal-bob-mcdonnell-slam-obamacare-as-a-job-killer/)).

<sup>14</sup> Of the 27 states that have not implemented state-based exchanges, 25 have Republican governors. In Missouri, Democratic Governor Jay Nixon supported an exchange but was unable to implement it because of a state ballot initiative. (*Federal Government Will Start Setting Up Missouri's Health Exchange*, St. Louis Today (Nov. 12, 2012) (online at [www.stltoday.com/news/local/govt-and-politics/political-fix/federal-government-will-start-setting-up-missouri-s-health-exchange/article\\_4bee6ae8-6b8d-5c6c-9ecf-e90dd36234b6.html](http://www.stltoday.com/news/local/govt-and-politics/political-fix/federal-government-will-start-setting-up-missouri-s-health-exchange/article_4bee6ae8-6b8d-5c6c-9ecf-e90dd36234b6.html)). In Montana, Democratic Governor Steve Bullock supported a state-based exchange, but was blocked in the Republican-controlled legislature.

<sup>15</sup> Center on Budget and Policy Priorities, *Status of State Health Insurance Exchange Implementation* (June 14, 2013) (online at [www.cbpp.org/files/CBPP-Analysis-on-the-Status-of-State-Exchange-Implementation.pdf](http://www.cbpp.org/files/CBPP-Analysis-on-the-Status-of-State-Exchange-Implementation.pdf)).

One of the few Republican governors to implement a state-based marketplace, Idaho's Gov. Butch Otter, described the benefits of states running their own marketplaces, noting that turning down the opportunity to run a state marketplace and instead requiring a federal marketplace:

would invite increased federal involvement in our state affairs through regulation of our insurance markets, forfeiting the creation of jobs in Idaho to other states, adding to the enlargement of the federal bureaucracy and incurring federal fees for operating costs associated with running a federal exchange. ... [T]here are numerous documented areas that the state will have the ability to make decisions in creating and administering the state-run exchange. In addition to those, a state-based exchange will provide Idaho with more control over operational costs, controlling costs to consumers. It will rely on existing state agencies to perform functions they already perform instead of creating duplicate federal functions.<sup>16</sup>

Despite these benefits, 26 states have refused to implement state-based health insurance marketplaces. This reduces flexibility for residents of their states and places added strain on the Department of Health and Human Services (HHS), complicating implementation of the law. HHS Secretary Kathleen Sebelius said: "Implementation had been hampered [by] red-state governors and legislators who have rejected state-run insurance exchanges. ... It is very difficult when people live in a state where there is a daily declaration, 'We will not participate in the law,' for them to figure out whether they are going to benefit."<sup>17</sup>

#### **D. Undermining Enrollment in Health Insurance Marketplaces**

Two leading Republican groups, FreedomWorks and Americans for Prosperity, announced earlier this month that they would begin a multimillion-dollar campaign to "dissuade uninsured Americans from obtaining health coverage."<sup>18</sup>

One press report described the goal of this campaign:

FreedomWorks and Americans for Prosperity, a conservative issue group financed by billionaire brothers David and Charles Koch, known for funding conservative causes, are planning separate media and grassroots campaigns aimed at adults in their 20s and 30s - the very people Obama needs to have sign up for healthcare coverage in new online insurance exchanges if his reforms are to succeed. "We're trying to make it socially acceptable to skip the exchange," said

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<sup>16</sup>Office of Gov. Butch Otter, Health Insurance Exchange Myth, Fact (Jan. 18, 2013) (online at [www.cdapress.com/news/local\\_news/article\\_d4bea2c6-619f-11e2-9e5b-001a4bcf887a.html](http://www.cdapress.com/news/local_news/article_d4bea2c6-619f-11e2-9e5b-001a4bcf887a.html)).

<sup>17</sup>*Sebelius: Obamacare Rollout Tougher than White House Expected*, The Hill (Apr. 9, 2013) (online at [thehill.com/blogs/blog-briefing-room/news/292531-sebelius-obamacare-rollout-more-complicated-than-anticipated](http://thehill.com/blogs/blog-briefing-room/news/292531-sebelius-obamacare-rollout-more-complicated-than-anticipated)).

<sup>18</sup>*Republicans Prepare for 'Obamacare' Showdown, With Eye to 2014 Elections*, Reuters (July 25, 2013) (online at [www.reuters.com/article/2013/07/25/us-usa-healthcare-republicans-idUSBRE9600EJ20130725](http://www.reuters.com/article/2013/07/25/us-usa-healthcare-republicans-idUSBRE9600EJ20130725)).

Dean Clancy, vice president for public policy at FreedomWorks, which boasts 6 million supporters. The group is designing a symbolic “Obamacare card” that college students can burn during campus protests.<sup>19</sup>

The goal of these efforts is not to modify the law or improve it, but to ensure the failure of the Affordable Care Act, even at the expense of placing individuals who would otherwise need and choose to purchase health insurance at risk.

One analyst described the effort as designed to “ruin the system for people who *want* the help Obamacare offers them. ... [T]he campaign effectively amounts to asking people to continue putting their well-being and livelihoods at risk for the good of the cause of keeping health care for sick people unaffordable.”<sup>20</sup>

#### **E. Denying Funding Requests to Implement the Affordable Care Act**

Republicans in Congress have repeatedly denied routine HHS budget requests for administrative funding needed to implement the Affordable Care Act, denying funding requested in FY 2012 and FY 2013 and subjecting HHS to the cuts in the sequester. This has left the agency with a shortfall of billions of dollars in administrative funding. This “shoestring budget” has hampered HHS’s ability to implement the law.<sup>21</sup>

According to the *Washington Post*:

HHS has repeatedly requested additional funds from Congress to assist in the implementing but has been turned down. After Congress rejected a request in March for nearly \$1 billion in additional spending for fiscal 2013, the White House asked for \$1.5 billion for fiscal 2015 to set up and run dozens of exchanges that will provide Americans options for health insurance.<sup>22</sup>

#### **F. Attacking Affordable Care Act Education Efforts**

On multiple occasions, Republicans in Congress have acted to undermine efforts to inform the public about the Affordable Care Act.

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<sup>19</sup>*Republicans Prepare for ‘Obamacare’ Showdown, With Eye to 2014 Elections*, Reuters (July 25, 2013) (online at [www.reuters.com/article/2013/07/25/us-usa-healthcare-republicans-idUSBRE96O0EJ20130725](http://www.reuters.com/article/2013/07/25/us-usa-healthcare-republicans-idUSBRE96O0EJ20130725)).

<sup>20</sup>*Undeniable Sabotage*, Talking Points Memo (July 25, 2013) (online at [talkingpointsmemo.com/archives/2013/07/undeniable\\_sabotage.php](http://talkingpointsmemo.com/archives/2013/07/undeniable_sabotage.php)).

<sup>21</sup>*Budget Request Denied, Sebelius Turns to Health Executives to Finance Obamacare*, Washington Post (May 10, 2013) (online at [www.washingtonpost.com/blogs/wonkblog/wp/2013/05/10/budget-request-denied-sebelius-turns-to-health-executives-to-finance-obamacare/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/10/budget-request-denied-sebelius-turns-to-health-executives-to-finance-obamacare/)).

<sup>22</sup>*Budget Request Denied, Sebelius Turns to Health Executives to Finance Obamacare*, Washington Post (May 10, 2013) (online at [www.washingtonpost.com/blogs/wonkblog/wp/2013/05/10/budget-request-denied-sebelius-turns-to-health-executives-to-finance-obamacare/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/10/budget-request-denied-sebelius-turns-to-health-executives-to-finance-obamacare/)).



In September 2012, for example, Republicans on the Energy and Commerce Committee opened an investigation of HHS grants to states after the State of California signed a contract with Ogilvy Public Relations that included discussion of placing mentions of the Affordable Care Act in popular television shows.<sup>23</sup> Republican leaders on the Energy and Commerce Committee described California's plan to inform the public about new insurance requirements via popular media as an effort "to subsidize Hollywood and insert propaganda into the popular culture."<sup>24</sup> House Republican Conference Chair Jeb Hensarling criticized the efforts of HHS to inform the public about the new Affordable Care Act benefits and requirements as "wasting taxpayer dollars on PR campaigns."<sup>25</sup>

The contrast between these actions and the actions of Republicans when the Bush Administration was implementing Medicare Part D is stark. Beginning in 2003, the Bush Administration spent more than \$70 million on a public relations campaign, including an expenditure of \$600,000 to fly a blimp over football stadiums, state fairs, and an auto race to promote its 1-800-MEDICARE information line.<sup>26</sup> After the Medicare Part D drug benefit was passed into law, the Bush Administration spent even more, planning a three-year, \$300 million public relations effort that included a \$25 million advertising campaign and a bus tour featuring high-level Administration officials that visited 100 cities in 2005.<sup>27</sup> Republican leaders were supportive of this spending.

#### **G. Intimidating Potential Participants in Public Education Efforts**

In May 2013, the *Washington Post* reported that HHS Secretary Sebelius had requested assistance from private sector entities to help fund efforts to educate the public about the Affordable Care Act. This prompted Republican leaders to open an investigation of HHS and Enroll American, a nonprofit organization conducting a public education campaign.<sup>28</sup> Over 20

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<sup>23</sup>Letter from Energy and Commerce Committee Chairman Fred Upton and Senate Finance Committee Ranking Member Chuck Grassley to Kathleen Sebelius, Secretary, Department of Health and Human Services (Sept. 28, 2012); Letter from Chairman Fred Upton and Oversight and Investigations Subcommittee Chairman Cliff Stearns to Robert Mathis, Managing Director, Ogilvy Public Relations (Sept. 27, 2012).

<sup>24</sup>Letter from Chairman Fred Upton and Chairman Cliff Stearns to Robert Mathis, Managing Director, Ogilvy Public Relations (Sept. 27, 2012).

<sup>25</sup>House Republican Conference Chair Jeb Hensarling, *Medicare on Main Street* (Oct. 5, 2012).

<sup>26</sup>*Look Up in the Sky - it's the Medicare Blimp*, St. Petersburg Times (Oct. 23, 2003).

<sup>27</sup>See, Government Accountability Office, *Media Contracts: Activities and Financial Obligations for Seven Federal Departments* (Jan. 13, 2006) (GAO-06-305); *Medicare Drug Benefit Outlined in Campaign*, The Washington Post (Oct. 10, 2005); *Health Secretary Urges Local Leaders to Tout Drug Plan*, The Denver Post (Aug. 28, 2005).

<sup>28</sup>Energy and Commerce Committee, *Committee Launches Probe Following Reports of HHS Soliciting Donations from Companies it Regulates* (May 13, 2013) (online at [energycommerce.house.gov/press-release/committee-launches-probe-following-reports-hhs-soliciting-donations-companies-it](http://energycommerce.house.gov/press-release/committee-launches-probe-following-reports-hhs-soliciting-donations-companies-it)).

different companies were sent document requests related to whether they had been asked for assistance from Secretary Sebelius.<sup>29</sup>

This appears to have had the desired effect. The *New York Times* reported that it caused “such a strong partisan uproar that potential donors bec[ame] skittish about contributing” to the group’s education efforts.<sup>30</sup>

Republicans also engaged in other intimidation tactics directed against organizations considering working with HHS to educate the public about the Affordable Care Act. When news reports indicated that the National Football League (NFL) and National Basketball Association (NBA) were considering working with HHS to inform the public about the law’s new benefits, Republican leaders sent letters to the leagues urging them not to do so, urging “caution ... against being coerced into doing their dirty work for them,”<sup>31</sup> and warning that “it is difficult to understand why an organization like yours would risk damaging its inclusive and apolitical brand by lending its name to its promotion.”<sup>32</sup> Soon after receiving these letters, the NFL announced they would not be participating in any efforts with HHS to inform the public about the Affordable Care Act.

#### **H. Demands to Defund the Affordable Care Act or Shut Down the Government**

Republicans and Democrats are currently negotiating over a continuing resolution to prevent a government shutdown in 2013. However, key Republicans in both the House and Senate – including national party leaders like Sen. Rand Paul, Sen. Marco Rubio, and Rep. Michelle Bachmann – have demanded ending funding for the Affordable Care Act as a prerequisite to passage of any legislation. Republican House leaders wrote that a continuing resolution should “defund the implementation and enforcement of the Patient Protection and

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<sup>29</sup>Energy and Commerce Committee, *Committee Launches Probe Following Reports of HHS Soliciting Donations from Companies it Regulates* (May 13, 2013) (online at [energycommerce.house.gov/press-release/committee-launches-probe-following-reports-hhs-soliciting-donations-companies-it](http://energycommerce.house.gov/press-release/committee-launches-probe-following-reports-hhs-soliciting-donations-companies-it)).

<sup>30</sup>*Potential Donors to Enroll America Grow Skittish*, New York Times (May 19, 2013) (online at [www.nytimes.com/2013/05/20/us/politics/potential-donors-to-enroll-america-grow-skittish.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/05/20/us/politics/potential-donors-to-enroll-america-grow-skittish.html?pagewanted=all&_r=0)).

<sup>31</sup>Letter from Rep. Steve Scalise to NFL Commissioner Roger Goodell and NBA Commissioner David Stern (June 27, 2013) (online at [scalise.house.gov/sites/scalise.house.gov/files/documents/Letter%20to%20NFL%20and%20NBA.pdf](http://scalise.house.gov/sites/scalise.house.gov/files/documents/Letter%20to%20NFL%20and%20NBA.pdf)).

<sup>32</sup>Letter from Sen. Mitch McConnell and Sen. John Cornyn to Roger Goodell (June 27, 2013).

Affordable Care Act;”<sup>33</sup> Senate leaders wrote, “we will not support any continuing resolution or appropriations legislation that funds further implementation or enforcement of ObamaCare.”<sup>34</sup>

Other Republicans have been critical of these efforts. Sen. Tom Coburn stated flatly that this idea “will not work” and Sen. Richard Burr called the idea to defund the law “the dumbest idea I’ve ever heard.”<sup>35</sup>

## **I. Threats to Deny Constituent Service Requests**

Constituent service requests – helping citizens who ask their members of Congress for assistance navigating federal programs like Medicare, Social Security, and those provided by the Department of Veterans Affairs – is a basic part of congressional service. Members of Congress routinely have staff in Washington and in their districts to help constituents with these requests.

Democratic members of Congress – even those who voted against the law – held town halls, participated in enrollment events, and routinely provided assistance to residents of their districts who sought help determining if they qualified for benefits under Medicare Part D and enrolling in the program. Some Republicans appear to be taking this approach with the Affordable Care Act. For example, Rep. Phil Gingrey, has said, “If a constituent wants to know something, I’m going to be truthful to them, even if I absolutely hate the program.”<sup>36</sup>

But it appears that other Republican members are taking a different – and unprecedented – approach, indicating they will not help constituents with questions about the Affordable Care Act. A recent article in *The Hill* asked numerous Republican House members about their approach to constituent services for health reform. *The Hill* reported:

Some Republicans indicated [that] they will not assist constituents in navigating the law and obtaining benefits. Others said they would tell people to call the Department of Health and Human Services (HHS). “Given that we come from Kansas, it’s much easier to say, ‘Call your former governor,’” said Rep. Tim Huelskamp (R), referring to HHS Secretary Kathleen Sebelius. “You say, ‘She’s the one. She’s responsible. She was your governor, elected twice, and now you

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<sup>33</sup>*Republicans Pen Obamacare Letter to John Boehner*, Politico (July 25, 2013) (online at [www.politico.com/story/2013/07/obamacare-funding-spending-bills-94757.html#ixzz2aTLAgRAE](http://www.politico.com/story/2013/07/obamacare-funding-spending-bills-94757.html#ixzz2aTLAgRAE)).

<sup>34</sup>Letter to Senator Harry Reid from Sens. Mike Lee, Marco Rubio, Ted Cruz, James Risch, Rand Paul, James Inhofe, David Vitter, John Thune, Jeff Chiesa, Mike Enzi, Deb Fischer, and Chuck Grassley (July 25, 2013) (online at [www.lee.senate.gov/public/index.cfm/press-releases?ID=93817977-d333-4992-8e2d-182ce24d2153](http://www.lee.senate.gov/public/index.cfm/press-releases?ID=93817977-d333-4992-8e2d-182ce24d2153)).

<sup>35</sup>*Coburn: Plan to Defund Obamacare Could Destroy GOP*, Washington Post (July 26, 2013) (online at <http://www.washingtonpost.com/blogs/post-politics/wp/2013/07/26/coburn-plan-to-defund-obamacare-could-destroy-gop/>).

<sup>36</sup>*GOP to Constituents: Questions on Obamacare? Call Obama*, The Hill (June 15, 2013) (online at [thehill.com/blogs/healthwatch/health-reform-implementation/305777-gop-to-constituents-questions-on-obamacare-call-obama#ixzz2aTPhzrEe](http://thehill.com/blogs/healthwatch/health-reform-implementation/305777-gop-to-constituents-questions-on-obamacare-call-obama#ixzz2aTPhzrEe)).

reelected the president, but he picked her.” Huelskamp said. “We know how to forward a phone call,” said Rep. Jason Chaffetz (R-Utah). “I have two dedicated staff who deal with nothing, but ObamaCare and immigration problems,” he added. “I’m sure there will be an uptick in that, but all we can do is pass them back to the Obama administration. The ball’s in their court. They’re responsible for it.”<sup>37</sup>

**J. Misinforming Citizens about the Impact of Health Care Reform on Insurance Premiums**

Republican leaders have repeatedly claimed that the Affordable Care Act will cause a catastrophic increase in insurance premiums since Congress first began considering these reforms.<sup>38</sup> As the date on which individuals can purchase health insurance on the marketplace gets closer, actual information on premiums is now available. This data shows that premiums will be even lower than predicted. For example, an HHS analysis released earlier this month found that in the states for which data are available, the lowest cost silver plan in the individual market in 2014 will cost, on average, 18% less than the rate predicted by the Congressional Budget Office; on the small group market, the average premium that small employers will pay is 18% lower than the same plan would cost absent the Affordable Care Act.<sup>39</sup>

But in several Republican-controlled states, insurance commissioners have released information in a misleading fashion, implying that rates will be higher than expected. This creates bad publicity for the Affordable Care Act and potentially convinces residents that they will not be able to afford coverage. For example, on July 19, 2013, Indiana’s Chief Deputy Insurance Commissioner under Republican Governor Mike Pence released information claiming that insurance rates for individuals in the state would increase by 72%, with plan costs increasing to \$570 monthly.<sup>40</sup> He claimed, “This new data regrettably confirms the negative impact of the

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<sup>37</sup> *GOP to Constituents: Questions on Obamacare? Call Obama*, The Hill (June 15, 2013) (online at [thehill.com/blogs/healthwatch/health-reform-implementation/305777-gop-to-constituents-questions-on-obamacare-call-obama#ixzz2aTPhzrEe](http://thehill.com/blogs/healthwatch/health-reform-implementation/305777-gop-to-constituents-questions-on-obamacare-call-obama#ixzz2aTPhzrEe)).

<sup>38</sup> See, *Weekly Remarks: John Boehner Says Health Costs Will Soar; Obama Sees Economy Rebounding*, Los Angeles Times (Oct. 31, 2009) (online at [latimesblogs.latimes.com/washington/2009/10/john-boehner-healthcare-barack-obama-economy.html](http://latimesblogs.latimes.com/washington/2009/10/john-boehner-healthcare-barack-obama-economy.html)).

<sup>39</sup> L. Skopec and R. Kronsick, *Market Competition Works: Proposed Silver Premiums in the 2014 Individual and Small Group Markets Nearly 20% Lower than Expected*, U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation (July 2013) (online at [aspe.hhs.gov/health/reports/2013/MarketCompetitionPremiums/rb\\_premiums.cfm](http://aspe.hhs.gov/health/reports/2013/MarketCompetitionPremiums/rb_premiums.cfm)).

<sup>40</sup> *State Says Obamacare Will Force 72% Increases in Individual Insurance Plan Rates*, Indianapolis Star (July 19, 2013) (online at [www.indystar.com/article/20130718/BUSINESS/307180100/State-says-Obamacare-will-force-72-percent-increase-individual-insurance-plan-rates](http://www.indystar.com/article/20130718/BUSINESS/307180100/State-says-Obamacare-will-force-72-percent-increase-individual-insurance-plan-rates)).

Affordable Care Act on the insurance market in Indiana. ... These rates call into question just how affordable health insurance will really be for many Hoosiers.”<sup>41</sup>

The State released no other information at the time. But independent analysts were able to obtain additional information on premiums and revealed that state officials had used a misleading average to get the \$570 cost estimate. They found that the “figure that Indiana put out ... doesn’t, in fact, tell us much at all. It’s pretty much just a great number to make the cost of health insurance sound expensive in Indiana and a horrible one to use in thinking about how much Hoosiers will pay for coverage come January.”<sup>42</sup> In fact, sample filings from insurers in Indiana reveal that premiums will be as low as \$125 a month for a 20-year-old and \$307 a month for a 47-year-old, before tax credits and subsidies, which will reduce out-of-pocket costs even more for many individuals.<sup>43</sup>

Indiana is not the only state to put out misleading figures on insurance premiums. In June 2013, Ohio’s Republican Lt. Governor Mary Taylor released information claiming that “initial analysis of the proposed rates show consumers will have fewer choices and pay much higher premiums for their health insurance starting in 2014.”<sup>44</sup> But a more detailed analysis of these claims found numerous problems: misleading use of averages, cherry picking plans to imply that rates currently paid by Ohio residents were lower than they are, comparing the cost of plans that now offer limited benefits but will offer full benefits in 2014, and failing to take into account the impact of tax credits and subsidies to reduce premium costs.<sup>45</sup>

Republicans on the Energy and Commerce Committee have also exaggerated the impact of the Affordable Care Act on insurance rates, releasing an analysis in May 2013 claiming that “consumers purchasing health insurance on the individual market may face premium increases of

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<sup>41</sup> *State Says Obamacare Will Force 72% Increases in Individual Insurance Plan Rates*, Indianapolis Star (July 19, 2013) (online at [www.indystar.com/article/20130718/BUSINESS/307180100/State-says-Obamacare-will-force-72-percent-increase-individual-insurance-plan-rates](http://www.indystar.com/article/20130718/BUSINESS/307180100/State-says-Obamacare-will-force-72-percent-increase-individual-insurance-plan-rates)).

<sup>42</sup> *Indiana Says Health Plan Costs Will Spike to \$570. That’s Not the Full Story*, Washington Post (July 20, 2013) (online at [www.washingtonpost.com/blogs/wonkblog/wp/2013/07/20/indiana-says-health-plan-costs-will-spike-to-570-thats-not-the-full-story/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/20/indiana-says-health-plan-costs-will-spike-to-570-thats-not-the-full-story/)).

<sup>43</sup> *Hoosier Hustle? Another Dubious Attack on Obamacare*, The New Republic (July 21, 2013) (online at [www.newrepublic.com/article/113973/obamacare-rate-shock-indiana-what-gop-officials-didnt-say#](http://www.newrepublic.com/article/113973/obamacare-rate-shock-indiana-what-gop-officials-didnt-say#)).

<sup>44</sup> *You Call This Insurance? Ohio’s Lieutenant Governor is Misleading the Public About Obamacare Rate Shock*, The New Republic (June 11, 2013) (online at [www.newrepublic.com/article/113440/obamacare-rate-shock-higher-prices-can-mean-better-benefits](http://www.newrepublic.com/article/113440/obamacare-rate-shock-higher-prices-can-mean-better-benefits)).

<sup>45</sup> *You Call This Insurance? Ohio’s Lieutenant Governor is Misleading the Public About Obamacare Rate Shock*, The New Republic (June 11, 2013) (online at [www.newrepublic.com/article/113440/obamacare-rate-shock-higher-prices-can-mean-better-benefits](http://www.newrepublic.com/article/113440/obamacare-rate-shock-higher-prices-can-mean-better-benefits)).

nearly 100 percent on average, with potential highs eclipsing 400 percent.<sup>46</sup> But this analysis was also flawed, selectively using rate information provided by insurers, failing to incorporate key cost saving provisions, and overlooking of the benefits of improved coverage.<sup>47</sup> Subsequent analyses have found that the rate shock predicted by Republicans has not materialized.<sup>48</sup>

### III. CONCLUSION

Commentators have written that Republican members of Congress, Republican governors, and other top Republican officials and supporters are actively working to sabotage the Affordable Care Act. This staff report analyzes ten of the strategies they are using in the campaign to undermine the law. These efforts may provide a short-term political gain for the Republican Party, but they come at a heavy price. The Republicans' actions are denying health coverage for millions of the poorest residents living in Republican-controlled states. They are raising costs for hospitals, health providers, and taxpayers in Republican states. And they are working to dissuade individuals who need health coverage from signing up for coverage.

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<sup>46</sup> House Committee on Energy and Commerce, Republican Staff, *Obamacare Oversight: the Looming Premium Rate Shock*, 113th Cong. (May 13, 2013).

<sup>47</sup> Memorandum from Committee on Energy and Commerce, Democratic Staff, *Investigation on the Impact on Cost of Coverage of the Affordable Care Act*, 113th Cong. (May 13, 2013).

<sup>48</sup> L. Skopec and R. Kronsick, *Market Competition Works: Proposed Silver Premiums in the 2014 Individual and Small Group Markets Nearly 20% Lower than Expected*, U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation (July 2013) (online at [aspe.hhs.gov/health/reports/2013/MarketCompetitionPremiums/rb\\_premiums.cfm](http://aspe.hhs.gov/health/reports/2013/MarketCompetitionPremiums/rb_premiums.cfm)).