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2 RPTS TOBY WALTER

3 HIF037140

4 [Correct title in bold below]

5 **Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans**  
6 **with Pre-Existing Conditions**

7 [Wrong title below; Appropriations Subcommittee hearing title]

8 ~~IMPACT OF THE ADMINISTRATION'S POLICIES~~

9 ~~AFFECTING THE AFFORDABLE CARE ACT~~

10 WEDNESDAY, FEBRUARY 6, 2019

11 House of Representatives

12 Subcommittee on Health

13 Committee on Energy and Commerce

14 Washington, D.C.

15

16

17

18 The subcommittee met, pursuant to call, at 10:16 a.m., in  
19 Room 2322 Rayburn House Office Building, Hon. Anna Eshoo [chairman  
20 of the subcommittee] presiding.

21 Members present: Representatives Eshoo, Butterfield,  
22 Matsui, Castor, Lujan, Schrader, Cardenas, Ruiz, Veasey, Kuster,  
23 Kelly, Barragan, Blunt Rochester, O'Halleran, Rush, Pallone [ex  
24 officio], Burgess, Upton, Guthrie, Griffith, Bilirakis, Bucshon,

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25 Brooks, Mullin, Hudson, Carter, and Walden [ex officio].

26 Staff present: Jeff Carroll, Staff Director; Elizabeth  
27 Ertel, Office Manager; Waverly Gordon, Deputy Chief Counsel; Zach  
28 Kahan, Outreach and Member Service Coordinator; Saha Khatezai,  
29 Professional Staff Member; Una Lee, Senior Health Counsel;  
30 Kaitlyn Peel, Digital Director; Tim Robinson, Chief Counsel;  
31 Samantha Satchell, Professional Staff Member; Andrew Souvall,  
32 Director of Communications, Outreach and Member Services; C.J.  
33 Young, Press Secretary; Adam Buckalew, Minority Director of  
34 Coalitions and Deputy Chief Counsel, Health; Margaret Tucker  
35 Fogarty, Minority Staff Assistant; Caleb Graff, Minority  
36 Professional Staff Member, Health; Peter Kielty, Minority General  
37 Counsel; Ryan Long, Minority Deputy Staff Director; James  
38 Paluskiewicz, Minority Chief Counsel, Health; Kristen Shatynski,  
39 Minority Professional Staff Member, Health; Danielle Steele,  
40 Minority Counsel, Health.

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41 Ms. Eshoo. The Subcommittee on Health will now come to  
42 order. The chair recognizes herself for five minutes for an  
43 opening statement, and the first thing that I would like to say  
44 is welcome.

45 Welcome back the 116th Congress under the new majority and  
46 I want to thank my Democratic colleagues for supporting me to  
47 do this work, to chair the Subcommittee.

48 It is an enormous honor and it is -- what is contained in  
49 the Committee, of course, are some of the most important issues  
50 that the American people expressed at the polls in the midterm  
51 elections.

52 To our Republican colleagues, I know that there are areas  
53 where we can really work together. In some areas, we are going  
54 to have to stretch. But know that I look forward to working with  
55 all of you and to those that are new members of the subcommittee,  
56 welcome to each one of you.

57 I know that you are going to bring great ideas and really  
58 be instructive to the rest of us, so welcome to you.

59 As I said, health care was the single most important issue  
60 to voters in the midterm elections and it is a rarity that there  
61 would be one issue that would be the top issue in every single  
62 congressional district across the country. So this subcommittee  
63 is front and center.

64 We are beginning the Health Subcommittee's work by

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65 discussing the *Texas v. Unites States* lawsuit and its implications  
66 for the entire health care system both public and private.

67 For over a hundred years, presidents, including Teddy  
68 Roosevelt, Harry Truman, Richard Nixon, and others attempted to  
69 reform our nation's health insurance system and provide access  
70 to affordable health insurance for all Americans.

71 In 2010, through the efforts that began in this committee,  
72 the Affordable Care Act was signed into law and bold reforms to  
73 our public and private insurance programs were made.

74 Since the Affordable Care Act was signed into law, over 20  
75 million Americans have gained health insurance that is required  
76 to cover preexisting conditions. The law disallows charging sick  
77 consumers more, it allows children to stay on their parents'  
78 health insurance policy to the age of 26, and provides coverage  
79 for preventive health services with no cost sharing.

80 Last February, 20 attorneys general and governors sued the  
81 federal government to challenge the constitutionality of that  
82 law. They claimed that after the individual mandate was repealed  
83 by the Republicans' tax plan the rest of the Affordable Care Act  
84 had to go, too.

85 The Trump administration's Department of Justice has refused  
86 to defend the Affordable Care Act in court and in December Judge  
87 Reed O'Connor of the Northern District of Texas declared the  
88 entire ACA invalid.

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89           Twenty attorneys general, led by the attorney general from  
90           California, our former colleague, Javier Becerra, have appealed  
91           Judge O'Connor's ruling.

92           For those enrolled in the Affordable Care Act, if the  
93           Republican lawsuit is successful, the 13 million Americans who  
94           gained health insurance through the Medicaid expansion will lose  
95           their health insurance.

96           The 9 million Americans who rely on tax credits to help them  
97           afford the insurance plan will no longer be able to afford their  
98           insurance and health insurance costs will skyrocket across the  
99           country when healthy people leave the marketplace for what I call  
100          junk insurance plans that won't cover them when they get sick  
101          -- another implication leaving the sick and the most expensive  
102          patients in the individual market, driving up premiums for so  
103          many.

104          The insurance reforms of the ACA protect every American,  
105          including those who get their health insurance through their  
106          employer. Every insurance plan today is required to cover 10  
107          basic essential health benefits.

108          No longer are there lifetime limits. The 130 million  
109          patients with preexisting conditions cannot be denied coverage  
110          or charged more and women can no longer be charged more because  
111          they are females.

112          I am going to stop here and I am going to yield the rest

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113 of my time to Mr. Butterfield.

114 Mr. Butterfield. Thank you, Chairwoman Eshoo, for holding  
115 this very important hearing the absolute importance of the  
116 Affordable Care Act and thank you for giving us an opportunity  
117 to expose the poorly written Texas case.

118 I want to talk a few seconds about sickle cell disease.  
119 More than one out of every 370 African Americans born with sickle  
120 cell disease and more than 100,000 Americans have this disease,  
121 including many in my state.

122 The disease creates intense pain that patients usually must  
123 be hospitalized to receive their care. Without preexisting  
124 condition protections, tens of thousands of Americans with sickle  
125 cell could be charged more for insurance, they could be dropped  
126 from their plans, and be prevented from enrolling in insurance  
127 plans altogether.

128 Republicans have tried and tried and tried to repeal the  
129 ACA more than 70 times. We, in this majority, have been sent  
130 here to protect the Affordable Care Act.

131 Thank you for the time. I yield back.

132 Ms. Eshoo. I thank the gentleman.

133 Next week -- I just want to announce this -- our subcommittee  
134 is going to explore specific legislation to reverse the  
135 administration's actions to expand the skinny plans -- the junk  
136 insurance plans -- and we are also going to discuss legislation

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137 that would restore outreach in enrollment funding that has been  
138 slashed by the administration so we can ensure that health care  
139 is more affordable and accessible for all Americans.

140 We want to thank the witnesses that are here today. Welcome  
141 to you. We look forward to hearing your testimony, and now I  
142 would like to recognize Dr. Burgess, the ranking member of the  
143 Subcommittee on Health, for five minutes for his opening  
144 statement.

145 Mr. Burgess. Thank you, Chairwoman Eshoo.

146 Let me just take a moment to congratulate you. As you are  
147 quickly finding out, you now occupy the most important  
148 subcommittee chair in the entire United States House of  
149 Representatives and I know this from firsthand experience.

150 We were the most active subcommittee in the United States  
151 House of Representatives in the last Congress. Hundreds of hours  
152 in hearings on health policy and certainly look forward to that  
153 continuing through this term as well.

154 I want to thank our witnesses all for joining us this morning.

155 We are here to discuss the issue of protecting access to health  
156 care for individuals with preexisting medical conditions in  
157 addition to the *Texas v. Azar* case.

158 So I think you heard the president say this last night in  
159 the State of the Union Address. There is broad bipartisan support  
160 for providing protections for patients with preexisting

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161 conditions.

162 I am glad we are holding our first hearing of the year.  
163 It is the end of the first week of February. So it is high time  
164 that we do this. It is unfortunate we are having a hearing that  
165 actually doesn't move toward the development of any policies that  
166 actually would improve health care for Americans.

167 To that effect, there are numerous options that you could  
168 bring before us that could moot the *Texas v. Azar* case. But the  
169 subcommittee apparently has chosen not to do so. For example,  
170 the bill to repeal the individual mandate is one that I have  
171 introduced previously.

172 You can join me on that effort, and if the individual mandate  
173 were repealed the case would probably -- would probably not exist.

174  
175 You could reestablish the tax in the individual mandate,  
176 which would certainly be your right to do so and, again, that  
177 would remove most of the argument for the court case as it exists  
178 today.

179 You know, I hear from constituents in north Texas about --  
180 concerned about not having access to affordable health care.  
181 In the district that I represent, because of the phenomenon known  
182 as silver loading, as the benchmark silver plans' premiums  
183 continue to increase, well, if you are getting a subsidy, what,  
184 me worry -- no problem -- I got a subsidy so I am going okay.

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186 But in the district that I represent a school teacher and  
187 a policeman couple with two children are going to be covered in  
188 the individual market and they are going to be outside the subsidy  
189 window.

190 So they buy a bronze plan because, like everybody, they buy  
191 on price so that is the least expensive thing that is available  
192 to them and then they are scared to death that they will have  
193 to use it because the deductible is so high.

194 If you get a kidney stone in the middle of the night and,  
195 guess what, that \$4,500 emergency room bill is all yours. So  
196 I take meetings with families who are suffering from high health  
197 care and prescription drugs costs and, unfortunately, we are not  
198 doing anything to address that today.

199 We could be using this time to discuss something upon --  
200 to develop policies to help those individuals and families. But,  
201 again, we are discussing something upon which we all agreed but  
202 we are taking no substantive action to address.

203 Look, if you believe in Medicare for all, if you believe  
204 in a single-payer government-run one-size-fits-all health  
205 system, let us have a hearing right here in this subcommittee.

206 We are the authorizing committee. That is our job.

207 Instead, we have the House Budget Committee holding those  
208 hearings and Democrats on that committee are introducing

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209 legislation. But these bills belong in the jurisdiction of the  
210 Energy and Commerce Committee, and yet we have not scheduled a  
211 hearing to discuss this agenda.

212 Do I agree with the policy or think it would be a good idea  
213 for the American people to have Medicare for all or  
214 one-size-fits-all health plan? No, I do not, and I would gladly  
215 engage in a meaningful dialogue about what such a policy would  
216 mean for the American people.

217 Single-payer healthcare would be another failed attempt at  
218 a one-size-fits-all approach. Americans are all different and  
219 a universal health care plan that does not meet the varying needs  
220 of each and every individual at different stages of their life  
221 will probably not be successful.

222 Today, we should be focusing on the parts of the health  
223 insurance market that are working for Americans. Seventy-one  
224 percent of Americans are satisfied with employer-sponsored health  
225 insurance, which provides robust protections for individuals with  
226 preexisting conditions.

227 Quite simply, the success of employer-sponsored insurance  
228 markets, it is not worth wiping that out with the single-payer  
229 health care policy. Yet, the bill that was introduced last term  
230 that is exactly what it did.

231 But today, there are a greater percentage of Americans in  
232 employer health coverage than at any time since the year 2000.

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233           Since President Trump took office, the number of Americans  
234           in employer health coverage has increased by over 22 million.

235           Given that the United States economy added more than 300,000  
236           jobs in January, the number of individuals and families covered  
237           by employer-sponsored plans is likely even greater still.

238           Instead of building upon the success of our existing health  
239           insurance framework, radical single-payer government-run  
240           Medicare would tear it down. It would eliminate the  
241           employer-sponsored health insurance, private health insurance,  
242           Indian health insurance, and make inroads against taking away  
243           the VA.

244           Again, I appreciate that we have organized and we are holding  
245           our first hearing. I believe we could be using our time much  
246           more productively. There is bipartisan support for protecting  
247           patients with preexisting conditions. I certainly look forward  
248           to hearing the testimony of our witnesses.

249           Thank you, I yield back.

250           Ms. Eshoo. I thank the ranking member, and let me just add  
251           a few points. You raised the issue of employer-sponsored health  
252           care. Our employer is the federal government and we are covered  
253           by the Affordable Care Act.

254           Number two, we, on our side, support universal coverage and  
255           so but what the committee is going to be taking up is, and you  
256           pointed out some of the -- some of the chinks in the armor of

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257 the Affordable Care Act.

258 We want to strengthen it and what you described relative  
259 to your constituents certainly applies to many of us on our side  
260 as well. So we plan to examine that and we will.

261 Mr. Burgess. Will the gentlelady yield on the point on  
262 employer coverage for members of Congress?

263 Ms. Eshoo. Mm-hmm.

264 Mr. Burgess. I actually rejected the special deal that  
265 members of Congress got several years ago when we were required  
266 to take insurance under the Affordable Care Act and we all were  
267 required to join the D.C. exchange.

268 But we were given a large tax-free monthly subsidy to walk  
269 into that exchange. I thought that was illegal under the law.

270 I did not take that. I bought a bronze plan -- an unsubsidized  
271 bronze plan at healthcare.gov, the most miserable experience I  
272 have ever been through in my life.

273 And just like constituents in my district, I was scared to  
274 use my health insurance because the deductible was so high.

275 I yield back.

276 Ms. Eshoo. I thank the gentleman. It would be interesting  
277 to see how many members have accepted the ACA, they and their  
278 families being covered by it.

279 And now I would like to recognize the chairman of the full  
280 committee, Mr. Pallone, who asked -- who requested that this

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281 hearing be the first one to be taken up by the subcommittee on  
282 Texas -- the Texas law case, and I call on the gentleman to make  
283 his statement.

284 Good morning to you.

285 The Chairman. Thank you.

286 Ms. Eshoo. You just shut it off.

287 The Chairman. I did.

288 Ms. Eshoo. There you go.

289 The Chairman. Thank you, Madam Chair, and thank you for  
290 all you have done over the years to help people get health  
291 insurance, to expand insurance, to address the price of  
292 prescription drugs and so many other things and is glad to see  
293 you in the chair of this subcommittee hearing.

294 Now, I was going to try to be nice today. But after I  
295 listened to Mr. Burgess I can't be. You know, and I am sure this  
296 is -- he is going to see this as personal but I don't mean it  
297 that way.

298 But I just have to -- I have to speak out, Mr. Burgess.  
299 Look, you were the chairman of this subcommittee the whole time  
300 that the Republicans tried unsuccessfully to repeal the  
301 Affordable Care Act.

302 I have had so many meetings where I saw you come in and take  
303 out your copy of the hearings on the Affordable Care Act and  
304 repeatedly tell us that the Affordable Care Act was bad law,

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305 terrible law, it needs to be repealed.

306 I saw no effort at all in the time that you were the chairman  
307 to try to work towards solutions and improving the Affordable  
308 Care Act. What I saw were constant efforts to join with President  
309 Trump to sabotage it.

310 And the reason that this hearing is important because the  
311 ultimate sabotage would be to have the courts rule that the ACA  
312 is unconstitutional, which is totally bogus.

313 You found this, you know, right-wing judge somewhere in Texas  
314 -- I love the state of Texas but I don't know where you found  
315 him -- and he -- and you did forum shopping to find him, and we  
316 know his opinion is going to be overturned.

317 But we still had to join a suit to say that his opinion was  
318 wrong and it wasn't based in any facts or any real analysis of  
319 the Constitution, and the reason we are having this hearing today  
320 is because we need to make the point that the Republicans are  
321 still trying to repeal the Affordable Care Act.

322 They are not looking to work with us to improve it. There  
323 were many opportunities when the senators -- Senator Lamar  
324 Alexander and others -- were trying to do things to improve the  
325 Affordable Care Act, to deal with the cost sharing that was thrown  
326 out by the president, to deal with reinsurance to make the market  
327 more competitive, and at no point was that brought up in this  
328 subcommittee under your leadership.

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329           You know, you talk about the employer-sponsored system.  
330           Sure, we all agree 60 percent of the people get their insurance  
331           through the employer.

332           But those anti-discrimination provisions that you said are  
333           protected with employer-sponsored plans they came through actions  
334           of the Democrats and the Affordable Care Act that said that you  
335           could not discriminate -- that you could not discriminate for  
336           preexisting conditions -- that you had to have an essential  
337           benefit package. Those are a consequence of the ACA.

338           So don't tell us that, you know, somehow that appeared  
339           miraculously in the private insurance market. That is not true  
340           at all.

341           Talk about Medicaid expansion, your state and so many other  
342           Republican states blocked Medicaid expansion. So there is so  
343           many people now that could have insurance that don't because they  
344           refuse to do it for ideological reasons.

345           You talk -- you mentioned the Indian Health Service. I love  
346           the fact that the gentleman from Oklahoma had that Indian health  
347           care task force. Thank you. I appreciate that.

348           But I asked so many times in this subcommittee to have a  
349           hearing on the Indian Health Care Improvement Act which, again,  
350           was in the Affordable Care Act, otherwise it would never have  
351           passed, and that never happened.

352           We will do that. But talk about the Indian Health service

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353 -- you did nothing to improve the Indian Health Service. And  
354 I am not -- am I not suggesting that wasn't true for the gentleman  
355 of Oklahoma. He was very sympathetic.

356 But, in general, we did not have the hearing and we would  
357 not have had the Indian Health Service Improvement Act but for  
358 the ACA.

359 And finally, Medicare for all -- who are you kidding? You  
360 are saying to us that you want to repeal the ACA and then you  
361 want to have a hearing on Medicare for all. You sent me a letter  
362 asking for a hearing on Medicare for all.

363 When do -- when does a member of Congress, let alone the  
364 chairman or the ranking member, I guess, in this case, ask for  
365 a hearing on something that they oppose? I ask for hearings on  
366 things that I wanted to happen, like climate change and addressing  
367 climate change.

368 I don't ask for hearings on things that I oppose. I get  
369 a letter saying, oh, we should have a hearing on Medicare for  
370 all but, by the way, we are totally opposed to it. It is a terrible  
371 idea. It will destroy the country.

372 Oh, sure. We will have a hearing on something that you think  
373 is going to destroy the country. Now, don't get me wrong. We  
374 will address that issue. I am not suggesting we shouldn't.

375 But the cynicism of it all -- the cynicism of coming here  
376 and suggesting that somehow you want -- you have solutions? You

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377 have no solutions. I am more than willing to work with you.

378 I am sure the ranking -- that Chairman Eshoo is willing to as

379 well.

380 But don't tell us that you had solutions. You did not and

381 you continue not to have solutions. And I am sorry to begin the

382 day this way but I have no choice after what you said. I mean,

383 it is just not -- it is just not -- it is disingenuous.

384 Thank you, Madam Chairwoman.

385 Ms. Eshoo. Thank you.

386 And now I will recognize the ranking member. Good morning.

387 Mr. Walden. Good morning.

388 Ms. Eshoo. The ranking member of the full committee, my

389 friend, Mr. Walden.

390 Mr. Walden. Thank you, Madam Chair. Congratulations on

391 taking over the subcommittee.

392 Ms. Eshoo. Thank you very much. I appreciate it.

393 Mr. Walden. I always enjoyed working with you on

394 telecommunications issues and I know you will do a fine job leading

395 this subcommittee.

396 Ms. Eshoo. Thank you.

397 Mr. Walden. I look forward to working with you. As we --

398 I cannot help but respond a bit. I do wish we were meeting to

399 pass bipartisan legislation and protect Americans with

400 preexisting health conditions from losing their coverage, given

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401 the pending court case, and let me speak on behalf of Republicans  
402 because we fully support protecting Americans with preexisting  
403 conditions.

404 We have said this repeatedly, we have acted accordingly,  
405 and we mean it completely. We could and should inject certainty  
406 into the system by passing legislation to protect those with  
407 preexisting conditions, period.

408 On the opening day of the 116th Congress, House Republicans  
409 brought a powerful but simple measure to the floor that called  
410 on this body to legislate on what we all agree needs to be done,  
411 and that is to lock in protections for patients with preexisting  
412 conditions.

413 Unfortunately, that went down on a party line vote. Our  
414 amendment was consistent with our long-held views with respect  
415 to the American Health Care Act, which our Democratic colleagues,  
416 frankly, in some cases, continued to misrepresent.

417 We provided protections ~~forte~~ those with preexisting  
418 conditions under the AHCA. Insurance companies were prohibited  
419 from denying or not renewing coverage due to a preexisting  
420 condition, period.

421 Insurance companies were banned from rescinding coverage  
422 based on a preexisting condition, period. Insurance companies  
423 were banned from ~~excludingrescinding~~ benefits based on a  
424 preexisting condition, period.

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425 ~~Insurance companies were banned from excluding benefits~~  
426 ~~based on a preexisting condition, period.~~ Insurance companies  
427 were prevented from raising premiums on individuals with  
428 preexisting conditions who maintain continuous coverage, period.

429 The fact is this is something we all agree on and we should  
430 and could work together to expeditiously guarantee preexisting  
431 condition protections for all Americans and do so in a manner  
432 that can withstand judicial scrutiny. That is something I think  
433 we could find common ground on.

434 And while a status check on the ACA lawsuit is interesting  
435 and important, the ruling has been stayed. The attorneys general  
436 across the country have filed appeals. Speaker Pelosi has moved  
437 to intervene in the case I think three times and Americans'  
438 premiums and coverage for this year are not affected.

439 But what really does affect American consumers is out of  
440 control costs of health care. That is what they would like  
441 Congress to focus on and something I think we need to tackle as  
442 well.

443 The fact of the matter is that for too many Americans health  
444 insurance coverage exists solely on paper because health care  
445 costs and these new high deductibles are putting family budgets  
446 in peril.

447 When the Affordable Care Act passed, Democrats promised  
448 people that their insurance premiums would go down \$2,500.

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449 Unfortunately, the exact opposite has occurred for many  
450 Americans, and not only have premiums gone up, not down, but think  
451 of what out-of-pocket costs have done. They have skyrocketed.

452 The latest solution from my friends on the other side of  
453 the aisle is some sort of Medicare for all proposal. And yes,  
454 we did ask for a hearing on it because I think it's something  
455 that Democrats ran on, believe in fully, and we should take time  
456 to understand it.

457 We know this plan would take away private health insurance  
458 from more than 150 million Americans. We are told it would end  
459 Medicare as we know it and would rack up more than \$32 trillion  
460 in costs, not to mention delays in accessing health services.

461 So, Madam Chairwoman, other committees in this body have  
462 announced plans to have hearings on Medicare for all. Speaker  
463 Pelosi has said she is supportive of holding hearings on this  
464 plan, and Madam Chairwoman, I think I read you yourself said such  
465 hearings would be important to have.

466 A majority of House Democrats supported Medicare for all  
467 in the last Congress. In fact, two-thirds of the committee --  
468 Democrats' 20 members, 11 whom are on this subcommittee -- have  
469 cosponsored the plan.

470 I think it is important for the American people to fully  
471 understand what this huge new government intervention to health  
472 care means for consumers if it were to become law.

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473           Yesterday, Dr. Burgess and I did send you and Chairman  
474 Pallone a letter asking for a hearing on Medicare for all and  
475 we think, as the committee of primary jurisdiction, that just  
476 makes sense.

477           So as you're organizing your agenda for the future, we  
478 thought it was important to put that on it. The American people  
479 need to fully understand how Medicare for all is not Medicare  
480 at all but actually just government-run single payer health care.

481           They need to know about the 32 trillion price tag for such  
482 a plan and how you pay for it. They need to know that it ends  
483 employer-sponsored health care, at least some versions of it do,  
484 forcing the 158 million Americans who get their health insurance  
485 through their job or through their union into a one-size-fits-all  
486 government-run plan.

487           So if you like waiting in line at the DMV, wait until the  
488 government completely takes over health care. Seniors needs to  
489 fully understand how this plan will affect the Medicare trust  
490 fund that they've paid into their entire lives and the impacts  
491 on access to their care.

492           Our tribes need to understand how this plan could impact  
493 the Indian Health Service and our veterans deserve to know how  
494 this plan could pave the way to closing VA health services.

495           So the question is when will we see the bill and when we  
496 will have a hearing on the legislation. Meanwhile, we need to

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497 work together to help states stabilize health markets damaged  
498 by the ACA.

499 Cut out-of-pocket costs, promote access to preventive  
500 services, encourage participation in private health insurance,  
501 and increase the number of options available through the market.

502 And I want to thank Mr. Pallone for raising the issue  
503 involving ~~Senator~~Senate Lamar Alexander. He and I and Susan  
504 Collins worked very well together to try and come up with a plan  
505 we could move through to deal with some of these issues.

506 Unfortunately, we could not get that done. So let us work  
507 together to lock in preexisting condition protections. Let ~~'s-~~  
508 ~~us~~ tackle the ever-rising health care costs and help our states  
509 offer consumers more affordable health insurance and if you are  
510 going to move forward on a Medicare for all plan, we would like  
511 to make sure we have a hearing on it before the bill moves forward.

512 So with that, Madam Chair, thank you and congratulations  
513 again, and I yield back.

514 Ms. Eshoo. I thank the ranking member of the full committee  
515 -- for his remarks. Several parts of it I don't agree with but  
516 I thank him nonetheless.

517 Now we will go to the witnesses and their opening statements.

518 We will start top -- from the left to Ms. Christen Linke Young,  
519 a fellow, USC-Brookings Schaeffer, Initiative for Health Policy.

520

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521           Welcome to you, and you have five minutes and I think you  
522           know what the lights mean. The green light will be on, then the  
523           yellow light comes on, which means one minute left, and then the  
524           red light.

525           So I would like all the witnesses to stick to that so that  
526           we can get to your questions -- our questions of you, expert as  
527           you are. So welcome to each one of you and thank you and you are  
528           recognized.

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529 STATEMENTS OF CHRISTEN LINKE YOUNG, FELLOW, USC-BROOKINGS  
530 SCHAEFFER, INITIATIVE FOR HEALTH POLICY; AVIK S.A. ROY,  
531 PRESIDENT, THE FOUNDATION FOR RESEARCH ON EQUAL OPPORTUNITY;  
532 ELENA HUNG, CO-FOUNDER, LITTLE LOBBYISTS; THOMAS P. MILLER,  
533 RESIDENT FELLOW, AMERICAN ENTERPRISE INSTITUTE; SIMON LAZARUS,  
534 CONSTITUTIONAL LAWYER AND WRITER

535

536 STATEMENT OF MS. YOUNG

537 Ms. Young. Good morning. Thank you. Thank you,  
538 Chairwoman Eshoo.

539 Ms. Eshoo. Get a little closer to the microphone. Thank  
540 you.

541 Ms. Young. How is that? Good morning, Chairwoman Eshoo,  
542 Ranking Member Burgess, members of the committee. Thank you for  
543 the opportunity to testify today.

544 I am Christen Linke Young, a fellow with the USC-Brookings  
545 Schaeffer Initiative on Health Policy. My testimony today  
546 reflects my personal views.

547 The Affordable Care Act has brought health coverage to  
548 millions of Americans. Since the law was passed, the uninsured  
549 rate has been cut nearly in half. The ACA's marketplaces are  
550 functioning well and offering millions of people comprehensive  
551 insurance.

552 Ms. Eshoo. Do you have the -- excuse me, do you have the

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553 button pushed? Is it on? The microphone.

554 Ms. Young. It looks like it.

555 Ms. Eshoo. Maybe bring it a little closer.

556 Ms. Young. Is that any better?

557 Ms. Eshoo. That is better. Thank you.

558 Ms. Young. Wonderful. Thirty-seven states have expanded  
559 Medicaid and many of the remaining states are considering  
560 expansion proposals. Beyond its core coverage provisions, the  
561 ACA has become interwoven with the American health care system.

562 As just a few examples, the law put in place new consumer  
563 protections in employer-provided insurance, closed Medicare's  
564 prescription drug donut hole, changed Medicare reimbursement  
565 policies, reauthorized the Indian Health Service, authorized  
566 biosimilar drugs, and even required employers to provided space  
567 for nursing mothers.

568 One of the core goals of the ACA was to provide health care  
569 for Americans with preexisting conditions and I would like to  
570 spend a few minutes discussing how the law achieves the objective.

571 By some estimates, as many as half of nonelderly Americans  
572 have a preexisting condition and the protections the law offers  
573 to this group cannot be accomplished in a single provision or  
574 legislative proclamation.

575 Instead, it requires a variety of interlocking and  
576 complementary reforms threaded throughout the law. At the center

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577 are three critical reforms.

578 Consumers have a right to buy and renew a policy regardless  
579 of their health needs, have that policy cover needed care, and  
580 be charged the same price. Further, the ACA prohibits lifetime  
581 limits on care received and requires most insurers to cap copays  
582 and deductibles.

583 Crucially, the law ensures that insurance for the healthy  
584 and insurance for the sick are part of the single risk pool and  
585 it provides financial assistance tied to income to help make  
586 insurance affordable.

587 However, a recent lawsuit threatened this system of  
588 protections. In *Texas v. United States*, a group of states argue  
589 that changes made to the ACA's individual mandate in 2017 rendered  
590 that provision unconstitutional.

591 Therefore, they puzzlingly argue that the entire ACA should  
592 be invalidated, stripping away protections for people with  
593 preexisting conditions and everything else in the law.

594 The Trump administration's Department of Justice has agreed  
595 with the claim of a constitutional deficiency and they further  
596 agree that central pillars of the preexisting condition  
597 protection should be eliminated.

598 But unlike the states, DOJ argues that the weakened remainder  
599 of the law should be left to stand. Other scholars can discuss  
600 the weakness of this legal argument. I would like to discuss

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601 its impacts on the health care system.

602 DOJ's position, that the law's core protections for people  
603 with preexisting conditions should be removed, would leave  
604 Americans with health needs without a reliable way to access  
605 coverage in the individual market.

606 Insurers would be able to deny coverage and charge more based  
607 on health status. In many ways, the market would look like it  
608 did before the ACA. Components of the law would formally remain  
609 in place but it is unclear how some of those provisions would  
610 continue to work.

611 The state's position would wreak even greater havoc and fully  
612 return us to the markets that predated the ACA. In addition to  
613 removing central protections for those with preexisting  
614 conditions, the financial assistance for families purchasing  
615 coverage, and the ACA's funding for Medicaid expansion would  
616 disappear.

617 The Congressional Budget Office has estimated the repeal  
618 of the ACA would result in as many as 24 million additional  
619 uninsured Americans and similar results could be expected here.

620 In addition, consumer protections for employer-based  
621 coverage would be eliminated. Changes to Medicare would be  
622 undone. The Indian Health Service would not be reauthorized.

623 The FDA couldn't approve biosimilar drugs.

624 Indeed, these are just some of the many and far-reaching

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625 effects of eliminating a law that is deeply integrated into our  
626 health care system.

627 Before I close, I would like to briefly note that *Texas v.*  
628 *United States* is not the only recent development that threatens  
629 Americans with preexisting conditions. Recent policy actions  
630 by the Trump administration also attempted to change the law in  
631 ways that undermine the ACA.

632 As just a few examples, guidance under Section 1332 of the  
633 ACA purports to let states weaken protections for those with  
634 health needs. Nationwide, efforts to promote short-term  
635 coverage in association health plans seeks to give healthy people  
636 options not available to the sick and drive up costs for those  
637 with health care needs.

638 Additionally, new waivers in the Medicaid programs allows  
639 states to place administrative burdens in front of those trying  
640 to access care.

641 To summarize, the Affordable Care Act has resulted in  
642 significant coverage gains and meaningful protections for people  
643 with preexisting conditions. *Texas v. U.S.* threatens those  
644 advances and could take us back to the pre-ACA individual market  
645 where a person's health status was a barrier to coverage and care.

646  
647 The lawsuit would also damage other health care policies  
648 and this litigation coincides with administrative attempts to

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649           undermine the ACA's protections for people with preexisting  
650           conditions.

651                     Thank you.

652                     [The prepared statement of Ms. Young follows:]

653

654           \*\*\*\*\* INSERT 1 \*\*\*\*\*

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655 Ms. Eshoo. Thank you very much.

656 Next, Mr. Avik Roy, president of the Foundation for Research

657 and Equal Opportunity. Welcome.

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658 STATEMENT OF MR. ROY

659

660 Mr. Roy. Chairwoman Eshoo, Ranking Member Burgess, and  
661 members of the Health Subcommittee of the House Energy and  
662 Commerce Committee, thanks for inviting me to speak with you  
663 today.

664 I am Avik Roy and I am the president of the Foundation for  
665 Research on Equal Opportunity, a nonpartisan nonprofit think tank  
666 focussed on expanding economic opportunity to those who least  
667 have it.

668 When we launched in 2016, our first white paper showed how  
669 universal coverage done the right way can advance both the  
670 progressive and conservative values at the same time, expanding  
671 access while reducing federal spending and burdensome  
672 regulations.

673 In my oral remarks, I am going to focus on a core problem  
674 that, respectfully, Congress has failed to solve -- how to protect  
675 Americans with preexisting conditions while also ensuring that  
676 every American has access to affordable health insurance.

677 Thirty-two million U.S. residents go without coverage today.

678 Fewer than half of those eligible for subsidies in the ACA  
679 exchanges have enrolled in ACA-based coverage.

680 This failure is the result of the flawed theory first  
681 articulated by MIT economist Jonathan Gruber underlying Title

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682 1 of the Affordable Care Act -- that if Congress requires that  
683 insurers offer coverage to those with preexisting conditions and  
684 if Congress forces insurers to overcharge the healthy to  
685 undercharge the sick, Congress must also enact an individual  
686 mandate to prevent people from jumping in and out of the insurance  
687 market.

688 We should all know by now that Professor Gruber is not  
689 omniscient. After all, in 2009, Gruber said, what we know for  
690 sure about the ACA is that it will, quote, "lower the cost of  
691 buying nongroup health insurance."

692 In reality, premiums have more than doubled in the ACA's  
693 first four years and the ACA subsidies only offset those increases  
694 for those with incomes near the poverty line.

695 There are two flaws with Gruber's theory, sometimes called  
696 the three-legged stool theory. First, the two ACA provisions  
697 that have had the largest impact on premiums have nothing to do  
698 with preexisting conditions.

699 Second, the ACA's individual mandate was so weak with so  
700 many loopholes that its impact on the market was negligible.  
701 Guaranteeing offers of coverage for those with preexisting  
702 conditions has no impact on premiums because the ACA limits the  
703 enrollment period for guaranteed issue plans to six weeks in the  
704 fall or winter.

705 The limited enrollment period, not the mandate, ensures that

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706 people can't game the system by dropping in and out. While  
707 community rating by health status does cause some adverse  
708 selection by overcharging healthy people who buy coverage,  
709 thereby discouraging healthy people from signing up, among  
710 enrollees of the same age this is not an actuarially significant  
711 problem.

712 The largest impact is from the ACA's three to one age bans  
713 which on their own double the cost of insurance for Americans  
714 in their 20s and 30s, forcing many to drop out of the market because  
715 younger people consume one-sixth of the health care that older  
716 people do.

717 In the court cases consolidated as *NFIB v. Sebelius*,  
718 President Obama's solicitor general, Neal Katyal, repeatedly  
719 argued that if the individual mandate were ruled to be  
720 unconstitutional, much of the ACA should remain but that the ACA's  
721 guaranteed issue and health status community rating provisions,  
722 the ones that impact those with preexisting conditions, should  
723 also be struck from the law.

724 The Trump Justice Department has merely echoed this belief.

725 Both administrations are more correct than the district judge  
726 in *Texas v. Azar*, who, in an egregious case of judicial activism,  
727 argued that the entirety of the ACA was inseparable from the  
728 mandate.

729 However, it is clear that both Justice Departments are also

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730 wrong. The zeroing out of the mandate penalty has not blown up  
731 the insurance market. Indeed, it has had no effect.

732 To be clear, it is not just ACA enthusiasts who have bought  
733 into Gruber's flawed theories. Many conservatives have as well.

734 A number of conservative think tank scholars have argued that  
735 because they oppose the individual mandate we should also repeal  
736 the ACA's protections for those with preexisting conditions --  
737 that is, guaranteed issue and community rating by health status.

738 These scholars have argued that a better way to cover those  
739 with preexisting conditions is to place them in a separate  
740 insurance pool for high-risk individuals.

741 I want to state this very clearly. Those scholars are wrong.

742 The most market-based approach for covering those with  
743 preexisting conditions is not to repeal the ACA's guaranteed issue  
744 and health status provisions but to preserve them and to integrate  
745 the principles of a high-risk pool into a single insurance market  
746 through reinsurance.

747 I have been pleased to see Republicans in Congress support  
748 legislation that would ensure the continuity of preexisting  
749 condition protections irrespective of the legal outcome in *Texas*  
750 *v. U.S.* I hope both parties can work together to achieve this.

751 Both parties can further improve the affordability of  
752 individual insurance by enacting a robust program of reinsurance  
753 and restoring five-to-one age bans.

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754           On these and other matters, I look forward to working with  
755           all members of this committee both today and in the future to  
756           ensure that no American is forced into bankruptcy by high medical  
757           bills.

758           Thank you.

759           [The prepared statement of Mr. Roy follows:]

760

761           \*\*\*\*\* INSERT 2 \*\*\*\*\*

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762 Ms. Eshoo. Thank you very much, Mr. Roy.

763 You have testified here before and we appreciate you being  
764 here again today. I would like to just suggest that for the  
765 benefit of members that you get your testimony to us much earlier,  
766 all right?

767 Mr. Roy. I apologize.

768 Ms. Eshoo. Yes.

769 Mr. Roy. I was, of course, officially invited to testify  
770 before this committee on Monday. I had some personal and  
771 professional obligations that limited my ability to get the --  
772 get the testimony in a timely fashion.

773 Ms. Eshoo. Yes.

774 Mr. Roy. I will be happy to brief any members of this  
775 committee or their staffs at another time.

776 Ms. Eshoo. Well, we thank you. I just -- I have a bad habit  
777 and I read everything and it wasn't there. So but I heard today  
778 and then we will all ask you our questions. Thank you.

779 The next witness is Ms. Hung and she is the cofounder of  
780 Little Lobbyists. You are recognized for five minutes, and  
781 welcome.

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782 STATEMENT OF MS. HUNG

783

784 Ms. Hung. Thank you. Good morning.

785 Thank you, Chairwoman, Ranking Member, and members of the  
786 subcommittee for the opportunity to tell my story and share my  
787 concerns with you today.

788 My name is Elena Hung and I am a mom. I am a proud mom of  
789 an amazing four-year-old. My daughter, Xiomara, is a happy  
790 child. She is kind and smart and funny and a little bit naughty.  
791 She is the greatest joy of my life.

792 She is at home right now, getting ready to go to school.  
793 She attends an inclusive special education pre-K program, and  
794 I asked her if she wanted to come here today. She said she wanted  
795 to go to school instead.

796 It has been a long moment -- a long road to this moment.  
797 Xiomara was born with chronic complex medical conditions that  
798 affect her airway, lungs, heart, and kidneys. She spent the first  
799 five months of her life in the neonatal intensive care unit.

800 She uses a tracheostomy tube to breathe and a ventilator  
801 for additional respiratory support. She relies on a feeding tube  
802 for all of her nutrition. She participates in weekly therapies  
803 to help her learn how to walk and talk. But I am thrilled to  
804 tell you that Xiomara is thriving today.

805 This past year was her best year yet healthwise and,

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806 ironically, it was also when her access to health care has been  
807 the most threatened. I sit before you today because families  
808 like mine -- families with medically complex children -- are  
809 terrified of what this lawsuit may mean for our kids.

810 You see, our lives are already filled with uncertainty --  
811 uncertainty about diagnoses, uncertainty about the effects of  
812 medications and the outcomes of surgeries. The one certainty  
813 we have is the Affordable Care Act and the health care coverage  
814 protection it provides.

815 We don't know what Xiomara's future holds, but with the ACA's  
816 protections in place we know this. We know Xiomara's 10  
817 preexisting conditions will be covered without penalty, even if  
818 we switch insurance plans or employers.

819 We know a ban on lifetime caps means that insurance companies  
820 cannot decide that her life isn't worth the cost and cut her off  
821 care just because she met some arbitrary dollar amount.

822 We know we won't have to worry about losing our home as a  
823 result of an unexpected hospitalization or emergency. We know  
824 Medicaid will provide the therapies and long-term services and  
825 supports that enable her independence.

826 I sit before you today on behalf of families like mine who  
827 fear that the only certainty we know could be taken away, pending  
828 the outcome of this lawsuit -- this lawsuit that seeks to eliminate  
829 protections for people with preexisting conditions -- and if that

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830 happens our children's lives will then depend on Congress where  
831 every so-called replacement plan proposed over the last two years  
832 has offered far less protection for our kids than the ACA does.

833 I sit here before you today on behalf of Isaac Crawley, who  
834 lost his insurance in 2010 after he met his lifetime limit just  
835 a few weeks after his first birthday, but got it back after the  
836 ACA became law;

837 Myka Eilers, who was born with a preexisting congenital heart  
838 defect and was able to obtain health insurance again when her  
839 dad reopened his own business after being laid off;

840 Timmy Morrison, who spends part of his childhood in  
841 hospitals, both inpatient and outpatient, because his insurance  
842 plan covers what is essential to his care;

843 Claire Smith, who has a personal care attendant and is able  
844 to live at home with her family and be included in her community,  
845 thanks to Medicaid;

846 Simon Hatcher, who needs daily medications to prevent  
847 life-threatening seizures, medications which would cost over  
848 \$6,000 without insurance;

849 Colton Prifogle, who passed away on Sunday and was able to  
850 spend his final days pain-free with dignity, surrounded by love,  
851 because of the Hospice care he received.

852 These are my friends, my friends that I love. These are  
853 Xiomara's friends. This is our life. I co-founded the Little

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854 Lobbyists, this group of families with medically complex  
855 children, some of -- some of whom are here today, because these  
856 are stories that desperately need to be told and heard alongside  
857 the data and numbers and policy analysis.

858           There are children like Xiomara in every state. That's  
859 millions of children with preexisting conditions and disabilities  
860 across the country. I sit before you today on the eve of another  
861 trip to the Children's Hospital.

862           Tomorrow I will hold my daughter's hand as I walk her to  
863 the OR for her procedure, and as I have done every time before,  
864 I know I will drown in worry as a mother does.

865           But the thing that has always given me comfort is knowing  
866 that my government believes my daughter's life has value and that  
867 the cost of medical care she needs to survive and thrive should  
868 not financially bankrupt us.

869           It is my plea for that to always be true.

870           Thank you.

871           [The prepared statement of Ms. Hung follows:]

872

873           \*\*\*\*\* INSERT 3 \*\*\*\*\*



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874 Ms. Eshoo. Thank you, Elena. Beautiful testimony.  
875 Beautiful testimony. I wish Xiomara were here. Maybe we can  
876 provide a tape so that when she gets older she can hear her mother's  
877 testimony in the Congress of the United States. Thank you.

878 I now would like to recognize Mr. Thomas Miller, resident  
879 fellow at the American Enterprise Institute. Welcome, and thank  
880 you. You have five minutes.

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881 STATEMENT OF MR. MILLER

882

883 Mr. Miller. Thank you, Chairwoman Eshoo. The mortifying  
884 silent C in my written testimony in your name must have been due  
885 to the speed with which I delivered the testimony on time. But  
886 I apologize for that.

887 Thank you also, Ranking Member Burgess and members of the  
888 subcommittee. Now let us all take a deep breath and get to it.

889 The Texas case remains in its relatively early stages. Its  
890 ultimate fate is as much as another 16 months away. The  
891 probability of a Supreme Court ruling that would overturn the  
892 entire ACA remains very, very low just by last December's decision  
893 at the federal district court level.

894 Any formal enforcement action to carry out that decision  
895 has been stayed while the case continues on appeal. We have been  
896 here before. Two longer-term trends in health policy persist  
897 -- our over reliance on outsourcing personal health care decisions  
898 to third party political intermediaries and then our chronic  
899 inability to reach compromises and resolve health policy issues  
900 through legislative mechanisms. They have fuelled a further  
901 explosion in extending health policy battles to our courts.

902 So welcome back to Groundhog Day, ACA litigation version.

903 The plaintiff's overall case is not frivolous but it does rely  
904 heavily on taking the actual text of the ACA literally and thereby

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905 limiting judicial scrutiny to what the Congress that enacted  
906 appeared on the limited record of that time to intend by what  
907 it did.

908 The plaintiffs are attempting to reverse engineer and  
909 leverage the unusually contorted Supreme Court opinion of Chief  
910 Justice Roberts in *NFIB v. Sebelius*.

911 Now, come critics insist that the 115th Congress that zeroed  
912 out the mandate tax also expressed a clear intent to retain all  
913 other ACA provisions. This ignores the limited scope of what  
914 that Congress had power to do through the vehicle of budget  
915 reconciliation in the tax-cutting Jobs Act. All that its members  
916 actually voted into law was a change regarding individual mandate.

917  
918 It did not and could not extend to the ACA's other  
919 nonbudgetary regulatory provisions nor did it change the findings  
920 of facts still in statutory law first made by the 111th Congress  
921 that insisted the individual mandate was essential to the  
922 functioning of several other ACA provisions, notably, guaranteed  
923 issue and adjusted community rating.

924 The plaintiffs are not out of bounds in trying to hold  
925 Congress to its past word. It happens once in a while. And in  
926 building on the similar reasoning used by other Supreme Court  
927 majorities to strike down earlier ACA legal challenges.

928 Since that's the story for ACA defenders they should have

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929 to stick to it, at least until a subsequent Congress actually  
930 votes to eliminate or revise those past findings of fact already  
931 in permanent law.

932 But even if appellate courts had -- also find some form of  
933 constitutional injury in what remains of the ACA's individual  
934 mandate as a tax-free regulatory command, the severability stage  
935 of such proceedings will become far more uphill for the  
936 plaintiffs.

937 Most of the time the primary test is functionality in the  
938 sense of ascertaining how much of the remaining law with the  
939 Congress enacting it believe could be retained and still operate  
940 as it envisioned.

941 Given the murkiness of divining or rewriting legislative  
942 intent in harder cases like this one, it remains all about certain  
943 that an ultimate Supreme Court ruling would, at a minimum, follow  
944 up previous inclinations revealed in the 2012 and 2015 ACA  
945 challenges and try to save as much of the law as possible.

946 Even appellate judges in the Fifth Circuit will note  
947 carefully the passage of time, the substantial embedded reliance  
948 costs, and the sheer administrative and political complexity of  
949 unwinding even a handful of ACA provisions on short notice.

950 So don't bet on more than a narrow finding that could sever  
951 whatever remains of an unconstitutional individual mandate  
952 without much remaining practical impact from the rest of the law.

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953           On the health policy front, we might try to remember that  
954 when congressional action produces as flawed legislative product  
955 justified in large part by mistaken premises and  
956 misrepresentations, it won't work well.

957           The ACA's architects and proponents oversold the  
958 effectiveness and attractiveness of the individual mandate,  
959 claiming it could hold the law's insurance coverage provisions  
960 together while keeping official budgetary costs and coverage  
961 estimates within the bounds of CBO's scoring.

962           But what worked to launch the ACA and keep it viable in theory  
963 and politics did not work well in practice and, to be blunt, one  
964 of the primary ways that the Obama administration sold its  
965 proposals for health policy overhaul was to exaggerate the size,  
966 scope, and nature of the potential population facing coverage  
967 problems due to preexisting health conditions.

968           Of course public policy should address remaining problems.  
969 It could and should be improved in other less prescriptive and  
970 more transparent ways than the ACA attempted.

971           My written testimony suggests a number of option available  
972 to lawmakers if some of the ACA's current over broad regulatory  
973 provisions were stricken down in court in the near future.

974           However, we are not back in 2012 or 2010 or even 2017 anymore,  
975 at least outside of our court system. Changes in popular  
976 expectations and health industry practices since 2010 are

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977 substantial breaks on even well-structured proposals for serious  
978 reform. But that is where the real work needs to be restarted.

979 It is often said with apocryphal attribution that God takes  
980 care of children, drunks, or fools, and the United States of  
981 America. Well, let's not press our luck.

982 To produce better lawsuits, fewer lawsuits, let us try to  
983 write and enact better laws.

984 Thank you.

985 [The prepared statement of Mr. Miller follows:]

986

987 \*\*\*\*\* INSERT 4 \*\*\*\*\*

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988 Ms. Eshoo. Thank you.

989 And now our last witness, Mr. Thomas Miller, resident fellow

990 -- I am sorry -- Mr. Simon Lazarus, constitutional --

991 Mr. Miller. I think he's younger than I am.

992 Ms. Eshoo. -- constitutional lawyer and writer. Welcome.

993 It is lovely to see you and thank you for being here to be a

994 witness and be instructive to us.

995 You have five minutes.

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996 STATEMENT OF MR. LAZARUS

997

998 Mr. Lazarus. Thank you, Chair Eshoo, and Ranking Member  
999 Burgess and members of the subcommittee. My name is Simon  
1000 Lazarus. I am a lawyer and writer on constitutional and legal  
1001 issues relating to, among other things, the ACA.

1002 I have had the privilege of testifying before this  
1003 subcommittee and other congressional committees numerous times.

1004 I am currently retired and the views that I express here are  
1005 my own and cannot be attributed to any of the organizations for  
1006 which I previously worked or other organizations.

1007 I have to say that I am not sure how important my task is  
1008 because I think all of the witnesses have pretty much agreed with  
1009 the bottom line and that includes the witnesses invited by the  
1010 minority, and that is that this decision to invalidate the entire  
1011 ACA is, in significant respects and I think many of us agree that  
1012 in all respects, completely baseless legally and has close to  
1013 zero chances of being upheld on appeal.

1014 And in light of all of that, Tom, I have to -- I am puzzled  
1015 by your assertion that the lawsuit is not frivolous because that  
1016 sounds to me like the definition of frivolousness in a lawsuit.

1017 In any event, I think it should be underscored that it is  
1018 not a coincidence that even the minority witnesses think very  
1019 little of this lawsuit because as soon as the decision came down

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1020 it was attacked in extremely strong terms across the political  
1021 spectrum.

1022 As the Wall Street Journal editorialized, while no one  
1023 opposes Obamacare more than we do, Judge O'Connor's decision is  
1024 likely to be overturned on appeal. Legal experts, including  
1025 prominent anti-ACA conservatives, have blistered Judge  
1026 O'Connor's result.

1027 For example, Phillip Klein, the editor -- executive editor  
1028 of the Washington Examiner, called the decision an assault on  
1029 the rule of law. Professor Jonathan Adler, who is an architect  
1030 of the second fundamental legal challenge to the ACA -- that's  
1031 King v. Burwell -- which I think the idea for which was hatched  
1032 at a meeting that you probably hosted --

1033 Mr. Miller. I have been here before.

1034 Mr. Lazarus. Okay. And that effort to kill the ACA was  
1035 rejected by the Supreme Court in 2015. In any event, Professor  
1036 Adler called the decision, quote, "an exercise of raw judicial  
1037 power unmoored from the relevant doctrines concerning when judges  
1038 may strike down a whole law because of a single alleged legal  
1039 infirmity buried within it."

1040 And on the courts, if one is going to be a prognosticator,  
1041 just look at the basic facts. Chief Justice John Roberts'  
1042 pertinent opinions nearly ensure at least a 5-4 Supreme Court  
1043 majority to reverse Judge O'Connor and, moreover, it should be

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1044 noted that Justice Brett Kavanaugh, looking at his prior decisions  
1045 as a D.C. circuit judge, also looks very likely to join a larger  
1046 majority to reverse Judge O'Connor.

1047           So my job here is just to try to explain what the legal reasons  
1048 are for this negative judgment on O'Connor's decision so I am  
1049 going to try to briefly do that.

1050           To begin with, the court could well dismiss the case for  
1051 lack of standing to sue on the part of any of the plaintiffs who  
1052 brought the case. The state government plaintiffs barely pretend  
1053 to have a colorable standing argument.

1054           The two individual plaintiffs complain that though it is  
1055 enforceable the mandate nonetheless imposes a legal obligation  
1056 to buy insurance and they would feel uncomfortable violating that  
1057 obligation.

1058           The problem with this is that Chief Justice Roberts in his  
1059 2012 *NFIB v. Sebelius* decision, which upheld the mandate,  
1060 expressly ruled that and based his decision, really, on the  
1061 determination that if individuals did not buy insurance, thus,  
1062 quote, "choosing to pay the penalty rather than obtain insurance"  
1063 they will have fully complied with the law.

1064           Now, post-TCJA -- the Tax Cut and Jobs Act -- a nonpurchaser  
1065 will still not be in violation of the law simply because Congress  
1066 reduced to zero the financial incentive to choose the purchase  
1067 option.

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1068           So no one is compelled the buy insurance in order to avoid  
1069 a penalty since none exists nor to follow the law because he will  
1070 be following or she will be following the law.

1071           So there is no injury period, no standing to sue. That is  
1072 a very likely result, even in the Fifth Circuit, I would say.

1073           Ms. Eshoo. Mr. Lazarus, can you just summarize --

1074           Mr. Lazarus. Okay. I am sorry.

1075           Well, in addition, I would just say on the merits the ACA's  
1076 mandate provision remains a valid exercise of the tax power and  
1077 that is pretty much for the same reasoning that there is no  
1078 standing and that is because Congress's determination after the  
1079 original ACA passed to drop the penalty to zero did not strip  
1080 Congress of its constitutional power under the -- under the tax  
1081 authority.

1082           And nor can its subsequent determination sensibly mean that  
1083 it was no longer using that power. And finally, I would just  
1084 want to add really to what other people have said and some of  
1085 the members of the subcommittee have eloquently said, that to  
1086 take the further leap that if the -- if the mandate provision  
1087 is unconstitutional after the passage of -- after the reduction  
1088 of the penalty to zero, which it really should not be found, but  
1089 if it is there is absolutely no basis whatsoever for holding --  
1090 for striking down the rest of the ACA.

1091           [The prepared statement of Mr. Lazarus follows:]

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1092

1093

\*\*\*\*\* INSERT 5 \*\*\*\*\*

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1094 Ms. Eshoo. Thank you very much.

1095 All right. I am going to -- we have now concluded the  
1096 statements of our witnesses. We thank you again for them. Each  
1097 member will have five minutes to ask questions of the witnesses  
1098 and I will start by recognizing myself for five minutes.

1099 I appreciate the discussion about the legalities and, of  
1100 course, we are discussing *Texas v. United States* today. But the  
1101 issue of preexisting conditions keeps coming up and I would like  
1102 Ms. Young and anyone else to chime in.

1103 This issue of what our Republican colleagues say that they  
1104 are for, and I listen to C-SPAN a lot and especially during the  
1105 days running up to the election and they covered Senate races  
1106 and House races, and I heard Republicans over and over and over  
1107 again in those debates with their opponents saying, I am for  
1108 preexisting conditions.

1109 Now, can anyone address how you extract that out of what  
1110 we have now, the Affordable Care Act, and have standalone  
1111 insurance policies? Where is the guarantee about what the price  
1112 would be for that policy?

1113 Would you like to --

1114 Ms. Young. The Affordable Care Act -- absolutely.

1115 Ms. Eshoo. Uh-huh.

1116 Ms. Young. Can you hear me okay?

1117 Ms. Eshoo. Uh-huh.

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1118 Ms. Young. Great. The Affordable Care Act requires that  
1119 all insurance plans charge consumers the same price regardless  
1120 of --

1121 Ms. Eshoo. That I understand. That's what we put in. But  
1122 the -- but the minority is saying that they are for preexisting  
1123 conditions except they have voted against the ACA countless times.

1124 So if you were to extract just that one issue and write a  
1125 bill on it, where is the guarantee that -- on what the price would  
1126 be for that standalone policy?

1127 Ms. Young. In my view, it is very difficult to put together  
1128 a system of protections for people with preexisting conditions  
1129 that doesn't include a panoply of reforms similar to many of the  
1130 reforms that were included in the Affordable Care Act.

1131 So you need to ensure people can buy a policy. You need  
1132 to ensure that that policy doesn't exclude coverage for their  
1133 particular health care needs.

1134 You need to ensure that they are able to purchase at a fair  
1135 price and you needed to surround that with reforms that really  
1136 create a functioning insurance market by providing financial  
1137 assistance, stable risk adjustment, and other associated  
1138 provisions like that.

1139 Ms. Eshoo. I want to get to something that is out there  
1140 and that is what I refer to in my opening statement. I refer  
1141 to them as junk plans. It is my understanding that many of these

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1142 plans exclude coverage for prescription drugs, for mental health  
1143 and substance use disorders.

1144 Who would like to address this? Is this correct?

1145 Ms. Young. I can address that.

1146 Ms. Eshoo. Uh-huh. Go ahead.

1147 Ms. Young. I believe you are referring to short-term  
1148 limited duration coverage.

1149 Ms. Eshoo. Right. Mm-hmm.

1150 Ms. Young. Those plans are not required to cover any  
1151 particular benefit and many of them can and likely will exclude  
1152 coverage for benefits like prescription drugs, maternity care,  
1153 substance use and mental health services, things like that.

1154 Ms. Eshoo. Now, are these plans medically underwritten?

1155 Ms. Young. Many of them are, yes.

1156 Ms. Eshoo. And how does that differ from the process by  
1157 which Americans get health insurance on the individual market  
1158 today?

1159 Ms. Young. Medical underwriting refers to a process where  
1160 insurance companies require individuals to fill out a detailed  
1161 health history questionnaire and then use the resulted of that  
1162 to determine if the individual can purchase a policy and if so  
1163 on what terms.

1164 That was a common practice in the individual market before  
1165 the Affordable Care Act. It is permitted for short-term limited

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1166 duration plans today.

1167 In contrast, in the ACA -- compliant individual market,  
1168 insurers are not prohibited to medically underwrite. Consumers  
1169 sign up for a policy based only on information about their age  
1170 and their income if they are seeking tax credits with no health  
1171 history screening.

1172 Ms. Eshoo. I see. Mr. Lazarus --

1173 Mr. Miller. Chairwoman Eshoo, could you ask the rest of  
1174 the panel and we are getting a one-sided view of this. The ACA's  
1175 protections are --

1176 Ms. Eshoo. I didn't call on you. I would like to call on  
1177 Mr. Lazarus. Are you giving us comfort that the lawsuit is not  
1178 going to go anywhere? Is that what you believe?

1179 Mr. Lazarus. I think all of the witnesses have basically  
1180 said that, at least with respect to the notion that if the mandate  
1181 provision is now found to be unconstitutional, which I don't think  
1182 it will be or should be, the quantum leap that the Republican  
1183 attorneys general and Judge O'Connor took to then say the whole  
1184 law has to go, I don't think any member of the panel thinks that  
1185 there is much chance of that occurring.

1186 So I don't know whether that answers your -- that doesn't  
1187 mean, however, that the -- that the fact that there is this dagger  
1188 pointed at the heart of our health care system is out there causing  
1189 uncertainty, that it was -- basically, opponents of the ACA have

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1190 outsourced to a judge, which Chairman Pallone correctly said was  
1191 forum -- was a target of forum shopping who has a widespread  
1192 reputation of, one article said, tossing out Democratic policies  
1193 that Republican opponents don't like.

1194 Ms. Eshoo. I think my time has more than expired. Thank  
1195 you.

1196 I now would like to recognize the ranking member of the  
1197 subcommittee, Dr. Burgess.

1198 Mr. Burgess. I thank you for the recognition.

1199 Mr. Miller, let me just give you an opportunity. You were  
1200 trying to respond with something about the ACA protections.

1201 Mr. Miller. Sure. It is a complex issue, but we need to  
1202 remember that in the best of the world, the ACA left a lot of  
1203 other folks unprotected. If you didn't comply with the  
1204 individual mandate you didn't get coverage. You got fined. You  
1205 got insult on top of injury and there is no coverage to it.

1206 So there are breakdowns in any imagined perfect system.  
1207 There are other approaches which can also fill that hole. You  
1208 are going to have to put some money in. You are going to have  
1209 to resolve.

1210 I don't think the Republicans did a good job of it in 2017  
1211 in explaining and defining what that meant. They began  
1212 backfilling as they went along with reinsurance. There are ways  
1213 to extend HIPAA over to the individual market.

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1214           Those are all thoughtful alternative approaches, and if you  
1215           don't have an individual mandate you should come up with something  
1216           else and we are not going to have an individual mandate. That  
1217           appears to be the case.

1218           So you are leaving a hole there and there are other ways  
1219           to provide stronger incentives and it requires some robust  
1220           protections where if you went into something like a high-risk  
1221           pool or an invisible risk pool you could requalify for that  
1222           full-scale portability after 18 months.

1223           So there are ways to connect the dots. It is heavier lifting  
1224           and it is more work than just waving your arms and saying, we  
1225           mandated it -- it must work, even though it doesn't.

1226           Mr. Burgess. And I thank you for that clarification and  
1227           just continuous coverage was part of the bill that we worked on  
1228           two years ago.

1229           Mr. Miller. A number of options. Yes.

1230           Mr. Burgess. Which, of course, is what exists in Medicare.  
1231           I mean, if you do not purchase Medicare within three months of  
1232           your sixty-fifth birthday, guess what? You get an assessment  
1233           for the rest of your life that -- in Part B of Medicare.

1234           So, Mr. Miller, I actually agree with you and I guess other  
1235           witnesses. My expectation is that this case will not be  
1236           successful on appeal and I base that on the fact that I have been  
1237           wrong about every assumption I have made about the Affordable

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1238 Care Act ever since its inception in 2009.

1239 So perhaps I can be wrong about that assumption but I do  
1240 assume that it will not -- that it will not survive on appeal.

1241 Let me just ask you, because I have had difficulty finding  
1242 this information -- you may have some sense -- how much money  
1243 has been collected under the individual mandate? The fines that  
1244 have been paid -- do we have an idea what that dollar figure is?

1245 Mr. Miller. Yes. I did that a couple years ago in the Ways  
1246 and Means. I knew it was going to come up today. I can supply  
1247 it for you.

1248 Mr. Burgess. Great.

1249 Mr. Miller. This is -- with a bit of a lag it ends up being  
1250 calculated. Not a lot, and it's somewhat randomly distributed.

1251 It tends to be the lower income people who didn't know how to  
1252 get out of the individual mandate who ended up paying it,  
1253 surprisingly enough. But it did not amount to a large amount  
1254 and it didn't have a lot of coverage effects.

1255 Mr. Burgess. So, basically, the effect of the Tax and Jobs  
1256 Act of 2017 was current law because no one behaved as if it was  
1257 a real thing anyway.

1258 Mr. Miller. Well, it had some other ripple consequences.

1259 But in that practical consequences were not as significant as  
1260 is often said.

1261 Mr. Burgess. Well, let me ask you this. I mentioned in

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1262 my opening statement that perhaps ways to end this lawsuit would  
1263 be to either repeal the individual mandate outright or reestablish  
1264 the tax within the individual mandate. Do you agree that that  
1265 is -- either of those activities would --

1266 Mr. Miller. That requires actually legislating, which is  
1267 a hard thing to do these days on Capitol Hill.

1268 Mr. Burgess. I think -- yes, sir. But it would achieve  
1269 the goal of breaking the lawsuit.

1270 Mr. Miller. Sure. And there is lots of other things. I  
1271 mean, states could pay us their own individual mandate. As I  
1272 said, you could also just rescind your findings of fact in the  
1273 old Congress and say, we were wrong -- we are sorry.

1274 Mr. Burgess. I don't think that is going to happen.

1275 Let me -- let me just ask you. I mentioned the phenomenon  
1276 of silver loading in my opening statement. Would you walk us  
1277 through, for people who are not familiar with that as a technical  
1278 term --

1279 Mr. Miller. Sure.

1280 Mr. Burgess. -- the phenomenon of silver loading?

1281 Mr. Miller. It is a bit of a ripple of the other litigation  
1282 over the cost-sharing reduction subsidies and that has got a  
1283 tangled web in itself.

1284 But, cleverly, a number of states, insurance regulators,  
1285 and insurers figured out a way to game the system, which is how

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1286 do you get bigger tax credits for insurance by increasing your  
1287 premiums.

1288 There was also worry about what those market were doing,  
1289 which fueled some of that increase, and a lot of spikes in the  
1290 individual market over the previous two years as a result of that  
1291 and the silver loading embellished that.

1292 Now, that was great for folks who were already covered where,  
1293 because of the comprehensiveness of their subsidy income related,  
1294 they weren't out any extra dollars as those premiums went up.

1295 But the folks in the rest of the individual market -- and  
1296 Avik can talk to this as well -- that is where we had our coverage  
1297 losses and that is where you got the damage being done. Those  
1298 are the victims -- the by-products of doing good on one hand and  
1299 it spills over into other people.

1300 Mr. Burgess. That's the teacher and policeman that I  
1301 referenced in my district who have two children. They are outside  
1302 the subsidy window.

1303 Mr. Roy, could you just briefly comment on the effect of  
1304 a Medicare-for-all policy on what union members receive as their  
1305 -- as their health insurance?

1306 Mr. Roy. Well, I mean, of course, there are many different  
1307 definitions of Medicare for all but if we define it as the  
1308 elimination of private insurance then, obviously, union members  
1309 who have either Taft-Hartley-based plans or employer-sponsored

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1310 insurance that would be replaced by a public option or something  
1311 like that. I assume that is what you mean.

1312 Mr. Burgess. Yes, sir. Thank you. Thank you for being  
1313 here.

1314 I yield back.

1315 Ms. Eshoo. Thank you, Ranking Member.

1316 And who are we going to? To recognize the gentlewoman from  
1317 the great state of California and its capital, Sacramento -- Ms.  
1318 Matsui.

1319 Ms. Matsui. Thank you, Madam Chair.

1320 Thank you all for joining us today. The topic of this  
1321 hearing is incredibly important to me and my constituents and  
1322 all Americans whose lives have been changed by the Affordable  
1323 Care Act.

1324 A special thank you to Ms. Hung for sharing her daughter's  
1325 story and for your incredible advocacy work on behalf of children  
1326 and families everywhere.

1327 When we started writing the ACA nine years ago, I consulted  
1328 with a full range of health care leaders in my district in  
1329 Sacramento. They called together the hospitals, the health  
1330 plans, the community health centers, the patients, and all those  
1331 who contribute to our health care systems and all those who use  
1332 it also.

1333 Everything was carefully constructed. We tried to think

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1334 about everything but, obviously, you can't think of everything.

1335 But we consulted as widely as possible because we also knew that  
1336 each policy would affect the next and the system as a whole.

1337 You simply cannot consider radical changes to the law in  
1338 a vacuum yet that is exactly what this ruling of the lawsuit does.

1339 By using the repeal of the individual mandate in the GOP tax  
1340 bill as justification of this suit, the court has declared the  
1341 entire Affordable Care Act invalid.

1342 Millions of Californians and Americans stand to lose  
1343 critical health protections including protections for people  
1344 especially with preexisting conditions. Vital protections for  
1345 Medicare beneficiaries including expanded preventive services  
1346 and closing the prescription drug donut hole will be thrown into  
1347 chaos.

1348 I was pleased to join my colleagues to vote for the House  
1349 of Representatives to intervene in this lawsuit and defend the  
1350 ACA in our continued fight to protect people with preexisting  
1351 conditions and for the health care of all Americans and I think  
1352 you know that that is something that all Americans care about  
1353 when you think about preexisting conditions. Everybody has some  
1354 sort of pre-existing conditions.

1355 For me, the potential consequences of the lawsuit are too  
1356 great to not fully consider, especially for the impact on people  
1357 confronting mental illness and substance abuse.

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1358           The passage of the ACA was a monumental step forward in our  
1359 fight to confront the mental health and substance abuse crisis  
1360 in this country and led to the largest coverage gains for the  
1361 mental health in a generation through the expansion of Medicaid.

1362           Ms. Linke Young, can you briefly discuss why the consumer  
1363 protections of the ACA are so important to individuals struggling  
1364 with mental illness or substance abuse?

1365           Ms. Young. Absolutely. Preexisting law -- law that  
1366 existed prior to 2009 established a baseline protection for people  
1367 with mental illness that said that if their insurance plan covered  
1368 mental illness -- mental health needs -- then it had to do so  
1369 on the same terms that it covered -- it covered their physical  
1370 treatment.

1371           But it didn't require any insurance product to include  
1372 coverage of mental health benefits. And so it was typical for  
1373 coverage in the individual market to exclude -- to exclude mental  
1374 health benefits completely.

1375           With the Affordable Care Act, plans were required to include  
1376 coverage for mental health and substance use disorder services  
1377 and to do so at parity on the same terms as they include -- as  
1378 they include coverage for physical health benefits and that  
1379 brought mental health benefits to tens of millions or -- about  
1380 10 million Americans who wouldn't have otherwise had it.

1381           In addition, the Medicaid expansion in the 37 states and

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1382 D.C. and that have taken that option has enabled many, many people  
1383 with serious mental health needs including substance use disorder  
1384 to access treatment that they would not otherwise have been able  
1385 to access.

1386 Ms. Matsui. So this would be very serious and I am thinking  
1387 about the 37 states that did expand Medicaid if this decision  
1388 was upheld.

1389 I just really feel, frankly, that it is difficult enough  
1390 when you have mental illness or someone in your family goes the  
1391 stigma that is attached to it, whereas with the Medicaid expansion  
1392 I believe that most people will seek the treatment that they really  
1393 need.

1394 And what do you foresee with the loss of this expansion if  
1395 it were to happen?

1396 Ms. Young. If federal funding for Medicaid expansion was  
1397 no longer available then the states that have expansion in place  
1398 would need to choose whether to find state funding to fill that  
1399 gap or to scale back their expansion or cut benefits or reduce  
1400 provider rates or some combination of those policies.

1401 The Congressional Budget Office and most experts expect that  
1402 many states would retract the expansion and move those residents  
1403 that were covered through expansion off the Medicaid rolls and  
1404 most of them are likely to become uninsured and would not continue  
1405 to have access to mental health and substance use disorder

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1406 coverage.

1407 Ms. Matsui. So, in essence, we will be going backwards then  
1408 once again. Okay.

1409 Thank you very much, and I yield back the balance of my time.

1410 Ms. Eshoo. Thank you, Ms. Matsui.

1411 I would now like to recognize the gentleman from Kentucky,  
1412 Mr. Guthrie.

1413 Mr. Guthrie. Thank you very much, and again,  
1414 congratulations on your --

1415 Ms. Eshoo. Thank you.

1416 Mr. Guthrie. -- on being the chair. I enjoyed being vice  
1417 chair -- vice a couple of times and learned a lot about the health  
1418 care system and moving forward.

1419 And I know today the title is how does the Texas case affect  
1420 preexisting conditions and I think we are hearing from everybody  
1421 that it would probably be near unanimous if we did a legislative  
1422 fix to preexisting conditions regardless of where the case goes  
1423 and so I was listening to Dr. Burgess talk earlier about having  
1424 a hearing for Medicare for all, and I think the chair of the full  
1425 committee said that, well, why would you want to have a hearing  
1426 for a piece of legislation you say you're not for.

1427 I think it is important for us to talk about and the issues  
1428 that would come because there are, I think, at least four or five  
1429 presidential candidates that already said they were for it.

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1430           So it is not just some obscure bill that somebody files every  
1431 year. It has now gotten into the public space that we need to  
1432 discuss.

1433           And Ms. Hung, I appreciate your testimony. I have nothing  
1434 compared to your issues with your child but I had a son that had  
1435 some issues when he was a boy. He is 23 now, and so about a month  
1436 of just what is going to happen.

1437           So I understand the preexisting conditions, and then another  
1438 year and a half, maybe two years, in and out of children's  
1439 hospitals. But we got the best words a parent can hear when a  
1440 physician walks in, we know what the problem is now and we can  
1441 fix it.

1442           Matter of fact, just last fall he thought he was having some  
1443 problems -- so he lives in Chicago, west of Chicago. Went to  
1444 see a -- to a doctor with him and the doctor said, hey, it is  
1445 something else -- it is something routine we can treat. He goes,  
1446 by the way, you had a really great surgeon when he was eight.

1447           So we were just reinforced with it. So everything kind of works.

1448           And so what has kind of impressed me, and I guess I am going  
1449 to just talk a little bit instead of ask questions, but what has  
1450 always impressed me about the care -- Vanderbilt Children's  
1451 Hospital is where we were -- that he has received and just the  
1452 innovation our health care system is producing.

1453           It is absolutely amazing innovation coming out in our health

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1454 care system. The artificial pancreas is real now. People can  
1455 have it now. You can cure hepatitis C with a pill. It is just  
1456 amazing what is happening in some people -- with some people,  
1457 not a lot. It is not universal but stage four melanoma is being  
1458 cured with precision medicine.

1459 I mean, those things are happening in our health care system.  
1460 They are expensive, and my biggest concern if we go to a  
1461 government-run that we just lose that health care. We innovate  
1462 and the world, and President Trump talked about it a little last  
1463 night, is living off our investment in innovation. But if we  
1464 don't invest and innovate, who is going to do it and who is going  
1465 to have the care that we have?

1466 As a matter of fact, we are investing and innovating so  
1467 quickly, this committee spent an awful lot of time over the last  
1468 couple of years to put 21st Century Cures in place so the  
1469 government regulatory structure can keep up with the vast  
1470 investment.

1471 I know we spent a lot of time in the last couple years doing  
1472 oversight. I hope we will continue to do oversight of  
1473 implementation of 21st Century Cures.

1474 So my only point is, and I will yield back in just a couple  
1475 seconds, is that it is important when we look at such massive  
1476 changes to our health care system the way people get health  
1477 insurance.

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1478           You know, most people still get it through their employer.

1479           Is that going to go away? People get it through -- we talked

1480           about the Indian Health Services. Is that going to go away?

1481           Is it a road to get rid of the VA?

1482           Just there is so much change that is proposed in what people

1483           boil down to one -- a bumper sticker, Medicare for All -- that

1484           it has implications for everybody. It has implications for the

1485           whole country, and universal coverage is a positive thing.

1486           But if you get to the -- I tell you, if you get to the Medicare

1487           reimbursements throughout the entire health care system, I am

1488           convinced we won't have the innovation that completely -- my son

1489           is completely healed -- that had some innovative surgeries --

1490           for his privacy I won't say -- but 15 years ago that now are

1491           probably completely different on what you see.

1492           My cousin is a NICU doctor and the stuff that -- the babies

1493           that he now sees that are surviving, and we have a colleague here

1494           that had a daughter born without kidneys who I guess -- Abby must

1495           be about five or six now.

1496           And so it is just -- that is a concern and I think that when

1497           we are going to have a piece of legislation that has kind of been

1498           boiled down to a bumper sticker but it is going to have impact

1499           on everybody living in this country and everybody throughout the

1500           world because I wish the world would help subsidize some of the

1501           innovations that we are producing -- that it is worthy for us

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1502 to have serious discussions and not just dismiss it as we are  
1503 not being serious.

1504 So and I can tell you I am, I know Dr. Burgess is and I think  
1505 the rest of the committee would be, and I appreciate you guys  
1506 all being here and sharing your stories.

1507 But we can fix preexisting conditions. I think we are all  
1508 on board with that, and Madam Chair, I yield back.

1509 Ms. Eshoo. I thank you, Mr. Burgess. Always a gentleman.

1510 Let us see. Who is next? The chairman of the full  
1511 committee, Mr. Pallone.

1512 The Chairman. Thank you.

1513 I wanted to ask Ms. Young a couple questions -- really, one  
1514 question. On the day of the Texas district court's ruling,  
1515 President Trump immediately praised Judge O'Connor's decision  
1516 to strike down protections for preexisting conditions.

1517 The next day he referred to the ruling as, quote, "great  
1518 news for America," and just last week in an interview with the  
1519 New York Times, President Trump bo~~ast~~asted that the Texas lawsuit  
1520 will terminate the ACA and referred to the ruling as a victory.

1521 In his testimony, Mr. Roy claims that President Trump  
1522 supports protecting people with preexisting conditions. I think  
1523 that could not be further from the truth. The truth is President  
1524 Trump has sought to undermine and unravel protections for more  
1525 than 130 million Americans living with preexisting conditions

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1526 and, understandably, that is not a record that Republicans want  
1527 to promote.

1528 But I also want to remind folks that since this is not a  
1529 fact that my colleagues on the other side seem to want to  
1530 acknowledge and that is that the Republican lawsuit brought by  
1531 Republican attorneys general, who asked the district court to  
1532 strike down the entire ACA.

1533 So the fact that my colleagues and our minority witnesses  
1534 today are trying to disassociate themselves from Judge O'Connor's  
1535 ruling which did exactly what the Republican AGs asked for, I  
1536 think is quite extraordinary.

1537 Mr. Roy asserts in his written testimony that Congress should  
1538 pass a simple bill reiterating guaranteed issue and community  
1539 rating in the event that the district court's decision is upheld  
1540 by the Supreme Court.

1541 So and then we have this GOP bill or motion during the rules  
1542 package where they said that, you know, they would do legislation  
1543 that would only include guaranteed issue and community rating  
1544 and that would ensure sufficient protections for preexisting  
1545 conditions, whatever the courts decide.

1546 So, basically, Ms. Young, I have one question. Can you  
1547 explain why what Mr. Roy is asserting -- that reinstating only  
1548 these two provisions on guaranteeing issue and community rating  
1549 -- is insufficient to protect individuals with a preexisting

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1550 condition and the same, of course, is with the House GOP bill  
1551 that would do that.

1552 Why is this not going to work to actually guarantee  
1553 protection for individuals with preexisting conditions?

1554 Ms. Young. The district court's opinion, as you note,  
1555 struck down the entirety of the ACA. So not just its protections  
1556 for people with preexisting conditions but the financial  
1557 assistance available to buy marketplace coverage, funding for  
1558 Medicaid expansion, a host of provisions in Medicare, protections  
1559 through the employer insurance and associated reforms.

1560 So a standalone action that reinstated two preexisting  
1561 conditions protections without wrapping that in the financial  
1562 assistance and the risk adjustment and the Medicaid expansion  
1563 and the other components of the ACA that are, in my view, important  
1564 to make the system function, would not restore the system that  
1565 we have today where people with preexisting conditions have access  
1566 to a functioning market where they can buy coverage that meets  
1567 their health needs.

1568 In fact, there have been some efforts by the Congressional  
1569 Budget Office to score various proposals that keep some types  
1570 of preexisting condition protections in place but eliminate the  
1571 financial assistance, and the Congressional Budget Office, under  
1572 some scenarios actually find that those lead to even greater  
1573 coverage losses than simply repealing the Affordable Care Act.

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1574           So implementing those two provisions on their own without  
1575 financial assistance and other protections would be insufficient.

1576           The Chairman. I mean, I think this is so important because,  
1577 you know, the -- you know, again, Mr. Roy and he is just reiterating  
1578 what some of my Republican colleagues say. They just neglect  
1579 all these other things that are so important for people with  
1580 preexisting conditions.

1581           You didn't mention junk plans. I mean, my intuition tells  
1582 me, and I am not -- you know, I talk to people about it in my  
1583 district -- you know, that if you start selling these junk plans  
1584 that don't provide certain coverage, one of the things it is  
1585 important for people with preexisting conditions to have a robust  
1586 plan that provides coverage for a lot of things that didn't exist  
1587 before the ACA.

1588           I mean, that is, again, important -- the fact that you have  
1589 a robust essential benefits is also important for people with  
1590 preexisting conditions, too, right?

1591           Ms. Young. Those are both critical protections. In  
1592 particular, the ACA seeks to ensure that insurance for the healthy  
1593 and insurance for the sick are part of a single combined risk  
1594 pool.

1595           Efforts to promote short-term plans or other policies that  
1596 don't comply with the ACA protections siphon healthy people out  
1597 of the central market and drive up costs for those with preexisting

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1598 conditions and anyone else seeking --

1599 The Chairman. Yes. So you are pointing out the very fact  
1600 that you have a larger insurance pool, which has resulted from  
1601 the ACA in itself, is important for people with preexisting  
1602 conditions and if you take out the healthier or the wealthier  
1603 because they -- because you don't have a mandate anymore that  
1604 hurts them too, correct?

1605 Ms. Young. Efforts to move healthier people out of the  
1606 individual market will increase premiums for those that remain  
1607 in complaint coverage, yes.

1608 The Chairman. All right. Thank you so much.

1609 Ms. Eshoo. Thank you, Mr. Pallone.

1610 And now I want to recognize the ranking member of the full  
1611 committee, Mr. Walden.

1612 Mr. Walden. Thank you, Madam Chair, and I want to thank  
1613 all of our witnesses. We have another hearing -- an important  
1614 one -- going on downstairs. That is why some of us are bouncing  
1615 back and forth between climate change and health care.

1616 And I want to -- I want to again say thank you for being  
1617 here and reiterate that as Republicans we believe strongly in  
1618 providing preexisting condition protection for all consumers and  
1619 if you go back to 1996 when HIPAA was passed under Republicans  
1620 we provided for continuous coverage protection for people with  
1621 pre-ex.

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1622 I mean, this is something we believe in before ACA and  
1623 something I believe in personally and deeply and something that  
1624 we are ready to legislate on, and I think at least giving that  
1625 guarantee and certainty to people would make a huge level of  
1626 comfort for them.

1627 And I just -- you know, I know -- I didn't mean to shake  
1628 things up this morning but asking for a hearing on Medicare for  
1629 all was something I thought was appropriate, given that other  
1630 committees are already announcing their hearings, and that going  
1631 back to when ACA was shoved through here and then Speaker Pelosi  
1632 saying we had to pass it so you could find out what is in it,  
1633 we don't want to repeat that. We need to know what is in it.

1634 We need thoughtful consideration. I think this committee is  
1635 the place to have that. So I still think that is important.

1636 I want to thank both Tom and Avik for being here -- Mr. Roy  
1637 for being here on short notice. You said, Mr. Roy, that Congress  
1638 should pass a simple standalone measure guaranteeing that  
1639 insurers offer coverage in the individual health insurance market  
1640 to anyone regardless of prior health status.

1641 Mr. Roy. Yes, I did.

1642 Mr. Walden. And do you want to respond? You didn't get  
1643 a chance to kind of respond here. So do you want to respond to  
1644 what was asked of the other witnesses around you?

1645 Mr. Roy. Well, thank you, Mr. Walden. I appreciate the

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1646 opportunity to actually explain my written testimony --

1647 Mr. Walden. Go ahead.

1648 Mr. Roy. -- in this setting. The key here is that  
1649 three-fourths of the variation of the premiums in health insurance  
1650 in a fully underwritten market are associated with age, not health  
1651 status or gender or anything else -- preexisting conditions.

1652 Mr. Walden. Okay.

1653 Mr. Roy. So the point is if everybody of the same age --  
1654 all 27-year-olds, all 50-year-olds, all 45-year-olds -- if all  
1655 45-year-olds are charged the same premium, the variation in  
1656 premium is between the healthy paying a little more and the sick  
1657 paying a little less is not that big of a difference. It doesn't  
1658 cause a lot of adverse selection.

1659 What drives adverse selection in the ACA is the fact that  
1660 younger people are forced to pay, effectively, double or triple  
1661 what they were paying before --

1662 Mr. Walden. Right.

1663 Mr. Roy. -- to allegedly subsidize the premiums for older  
1664 people. So revising age bands would be a huge step in moving  
1665 in the right direction. Reinsurance, which is effectively a  
1666 high-risk pool within a single risk pool, would help basically  
1667 also reduce the premiums that healthy people pay so that people  
1668 with preexisting conditions could get better coverage.

1669 So you can have a standalone bill that would ensure that

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1670 people have -- with preexisting conditions have access to  
1671 affordable coverage.

1672 Mr. Walden. I would hope so. I think it is really  
1673 important. I mean, we were for preexisting protections. I was  
1674 for getting rid of the insurance caps before ACA. I thought they  
1675 were discriminatory against those who through no fault of their  
1676 own had a consequence of -- consequential health issues that could  
1677 have blown through their lifetime caps.

1678 And so I think there are things we could still find common  
1679 ground on and I wonder if you want to address the Medicare for  
1680 all proposal as well.

1681 Now, we haven't seen it spelled out. I know the Budget  
1682 Committee is, I guess, having it scored and hearings on it. But  
1683 I am concerned about the impacts it may have on delay in terms  
1684 of getting health care. I am concerned about what it might do  
1685 to the Medicare trust fund.

1686 Do you have -- do you want to opine on that while you are  
1687 here?

1688 Mr. Roy. Well, I have written a lot at Forbes and elsewhere  
1689 about how Medicare for all from a fiscal standpoint is unworkable  
1690 because of the gigantic transfers it would assign to the federal  
1691 government.

1692 It would increase federal spending by somewhere between \$28  
1693 trillion and \$33 trillion over a 10-year period, which would be

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1694 an increase in overall federal spending of 71 percent.

1695 Now, that is not if -- that excludes the impact of cutting  
1696 what you pay hospitals and doctors and drug companies by 50  
1697 percent, which is what you would have to do to effectively make  
1698 the numbers work.

1699 I do want to urge you, Mr. Walden, and your colleagues that  
1700 while Medicare for all is unworkable and I think most people know  
1701 that, the status quo is unacceptable, too.

1702 Mr. Walden. Right.

1703 Mr. Roy. And I think it is extremely important for this  
1704 committee in particular to tackle the high cost of hospital care,  
1705 the high cost of drug prices.

1706 Mr. Walden. Yes. That was -- if I had stayed on as chair  
1707 that was going to be our big priority this cycle. Surprise  
1708 billing -- I mean, you go in. You have a procedure. You have  
1709 played by all the rules and it turns out the anesthesiologist  
1710 that put you under wasn't in your program and you get billed.

1711 That is wrong. That is just -- I think we can find common ground  
1712 on that one.

1713 We took on the issue of getting generic drugs into market  
1714 and under the change in the law we passed last year, Dr. Gottlieb  
1715 now has set a record for getting new generics in the market and  
1716 driving both choice and innovation but also price down, and this  
1717 administration -- I have been in the meetings with the president

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1718 and CEOs of the pharmaceutical companies. He is serious about  
1719 getting costs down on drugs and getting to the middle part of  
1720 this, too.

1721 We need to look from one end to the other and, Madam Chair,  
1722 I think we can find common ground here to do that and get  
1723 transparency, accountability so consumers can have choice and  
1724 so we can drive down costs.

1725 I have used up my time and I thank our witnesses again.

1726 Madam Chair, I yield back.

1727 Ms. Eshoo. I thank the ranking member.

1728 We plan to examine all of that and I think -- I hope that  
1729 we can find common ground on it because these are issues that  
1730 impact all of our constituents and they need to be addressed.

1731 And on the surprise billing, I know that the Senate is trying  
1732 to deal with it and we should hear as well. I think that your  
1733 clock is not working at the witness table.

1734 Mr. Roy. That is correct.

1735 Ms. Eshoo. But it is working up here, okay. So maybe you  
1736 can refer to that one.

1737 Now I would like to call on the gentlewoman from Florida,  
1738 Ms. Castor.

1739 Ms. Castor. Thank you, Madam Chair. Witnesses, thank you  
1740 very much for being here and, colleagues, thank you for all of  
1741 your attention here.

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1742 I just think it is so wrong for the Trump administration  
1743 and Republicans in Congress to continue to try to rip affordable  
1744 health care away from American families, especially our neighbors  
1745 with preexisting conditions.

1746 This lawsuit is just a continuation of their efforts to do  
1747 that. When they couldn't pass the bill here in the Congress --  
1748 in the last Congress, despite Republican majorities, and I am  
1749 sorry to say that my home state of Florida under Rick Scott's  
1750 administration joined that federal lawsuit.

1751 Thirteen Democratic members of the Florida delegation have  
1752 written to our new governor and attorney general, asking -- urging  
1753 them to remove the state of Florida from the federal lawsuit that  
1754 would kill the Affordable Care Act and rip health coverage away  
1755 from American families including individuals with preexisting  
1756 health conditions.

1757 This follows the letter we sent to Rick Scott as well and  
1758 I would like to ask unanimous consent that these letters be  
1759 admitted into the record of this hearing.

1760 [The information follows:]

1761

1762 \*\*\*\*\*COMMITTEE INSERT 6 \*\*\*\*\*



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1763 Ms. Castor. American families are -- they are simply tired  
1764 of the assault on affordable health care and, Chairwoman Eshoo,  
1765 you raised the point about the skimpy junk insurance plans because  
1766 one way that the Trump administration and Republicans are trying  
1767 to undermine affordable care are these junk health plans that  
1768 do not provide fundamental coverage.

1769 When you pay your hard-earned copayment and premiums, you  
1770 should actually get a meaningful health insurance policy, not  
1771 some skimpy plan that is just going to subject you to huge costs.

1772 These sub-par and deceptive junk plans exclude coverage for  
1773 preexisting conditions. They discriminate based on age and  
1774 health status and your gender.

1775 Consumers are tricked into buying these junk plans,  
1776 mistakenly believing that they are the comprehensive ACA plan  
1777 but then they are faced with huge out-of-pocket costs. For  
1778 example, in a recent Bloomberg article Dawn Jones from Atlanta  
1779 was enrolled in a short-term junk plan when she was diagnosed  
1780 with breast cancer. Her insurer refused to pay for her cancer  
1781 treatment, leaving her with a \$400,000 bill.

1782 Another patient in Pennsylvania faced a \$250,000 bill --  
1783 in unpaid medical bills because her junk short-term policy did  
1784 not provide for prescription drug coverage and other basic  
1785 services.

1786 The Trump administration now is actively promoting these

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1787 junk plans and I want American families and consumers across the  
1788 country to be on alert. Don't buy in to these false promises.

1789 Ms. Young, you have talked a little bit about this but will  
1790 you go deeper into this? Help us educate families across the  
1791 country. I understand that these plans often impose lifetime  
1792 and annual limits. Is that correct?

1793 Ms. Young. It is, yes.

1794 Ms. Castor. And that is something the Affordable Care Act  
1795 outlawed?

1796 Ms. Young. Correct.

1797 Ms. Castor. Can you describe what these plans typically  
1798 look like and what kind of coverage they purport to provide?

1799 Ms. Young. Short-term limited duration insurance is not  
1800 regulated at the federal level. None of the federal consumer  
1801 protections apply. Some state law protections may apply or --

1802 Ms. Castor. Consumer protections -- name them.

1803 Ms. Young. The requirement that plans cover essential  
1804 health benefits, the prohibition on annual and lifetime limits,  
1805 the requirement that the insurance company impose a cap on the  
1806 total copays and deductibles an individual can face over the year,  
1807 requirements to cover preventive services, to not exclude -- to  
1808 not exclude coverage for preexisting conditions and other --

1809 Ms. Castor. Wait a minute. Wait a minute. I have heard  
1810 some of my Republican colleagues say they are all in favor of

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1811 that. But can you be in favor of preexisting condition protection  
1812 on the one hand and then say, oh, yeah, we believe these junk  
1813 insurance plans are the answer, like the Trump administration  
1814 and Republicans in Congress are promoting?

1815 Ms. Young. Short-term limited duration plans do not have  
1816 to comply with the requirements about preexisting conditions.

1817 That is correct.

1818 Ms. Castor. Can you describe why an individual who is  
1819 healthy when they sign up for one of these junk plans could still  
1820 be subject to hundreds of thousands of dollars in medical bills?

1821 Ms. Young. There is no requirement that short-term plans  
1822 cover any particular health care cost. So an individual who  
1823 doesn't read the fine print behind their policy might discover,  
1824 for example, that the plan only covers hospital stays of a few  
1825 days and individuals are on the hook for all additional hospital  
1826 expenses.

1827 They may find that the plan has a very low annual limit so  
1828 that once they have spent \$10,000 or \$20,000 they are responsible  
1829 for bearing the full cost or any variation like that where they  
1830 simply discover when they need to access the health care system  
1831 that the plan doesn't include the coverage that they had -- that  
1832 they had hoped to purchase.

1833 Ms. Castor. Thank you very much, and we will be working  
1834 to ensure that consumers are protected and when they pay their

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1835 premiums and copays they actually get a meaningful health  
1836 insurance policy.

1837 Thank you, and I yield back.

1838 Ms. Eshoo. I thank the gentlewoman.

1839 I now would like to call on Mr. Griffith from Virginia.  
1840 You are recognized for five minutes.

1841 Mr. Griffith. Thank you very much, Madam Chair. I  
1842 appreciate it.

1843 Here is the dilemma that we have. In my district, which  
1844 is financially stressed in many parts of it -- I represent 29  
1845 jurisdictions in rural southwest -- always put the pause in there  
1846 -- Virginia.

1847 So when ACA came in so many of my people immediately came  
1848 to me, long before the Trump administration came in, and in their  
1849 minds the ACA was junk insurance, because when they were promised  
1850 that their premiums would go down they now had premiums that were  
1851 financially crippling.

1852 When they were promised that they would have better access,  
1853 they now found that they had high deductibles and they now found  
1854 that their copays had gone through the roof.

1855 So there is no question -- I never argued -- that the  
1856 preexisting condition was a problem that should have been dealt  
1857 with long before the ACA, and I understand the concerns and the  
1858 frustration that people had who had preexisting conditions and

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1859 we need to take care of that and we will take care of that.

1860 I don't see anybody who would argue at this point that we  
1861 shouldn't deal with people with preexisting conditions and make  
1862 sure they have access to affordable health care, which is why  
1863 I supported our attempts to get an amendment put in on day one  
1864 of this Congress that would say get the -- the committees of  
1865 jurisdiction.

1866 In fact, it referenced the Energy and Commerce Committee  
1867 -- this committee -- and the Ways and Means Committee to report  
1868 out a bill that took care of all of the concerns we have heard  
1869 today and said it guarantees no American citizen can be denied  
1870 health insurance coverage as the result of a previous illness  
1871 or health status and guarantees no American citizen can be charged  
1872 higher premiums or cost sharing as the result of previous -- of  
1873 a previous illness or health status, thus ensuring affordable  
1874 health coverage for those with preexisting conditions.

1875 That is where we are. That is what we stand for. So, you  
1876 know, I find it interesting that this debate has become -- you  
1877 know, and I am hearing about junk insurance and how, you know,  
1878 Republicans are evil that they want junk insurance.

1879 I hear it on a regular basis that my people think that what  
1880 they have got now is junk. It is all they can afford and it is  
1881 costing them a fortune.

1882 So, Mr. Roy, what do you have to say about that?

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1883 Mr. Roy. I have found the conversation we have been having  
1884 about so-called junk insurance interesting because nobody seems  
1885 to be asking the question as to why people are voluntarily buying  
1886 so-called junk insurance.

1887 They are buying it because the premiums are half or a third  
1888 or a quarter of what the premiums are for the Affordable Care  
1889 Act for them.

1890 Mr. Griffith. And if you can't afford something else you  
1891 are going to buy something that you can afford. Isn't that  
1892 correct?

1893 Mr. Roy. A hundred percent. So a plan that has all the  
1894 bells and whistles but it is unaffordable to you is, effectively,  
1895 worthless whereas a plan that may not have all the bells and  
1896 whistles but at least provides you some coverage is.

1897 And the great tragedy of the Affordable Care Act is that  
1898 we did not have to have that dichotomy. We could have had plans  
1899 that had robust coverage for people with preexisting conditions  
1900 and protections for people regardless of health status and yet  
1901 were still affordable.

1902 I have outlined it both in my written testimony, in my oral  
1903 testimony, and many, many other documents that I have presented  
1904 to this committee in the past how we could achieve that.

1905 Mr. Griffith. Now, you would agree with me for those people  
1906 who may have bought the junk insurance without knowing what they

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1907 were getting into that we probably ought to pass something that  
1908 says that the things that aren't going to be covered -- if you're  
1909 only getting \$20,000 worth of care and then you have to take the  
1910 full bill after that, as Ms. Castor talked about.

1911 We should have that in bold language on the front of the  
1912 policy. You would agree that we should put some consumer  
1913 protection in that and make sure there is transparency so people  
1914 are well-advised of what they are getting or not getting. Isn't  
1915 that true?

1916 Mr. Roy. I have no problem with robust disclosure about  
1917 what is in a short-term limited duration plan versus an  
1918 ACA-compliant plan. To a degree, we already have that in the  
1919 sense if you are buying off the ACA plan I think most consumers  
1920 know that those plans have fewer protections but more disclosure  
1921 and more clarity in disclosure would be a good thing.

1922 Mr. Griffith. Absolutely. I agree with that.

1923 You know, what is interesting is everybody seems to have  
1924 gone after Judge O'Connor. I don't know him. I haven't studied  
1925 his opinions.

1926 But I do find this interesting. I thought it was the right  
1927 thing to do. He put a stay on his ruling so it didn't create  
1928 a national catastrophe or suddenly people are having to scramble  
1929 to figure out what to do.

1930 Mr. Miller, isn't that a little unusual in this day -- I

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1931 mean, people have accused him of being biased or having a political  
1932 bent and using his power. But I seem to recall all kinds of  
1933 opinions by judges that I thought were coming from a slightly  
1934 different philosophical bent but who went out there on a limb,  
1935 stretched -- pushed the envelope of the law.

1936 But instead of saying, now, let us wait until the appeal  
1937 is over and make sure this is right before we affect the average  
1938 citizen they just let it go into effect. But Judge O'Connor said,  
1939 no, in case this is overturned I want to make sure nobody is  
1940 adversely impacted and put a stay on his own ruling.

1941 Isn't that unusual and wasn't that the right thing to do?

1942 Mr. Miller. No, it is not -- it is hopscotch. We have had  
1943 some federal judges who have had nationwide injunctions reaching  
1944 way beyond what you would think would be the normal process.

1945 Mr. Griffith. Yes. I have noticed that.

1946 Mr. Miller. I think all the parties understood what  
1947 practically was going on here. I would just point out on the  
1948 legalities of this, just to clean up the record, one of the things  
1949 about --

1950 Ms. Eshoo. Just summarize quickly because your time is up.

1951 Mr. Miller. My time is up. Okay.

1952 Mr. Griffith. You could summarize, she said.

1953 Ms. Eshoo. Quickly.

1954 Mr. Miller. I will just say, real fast, we left out the

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1955 argument about tax guardrails, which was in Chief Justice Roberts'  
1956 opinion and Si is exaggerating what is there and isn't there.

1957 The problem is that when you take it apart there is nothing  
1958 left behind.

1959 Ms. Eshoo. Okay. I think your time is expired.

1960 Mr. Miller. It was his testimony was that this tax didn't  
1961 exist anymore.

1962 Ms. Eshoo. All right. We are now going to go to and  
1963 recognize Dr. Ruiz from California.

1964 Mr. Ruiz. Thank you. It is so wonderful to be on this  
1965 committee finally. So thank you to all --

1966 [Laughter.]

1967 Ms. Eshoo. He hasn't stopped celebrating.

1968 Mr. Ruiz. Thank you to all the witnesses for joining us  
1969 today. We have over 130 million Americans that have preexisting  
1970 conditions. The ACA defended full protections for people with  
1971 preexisting conditions and those are three components.

1972 One is that insurance companies cannot deny insurance to  
1973 people with preexisting conditions; two, they cannot deny  
1974 coverage of specific treatments related to the preexisting  
1975 condition illness; and three, they cannot discriminate by  
1976 increasing the prices towards people who have a preexisting  
1977 condition.

1978 Let me give you some examples of some of the benefits and

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1979 hardships that people would face if this lawsuit is completed.

1980 My district is home to Desert AIDS Project, an FQHC that was  
1981 founded in 1984 to address the AIDS crisis.

1982 It is the Coachella Valley's primary nonprofit resource for  
1983 individuals living with HIV/AIDS. They have grown to become one  
1984 of the leading nonprofits and effective HIV/AIDS treatment in  
1985 the nation.

1986 And the folks at Desert AIDS Project know how to end the  
1987 HIV/AIDS epidemic. Basically, you need prevention and you need  
1988 treatment. They told me that the ACA has been critical in  
1989 providing treatment to the HIV -- in order to get the HIV viral  
1990 load at an uninfectious low level.

1991 So the problems before the ACA was that insurance companies  
1992 didn't used to have to pay for HIV tests, for example, or  
1993 individuals with HIV couldn't get Medicaid coverage until they  
1994 were really sick on full-blown AIDS, many already on their death  
1995 beds.

1996 Now, because of the ACA insurance companies must cover  
1997 essential health benefits like HIV tests and anti-viral  
1998 medications which, by the way, the folks on the other side have  
1999 attempted to repeal.

2000 Because of the ACA and the Medicaid expansion many  
2001 HIV-infected middle class families now have health insurance for  
2002 the very first time. Unfortunately, I can't say that for HIV

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2003 patients throughout our country including in states like Texas  
2004 that didn't expand the Medicaid coverage.

2005 And, by the way, this is another example of ACA that those  
2006 on the other side attempted to repeal. Before the passage of  
2007 the ACA, 90 percent of Desert AIDS Project clients did not have  
2008 health insurance and now, with the ACA, 99.9 percent of clients  
2009 have health insurance coverage in Desert AIDS Project.

2010 Let me repeat that statistic. Insurance coverage for these  
2011 patients from only 10 percent to 99.9 percent because of the ACA.

2012 And yet, the president, while claiming to be committed to  
2013 eliminating the HIV/AIDS epidemic in 10 years, is actively taking  
2014 measures to take away these protections of this very population  
2015 by rolling back the Medicaid expansion and weakening and  
2016 undermining preexisting conditions protections.

2017 This would be devastating to Desert AIDS Project clients  
2018 and patients and, yet, this is just one example of the devastation  
2019 that repeal of the ACA would cause on individuals with preexisting  
2020 conditions.

2021 Ms. Young, could you discuss the potential impact of the  
2022 lawsuit on individuals with preexisting conditions if the  
2023 district court's decision is upheld?

2024 Ms. Young. If the district court decision were to be upheld  
2025 as written, it would disrupt the coverage for people with  
2026 preexisting condition in all segments of the insurance market.

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2027           So we talked a lot about the individual market. The core  
2028           protections in the individual market today would be eliminated  
2029           along with the financial assistance that enables them to afford  
2030           coverage and make those markets stable.

2031           In employer coverage, people with preexisting conditions  
2032           would also face the loss of certain protections. They would once  
2033           again be exposed to lifetime or annual limits and they could --  
2034           they could face unlimited copays.

2035           Mr. Ruiz. Let me get to another point because, you know,  
2036           we are hearing a lot of political trickery here in the  
2037           conversations. A number of the folks on the other side have  
2038           introduced bills that will pick and choose which one of these  
2039           three components that make up full protections for preexisting  
2040           conditions that they want to have in certain bills.

2041           For example, one bill says, we want guaranteed issue and  
2042           community rating which will help keep the costs low for everybody  
2043           but don't include the prohibition on preexisting coverage  
2044           exclusions.

2045           Another bill excludes -- includes guaranteed issue and the  
2046           ban on preexisting coverage exclusion but does not include the  
2047           community rating, saying, well, let us charge people with  
2048           preexisting more than other folks.

2049           So they claim these bills are adequate to protect consumers  
2050           with preexisting conditions. Can you explain why these bills

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2051 are inadequate to protect individuals with preexisting  
2052 conditions?

2053 Ms. Young. Very briefly. Requiring insurance companies  
2054 to sell a policy but allow preexisting condition exclusions  
2055 requires them to sell something but it doesn't have to have  
2056 anything in it. It is a little bit like selling a car without  
2057 an engine.

2058 And allowing unlimited preexisting condition rate-ups it  
2059 tells the consumer that they can buy a car but they could be charged  
2060 Tesla prices even if they are buying a Toyota Camry. That is  
2061 not what the Affordable Care Act does. It puts in place a  
2062 comprehensive series of protections.

2063 Mr. Ruiz. Thank you.

2064 Ms. Eshoo. Your time has expired. I thank the gentleman.  
2065 I now would like to recognize Dr. Bucshon from Indiana.

2066 Mr. Bucshon. Thank you, and congratulations on your  
2067 chairmanship. Look forward to working with you.

2068 I am a physician. I was a heart surgeon before I was in  
2069 Congress and we all support protections for preexisting  
2070 conditions. Look, I had a couple of patients over the years who  
2071 I did heart surgery on who had -- one had had Hodgkin's disease  
2072 in his 20s and his entire life after that he could not afford  
2073 health coverage, and that is just plain wrong. We all know that.

2074 I had an employee of mine whose wife met her lifetime cap

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2075 because of a serious heart condition and had to ultimately go  
2076 onto Medicaid. That is not right.

2077 So I think Republicans have -- for many years have supported  
2078 protecting people with preexisting conditions. I think we are  
2079 in a policy discussion about the most appropriate way to do that.

2080

2081 And so I really think what we should be focusing on is to  
2082 make sure that people actually have coverage that they can afford  
2083 -- quality affordable health coverage, and under the ACA, as was  
2084 previously described, the deductibles can be very high. You  
2085 couldn't keep your doctor and your hospital, as everyone said  
2086 that supported the ACA and so we are not meeting that goal.

2087 And now we have heard from the Democrats about Medicare for  
2088 all and their bill in the last Congress, H.R. 676, would have  
2089 made it illegal for private physician practices to participate  
2090 in a government health care program. And by the way, Medicare  
2091 for all doesn't even solve the main problem we have in health  
2092 care, which is the huge cost.

2093 I keep telling people if you continue to debate how to pay  
2094 for a product that is too expensive, you are not going to catch  
2095 up. It doesn't matter who is paying for it. It doesn't matter  
2096 if the government is paying for it or a partial hybrid system  
2097 like we have now.

2098 So I am hoping we can have some hearings on how we get the

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2099 cost down, and the insurance problem kind of almost can solve  
2100 itself if we can do that.

2101 We should be talking about the fact that people with  
2102 preexisting conditions really don't have protections and it  
2103 doesn't work if you don't have actual access to a physician.

2104 So Mr. Miller and Mr. Roy -- I will start with Mr. Roy --  
2105 can you talk about what could happen in the U.S. if private  
2106 physician practices were not allowed to participate in a single  
2107 payer program, hypothetically, and would that create access  
2108 issues for patients?

2109 Mr. Roy. Well, we already have access issues for patients  
2110 in the Medicaid program. A lot of physicians don't accept  
2111 Medicaid --

2112 Mr. Bucshon. That is correct.

2113 Mr. Roy. -- even though they theoretically participate  
2114 in the Medicaid program. That is also an increasing problem in  
2115 Medicare because there are disparities in the reimbursement rates  
2116 between private insurers, Medicare, and especially Medicaid.

2117 And this is one of the other flaws in the ACA is it relied  
2118 on a program with very poor provider access to expand coverage.

2119 I think the exchanges at least have the virtue of using private  
2120 insurers to expand coverage rather than the Medicaid program with  
2121 its much lower reimbursement rates.

2122 Mr. Bucshon. So I would argue that, you know, then if you

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2123 go to a Medicare for all you have access issues on steroids,  
2124 potentially, and especially if you -- if you don't allow private  
2125 practice physicians -- what I am saying nonhospital or  
2126 government-employed physicians, which is what we would all be  
2127 -- to participate in the program, which is actually not what other  
2128 countries do.

2129 In England, for example, you can have your private practice  
2130 and also participate in the National Health Service.

2131 Mr. --

2132 Mr. Miller. [Speaking off mic]

2133 Mr. Bucshon. I think -- can you turn on your mic, Mr. Miller?

2134 Mr. Miller. Oh, I thought I had it on. It looks like --

2135 Mr. Bucshon. There it is.

2136 Mr. Miller. Okay. You are more likely to have Medicaid  
2137 for all than Medicare for all until you solve the -- and say stop,  
2138 we can't deal with that. The problem is we would love to give  
2139 away all kinds of stuff. We just don't want to pay for it.

2140 Now, we can shovel it off into ways in which you get less  
2141 than what was promised and say we have done our job. We did that  
2142 to an extent with the ACA. You find the lowest cost way to make  
2143 people think they are getting something that is less than what  
2144 they actually received.

2145 That is why the individual market as a whole has shrunk in  
2146 recent years. It is because those people who are not

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2147 well-subsidized in the exchanges are finding out they can't afford  
2148 coverage anymore.

2149 Mr. Bucshon. So, I mean, and I will stick with you, Mr.  
2150 Miller. I mean, do you think if the iteration of Medicare for  
2151 all bans private practice physicians not to be able to participate  
2152 that we would put ourselves at risk of creating a two-tiered system  
2153 where the haves can have private coverage and there can be private  
2154 hospitals as there is in other countries?

2155 Mr. Miller. Well, we have got -- already we have got plenty  
2156 of tiers in our system to begin with. It would exacerbate those  
2157 problems and I don't think we would live with it politically,  
2158 which is why we would probably short circuit.

2159 But it is at least a danger when people believe in the theory  
2160 of what seems easy but the reality is very different.

2161 Mr. Bucshon. Yes. I mean, I would have an ethical problem  
2162 as a physician treating patients differently based on whether  
2163 or not they are wealthy or whether or not they are subjected to  
2164 a Medicare for all system, right.

2165 So, ethically, I can tell you physicians would have a  
2166 substantial problem with that. Other countries kind of do that  
2167 because that is just the way it is there and I think in many  
2168 respects their citizens don't have a problem with it because that  
2169 is just what they have always lived with.

2170 But I would agree with you that in the United States there

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2171 would be some issues.

2172 Mr. Roy, do you have any comments on that?

2173 Mr. Roy. I do. I would just like to add that at the  
2174 Foundation for Research on Equal Opportunity we put together a  
2175 detailed proposal for private insurance for all where everyone  
2176 buys their own health insurance with robust protections for  
2177 preexisting conditions and health status and robust financial  
2178 assistance for people who otherwise can't afford coverage in a  
2179 way that is affordable, that would actually reduce federal  
2180 spending by \$10 trillion over three decades but would ensure 12  
2181 million more people have access to health insurance than do today  
2182 under current law.

2183 So there are ways to address the problem of affordability  
2184 and access of health insurance while also reducing the underlying  
2185 cost of coverage and care and making the fiscal system more  
2186 sustainable.

2187 Mr. Bucshon. Yes. I mean, I think we should be also putting  
2188 focus on the cost of the product itself, right, and it is -- the  
2189 reasons why it costs so much are multi-factorial. It is a free  
2190 market system.

2191 The other thing is is I told my local hospital administrators  
2192 that if we get Medicare for all get ready to have a federal office  
2193 in your private hospital that tells you how to run your business.

2194 I yield back.

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2195 Ms. Eshoo. I thank the doctor.

2196 And last, but not least, Mr. Rush from Illinois is recognized  
2197 for five minutes for question.

2198 Mr. Rush. Thank you, Madam Chair.

2199 Madam Chair, I also want to congratulate you for your  
2200 becoming chair of the subcommittee and --

2201 Ms. Eshoo. I thank you very much.

2202 Mr. Rush. -- I have been a member of Congress for quite  
2203 -- for, as you have, for over 26 years and this is my first time  
2204 being a member of this subcommittee and I am looking forward to  
2205 working with you and other members of the subcommittee.

2206 I want to -- as I recall the -- when this Affordable Care  
2207 Act was passed there were millions of Americans who were without  
2208 health insurance totally. They were uninsured. They had no help  
2209 at all, no assistance from anyone to deal with their illnesses  
2210 and their disease.

2211 And since the act was passed, approximately 20 million  
2212 Americans have gained health coverage including over a million  
2213 in my state and I don't want to overlook that fact. I don't want  
2214 to get that fact lost in other kind of -- in the minutia of what  
2215 we -- some of the -- of any one particular aspect of our discussion.

2216 In 2016, almost 14,000 of my constituents received health  
2217 care subsidies to make their health care more affordable, and  
2218 one aspect of the ACA that I like is insurance companies must

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2219 now spend at least 80 percent of their premium on actual health  
2220 care as opposed to other kinds of pay for CEOs and also for an  
2221 increase of their profits.

2222 And the insurance rate has increased between -- the uninsured  
2223 rate, rather, has increased between the years 2013 and 2017 --  
2224 since 2017 in my state.

2225 Ms. Young, how many Americans would expect to lose coverage  
2226 if this court decision in Texas were upheld?

2227 Ms. Young. The Congressional Budget Office has estimated  
2228 that repeal of the Affordable Care Act against their 2016 baseline  
2229 would result in 24 million additional uninsured Americans and  
2230 upholding the district court's decision we could expect sort of  
2231 broadly -- broadly similar results with adjustments for the new  
2232 baseline.

2233 Mr. Rush. Mm-hmm.

2234 I want to ask Ms. Hung, you've been sitting here patiently,  
2235 remarkably, listening to a lot of discussion between experts.

2236 But how do you feel about your daughter? How do you feel? What  
2237 is your reaction to all of this as it relates to the looming problem  
2238 that you have if this case is upheld?

2239 Ms. Hung. Thank you. No one is going to sit here and say  
2240 that they are not going to protect preexisting conditions, right.

2241 No one is going to say that. But that is what we have seen.

2242 That is what families like mine has seen -- repeal efforts,

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2243 proposals that don't cover preexisting conditions or claim to  
2244 give a freedom of choice to choose what kind of insurance we want.

2245 Well, the choice that I want is insurance that covers, that  
2246 guarantees that these protections are in place. I don't want  
2247 to sit in the NICU at my daughter's bedside wondering if she is  
2248 going to make it and also then have to decide what kind of insurance  
2249 I am going to buy and imagine what needs that she will have in  
2250 order to cover that.

2251 So I sit here and say, well, what worked for me is that I  
2252 got to spend 169 days at my daughter's bedside without worrying  
2253 about whether we would go bankrupt or lose our home, and that  
2254 is the guarantee that we need.

2255 Mr. Rush. Madam Chair, I yield back.

2256 Ms. Hung. Thank you.

2257 Ms. Eshoo. I thank the gentleman.

2258 I now would like to call on another new member of the  
2259 subcommittee and we welcome her, Ms. Blunt Rochester from the  
2260 small but great state of Delaware.

2261 [Laughter.]

2262 Ms. Blunt Rochester. Thank you, Madam Chairwoman.

2263 First of all, thank you so much for your leadership. It  
2264 is an honor for me to be on this subcommittee. And excuse me,  
2265 I had competing committees for my first day of subcommittees and  
2266 so I have been running back and forth.

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2267           But this is a very important topic and I want to acknowledge  
2268 Ms. Hung. The last time I saw you we were at a press event with  
2269 then Leader Pelosi highlighting the Little Lobbyists and the work  
2270 that you do and have been doing, and just your support of  
2271 protecting preexisting conditions for children across the  
2272 country.

2273           And it is really admirable that you advocate not only for  
2274 your child but for all children across the country and have been  
2275 fighting for decades. And I was hoping that you could talk a  
2276 little bit about the formation of the Little Lobbyists and who  
2277 they are, what it is all about, how it formed.

2278           Ms. Hung. Thank you, Congresswoman, and thank you for your  
2279 support. I did not set out to start the Little Lobbyists. It  
2280 kind of just happened. We were following the news with families  
2281 like mine, families with children with complex medical needs and  
2282 disabilities.

2283           We are very concerned. We are very worried and we decided  
2284 to speak up and tell our stories, and I tell my story because  
2285 I know that many have been fortunate to not experience the  
2286 challenges and hardships that we have seen. I also know that  
2287 many have not experienced the joy and gratitude that I had in  
2288 being Xiomara's mother.

2289           So I feel a responsibility to uplift these stories that we  
2290 weren't -- we weren't seeing being represented. Now, I have spent

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2291 my -- more than my fair share of time in the hospital. I have  
2292 witnessed my baby on the brink of life and death one too many  
2293 times.

2294 I know what is possible with access to health care -- quality  
2295 health care -- and I think I can say that I have a profound  
2296 understanding, more than many Americans, how fragile life is and  
2297 it is with that understanding that I have chosen to spend my time  
2298 raising that awareness.

2299 I acknowledge my privilege. I acknowledge my proximity to  
2300 Washington, D.C. to come here. There are so many stories like  
2301 mine across the country of families who are just fighting for  
2302 their children, who want to spend that time on their kids and  
2303 not worrying about filing for bankruptcy or losing their home  
2304 or wondering if they can afford lifesaving medication.

2305 Ms. Blunt Rochester. Yes, that was going to be my next  
2306 question. How does this uncertainty affect your family? How  
2307 is it affecting individuals that you work and are talking to and  
2308 other Little Lobbyists?

2309 Ms. Hung. It is everything. It is everything. So the  
2310 uncertainty is not knowing. I mean, we don't know what the future  
2311 holds. None of us do. But to add this on top of what we are  
2312 going through, on top of the NICU moms that I know that are  
2313 worrying, who are trying to keep their jobs and trying to be there  
2314 for their children, to add this level of uncertainty on top of

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2315 it is just devastating.

2316 Ms. Blunt Rochester. I wanted to have your voice heard.

2317 I know from hearing that we have a lot of great experts and a  
2318 great panel here and I would like to bring it back to what this  
2319 is all about. Maybe -- I don't know if I am the last one speaking  
2320 or the last, but I wanted to bring it back to why we are doing  
2321 this and why we are here.

2322 I have served the state of Delaware in different capacities  
2323 as our deputy secretary of health and social services. I have  
2324 been in state personnel so I have seen health care from that  
2325 perspective and also from advocacy perspective as CEO of the Urban  
2326 League.

2327 But hearing your story makes this real for us and is really  
2328 one of the reasons why I wanted to be on this committee. So I  
2329 thank you for your testimony. I thank the committee for your  
2330 expert testimony and I yield back the balance of my time.

2331 Ms. Eshoo. Thank you very much.

2332 I don't see anyone else from the Republican side.

2333 Mr. Burgess. There's some people coming back, but proceed.

2334 Ms. Eshoo. Okay. All right. We will move on.

2335 I now would like to cal -- recognize the gentleman from  
2336 California, Mr. Cardenas.

2337 Mr. Cardenas. Thank you, and thank you, Chairwoman Eshoo  
2338 and Ranking Member Burgess, for -- and all the staff for all the

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2339 work that went into holding this hearing of this committee and  
2340 I appreciate all the effort that has gone into all of the attention  
2341 that we are putting forth to health care both at the staff level  
2342 and at the member level and certainly for the advocates in the  
2343 community as well.

2344 Thank you so much for your diverse perspectives on what is  
2345 important to the health and well-being of all Americans.

2346 I think while the legal arguments and implications of this  
2347 case are important, I want to take a few minutes to focus on the  
2348 very personal threats posed by these attacks to the Affordable  
2349 Care Act.

2350 This ruling, if upheld, would take away health care for tens  
2351 of millions of Americans, including our most vulnerable,  
2352 especially children and seniors. They are especially at risk  
2353 and people with preexisting conditions, we would see them just  
2354 be dropped from the ability to get health care.

2355 For some of us, this is literally a death -- life and death  
2356 situation and, as lawmakers, I hope that we don't lose sight of  
2357 the fact of how critical this is, and as the lawmakers for this  
2358 country I hope that we can move expeditiously with making sure  
2359 that we can figure out a way to not allow the courts to determine  
2360 the future and the fate of millions of Americans when it comes  
2361 to their health care and health care access.

2362 Also, I want to thank everybody who is here today, and also

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2363 the court's ruling would ideologically and politically, you know,  
2364 follow through with the motivation that I believe close to 70  
2365 times or so in this Congress there was an effort to end it, not  
2366 mend it, when it comes to the Affordable Care Act and I think  
2367 it is inappropriate for us to look at in such a black and white  
2368 manner.

2369           There are cause and effects should the Affordable Care Act  
2370 go away. I happen to be personally one of those individuals that  
2371 through a portion of my childhood did not have true access to  
2372 health care and it's the kind of thing that no parent should go  
2373 through and the kind of situation that no American should ever  
2374 have to contemplate, waiting until that dire moment where you  
2375 have to go to the emergency instead of just looking forward to  
2376 the opportunity to, you know, sticking out your tongue and asking  
2377 the doctor questions and they ask you questions and they find  
2378 out what is or is not wrong, and that is the kind of America that  
2379 used to be.

2380           And since the Affordable Care Act, imperfect as it is, that  
2381 is not the America of today. The America of today means that  
2382 if a young child has asthma, that family can in fact find a way  
2383 to get an equal policy of health care just like their neighbor  
2384 who doesn't have a family member with a preexisting condition.

2385           So with that, I would like to, with the short balance of  
2386 my time, ask Ms. Hung could you please expand on the uncertainty

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2387 that you have already described that your family would face should  
2388 this court decision end the Affordable Care Act as we know it?

2389 And then also could you please share with us, are you speaking  
2390 only for you and your family or is this something that perhaps  
2391 hundreds of thousands if not more American families would suffer  
2392 that fate that you are describing?

2393 Ms. Hung. Thank you. I am here on behalf of many families  
2394 like mine. The Little Lobbyists families are families with --

2395 Mr. Cardenas. Dozens or thousands?

2396 Ms. Hung. Thousands, across the country. Families with  
2397 children with complex medical needs and disabilities, and these  
2398 protections that we are talking about today they are not just  
2399 for these children. They are for everyone. They are for  
2400 everybody. Any one of us could suddenly become sick or disabled  
2401 with no notice whatsoever. Any one of us could go suddenly from  
2402 healthy to unhealthy with no notice and have a preexisting  
2403 condition. An accident could happen, a cancer diagnosis, a sick  
2404 child.

2405 There is no shame in being sick. There is no shame in being  
2406 disabled. Let us not penalize that. There is not shame in  
2407 Xiomara needing a ventilator to breathe or needing a wheelchair  
2408 to go to the playground.

2409 But there is shame in allowing insurance companies to charge  
2410 her more money just because of it, more for her care, and there

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2411 is shame in allowing families like mine to file for bankruptcy  
2412 because we can't afford to care for our children.

2413 It is that uncertainty that is being taken away or at risk  
2414 right now. Our families are constantly thinking about that while  
2415 we are at our children's bedside.

2416 Mr. Cardenas. I just want to state with the balance of my  
2417 time that this court case could be the most destructive thing  
2418 that could have ever happened in American history when it comes  
2419 to the life and well-being of American citizens.

2420 I yield back the balance of my time.

2421 Ms. Eshoo. I thank the gentleman.

2422 I now would like to recognize my friend from Florida, Mr.  
2423 Bilirakis.

2424 Mr. Bilirakis. Thank you, Madam Chair, and congratulations  
2425 on chairing the best subcommittee in Congress, that's for sure  
2426 -- the most important.

2427 Ms. Eshoo. Oh, thank you.

2428 Mr. Bilirakis. Mr. Miller, the Texas court decision hinges  
2429 on the individual mandate being reduced to zero in the law. Can  
2430 you explain the court's reasoning in their decision?

2431 Mr. Miller. Well, I mean, we have to go back to a lot of  
2432 convoluted reasoning in prior decisions in order to get there.

2433 So this is a legacy of trying to save the Affordable Care Act  
2434 by any means possible and it gets you into a little bit of a bizarre

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2435 world.

2436 But if you take the previous opinions at their face -- it  
2437 was somewhat of a majority of one by Chief Justice Roberts --  
2438 he basically saved the ACA, which otherwise would have gone down  
2439 before any of this was implemented, by having a construction which  
2440 said, I found out it is a tax after all, and he had three elements  
2441 as to what that tax was.

2442 The problem is once you put the percentage of zero and the  
2443 dollar amount at zero, it is not a tax anymore. It is not bringing  
2444 in revenue. You don't pay for it in the year you file your taxes.  
2445 It is not calculated the way taxes are.

2446 So that previous construction, if you just look in a literal  
2447 way at the law, doesn't hold anymore. What we do about it is  
2448 another issue beyond that. But on the merits, we have got a  
2449 constitutional problem and in that sense that court decision was  
2450 accurate. People then say, what do you -- where do you go next  
2451 and that is the mess we are in.

2452 Mr. Bilirakis. Yes. Could legislation be passed that  
2453 would address the court's concern such as reimposing the  
2454 individual mandate?

2455 Mr. Miller. All kinds of legislation. You are open for  
2456 business every day. But sometimes business doesn't get conducted  
2457 successfully. There are a wide range of things that I can imagine  
2458 and you can imagine that would deal with this in either direction.

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2459           You have to pass something. What we are doing is we are  
2460           passing the buck. We are trying to uphold some odd contraption,  
2461           which is the only one we have got, as opposed to taking some new  
2462           votes and saying, what are you in favor of and what are you against  
2463           and be accountable for it and build a better system.

2464           Mr. Bilirakis. Thank you.

2465           Mr. Roy, you have written extensively on how to build a better  
2466           health care system. The goal of the individual mandate, when  
2467           the Democrats -- now the majority party -- passed the ACA, was  
2468           to create a penalty to really force people to buy insurance.

2469           Are there alternative ways to provide high-quality insurance  
2470           at low prices without a punitive individual mandate?

2471           Mr. Roy. Absolutely. So as we have discussed already and  
2472           I know you haven't necessarily been here for some of that  
2473           discussion, simply the fact that there is a limited open  
2474           enrollment period in the ACA prevents the gaming of jumping in  
2475           and out of the system and that is a standard practice with  
2476           employer-based insurance. It is a standard practice in the  
2477           private sector parts of Medicare. That is a key element.

2478           Another key element is to reform the age bands -- the 3 to  
2479           1 age bands in the ACA -- because that actually is the primary  
2480           driver of healthy and particularly younger people dropping out  
2481           of the market.

2482           Another key piece is to actually lower, of course, the

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2483 underlying cost of health care so that premiums will go down and  
2484 making sure that the structure of the financial assistance that  
2485 you provide to lower income people actually matches up with the  
2486 premium costs that are affordable to them.

2487 And a big part of it is, again, making the insurance product  
2488 a little bit more flexible so plans have the room to innovate  
2489 and make insurance coverage less expensive than it is today.

2490 Mr. Bilirakis. All right. Thank you very much.

2491 I yield back, Madam Chair, the rest of my time.

2492 Ms. Eshoo. Thank you, Mr. Bilirakis.

2493 I now would like to recognize the gentleman from Oregon,  
2494 Mr. Schrader.

2495 Mr. Schrader. Thank you, Madam Chair. I appreciate that.

2496 I think sometimes we forget that the ACA was a response to  
2497 a bipartisan concern about the construction of the health care  
2498 marketplace prior to the ACA.

2499 It was a pretty universal opinion, not a partisan issue,  
2500 that health care costs were completely out of control. Whether  
2501 you were upper middle class or low income or extremely wealthy,  
2502 it was -- it was unsustainable.

2503 And the ACA may not be perfect but, as pointed out at the  
2504 hearings, it gave millions of Americans health care that didn't  
2505 have it before. It started to begin the discussion that we are  
2506 talking about here -- how do you create universal access in an

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2507 affordable way to every American.

2508 Certainly, I am one of the folks that believe health care  
2509 is a right, not a privilege, in the greatest country in the world.

2510 We are discussing about different ways to get at it.

2511 I think one of the most important things that doesn't get  
2512 talked about a lot is the importance of the essential health  
2513 benefits. It gets demonized because, well, geez, I am not a woman  
2514 so I shouldn't have to pay for maternity -- you know, I am  
2515 invincible -- I am never really going to get sick so I don't need  
2516 to pay for, you know, emergency health care.

2517 Those things are ancillary. I guess, Ms. Young, talk to  
2518 us a little bit about why the essential health benefits are part  
2519 of the Affordable Care Act, and there have been some attempts  
2520 by the administration and different members not, I think,  
2521 realizing how important they are with these often, you know,  
2522 cheaper plans. Just get the cost down -- they are ignoring maybe  
2523 the health aspects of that. Could you talk a little bit about  
2524 that?

2525 Ms. Young. Absolutely.

2526 Prior to the Affordable Care Act, insurers could choose what  
2527 benefits they were going to place in their -- in their benefit  
2528 policies.

2529 The Affordable Care Act essential health benefit  
2530 requirements require that all insurers in the individual and small

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2531 group markets cover a core set of 10 benefits -- things like  
2532 hospitalizations and doctors visits as well as maternity care,  
2533 mental health and substance use disorder, prescription drugs,  
2534 outpatient services.

2535 So, really, ensuring that the insurance that people are  
2536 buying offers a robust set of benefits that provides them  
2537 meaningful protection if they get sick.

2538 If you return to a universe where an issuer can choose what  
2539 benefits they are going to put inside of a policy, you could have  
2540 an insurance benefit that, for example, excludes coverage for  
2541 cancer services and another policy that excludes coverage for  
2542 mental health needs and one that excludes coverage for a  
2543 particular kind of drug.

2544 Mr. Schrader. And that might be in the fine print and people  
2545 may not realize that as they sign up for policies.

2546 Ms. Young. That is correct, yes. So it would require  
2547 consumers to really pile through the insurance -- different  
2548 policies to understand what they were buying.

2549 It also provides a back door path to underwriting because  
2550 insurers, for example, that exclude coverage for cancer from their  
2551 benefit won't attract any consumers who have a history of cancer  
2552 who need -- who have reason to believe that they may need cancer  
2553 coverage.

2554 And so it really takes our insurance market from one that

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2555 successfully pools together the healthy and the sick to one that  
2556 becomes more fragmented.

2557 Mr. Schrader. Right. Well, and another piece of the  
2558 Affordable Care Act that gets overlooked and, again, it has been  
2559 alluded to by different members and some of you on the panel is  
2560 the innovation, the flexibility -- I mean, the Center for Medical  
2561 Innovation, the accountable care organizations.

2562 Instead of -- you know, it seems to me we are focused just  
2563 on cost -- how do I itemize this cost. We ask you guys these  
2564 questions -- the rate bands and all that stuff. We should be  
2565 concerned about health care.

2566 I mean, the goal here is to provide better health. It's  
2567 not to support the insurance industry or my veterinary office  
2568 or whoever. The goal is to provide better health care and the  
2569 way you do that is by, I think, you know, having the experts in  
2570 different communities figure out what is the best health care  
2571 delivery system.

2572 Do you need more dentists in one community? Need more mental  
2573 health experts in another community?

2574 I am very concerned that if the Affordable Care Act is undone  
2575 that a lot of this innovation that has been spawned, the  
2576 accountable care organizations that are going, you know, would  
2577 begin to dissolve. There would be no framework for them to  
2578 operate in.

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2579           Just recently in Oregon, where I come from, we had a record  
2580 number of organizations step up to participate in what we call  
2581 our coordinated care organizations that deal with the Medicaid  
2582 population and have over 24 different organizations vying for  
2583 that book of business.

2584           Could you talk just real briefly -- I am sorry, time wise  
2585 -- real briefly about, you know, what would happen if those all  
2586 went away?

2587           Ms. Young. As you note, the Affordable Care Act introduced  
2588 a number of reforms and how Medicare pays to incentivize more  
2589 value-based and coordinated care.

2590           If the district court's decision were to be upheld then the  
2591 legislative basis for some of those programs would disappear and  
2592 there would really be chaos in Medicare payment if that decision  
2593 were upheld.

2594           Mr. Schrader. Okay. Thank you, and I yield back, Madam  
2595 Chair.

2596           Ms. Eshoo. I thank the gentleman.

2597           I can't help but think that this was a very important exchange  
2598 in your expressed viewpoints and counterpoint to Mr. Miller's  
2599 description of the ACA as a odd contraption.

2600           I now would like to --

2601           Mr. Miller. I would respond on that if I had the  
2602 opportunity.

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2603 Ms. Eshoo. I am sure you would.

2604 Let us see who is next. Now I would like to recognize Mr.  
2605 Carter from Georgia.

2606 Mr. Carter. Well, thank you, and thank all of you for being  
2607 here. Very, very interesting subject matter that we have as our  
2608 first hearing of the year. I find it very interesting.

2609 Mr. Miller, let me ask you, just to reiterate and make sure  
2610 I understand. I am not a lawyer. I am a pharmacist, so I don't  
2611 --

2612 Mr. Miller. Good for you.

2613 Mr. Carter. Yes. I don't know much about law or lawyers  
2614 and --

2615 Mr. Miller. It is a dangerous weapon.

2616 Mr. Carter. Well, let me ask you something. Right now,  
2617 this court case, how many patients is it impacting?

2618 Mr. Miller. Well, people hypothetically might react  
2619 thinking it is real, but otherwise, nobody.

2620 Mr. Carter. But it is my understanding it is still in  
2621 litigation.

2622 Mr. Miller. Correct. Correct. And it is going to take  
2623 a while and it is going to end up differently than where it starts.

2624 But we are doing this, you know, make believe because it scores  
2625 a lot of points.

2626 Mr. Carter. Well, I -- make believe -- I mean, we are in

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2627 Congress. We are not supposed to be make believe.

2628 Mr. Miller. Well --

2629 Mr. Carter. I mean, I am trying to understand why this is  
2630 the first hearing. When it -- when it is not impacting a single  
2631 patient at this time, it is still in litigation, we don't know  
2632 how it is going to turn out, we don't know how long it is going  
2633 to take. Judging by other court cases that we have seen, it may  
2634 take a long, long time.

2635 Mr. Miller. Well, to be fair, I used to run hearings in  
2636 Congress on staff.

2637 Mr. Carter. Well --

2638 Mr. Miller. The majority can run any kind of hearing it  
2639 wants to.

2640 Mr. Carter. -- we are not here to be fair. So anyway,  
2641 I am trying to figure out why this is the first hearing. I mean,  
2642 you know, earlier the chairman of the full committee berates our  
2643 Republican leader because he asked for a hearing on something  
2644 that he is opposed to and that I am opposed to, and I am just  
2645 trying to figure it out.

2646 You know, one of the things that we do agree on is that  
2647 preexisting conditions need to be covered. Isn't it possible  
2648 for us to still be working on preexisting conditions now and  
2649 legislating preexisting conditions while this is under  
2650 litigation?

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2651 Mr. Miller. What you need are majorities who are willing  
2652 to either spend money --

2653 Mr. Carter. Well --

2654 Mr. Miller. -- change rules and move things around. But  
2655 that has been hard for Congress to do.

2656 Mr. Carter. Well, I think that the record will show that,  
2657 you know, the first -- one of the first bills that the -- that  
2658 we proposed in the Republican Party was in -- in the Republican  
2659 conference was for preexisting conditions -- Chairman Walden.  
2660 In fact, I know he did because I cosponsored it.

2661 Mr. Miller. Mm-hmm. Yes. It was one of the more thorough  
2662 ones, actually.

2663 Mr. Carter. It is something that we have -- we have  
2664 concentrated on that. So thank you for that. I just want to  
2665 make sure.

2666 Mr. Roy, I want to ask you, didn't you -- did you testify  
2667 before the Oversight Committee recently?

2668 Mr. Roy. Last week, yes.

2669 Mr. Carter. What were -- what were they talking about in  
2670 the Oversight Committee? What were you testifying about?

2671 Mr. Roy. Prescription drug prices. The high cost of  
2672 prescription drugs.

2673 Mr. Carter. Prescription drugs. Go figure. Here we are  
2674 in the committee and the subcommittee with the most jurisdiction

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2675 over health care issues and Oversight has already addressed  
2676 prescription drug pricing?

2677 Mr. Roy. Well, you have two years in this committee and  
2678 I look forward to hopefully being invited to talk --

2679 Mr. Carter. Well, I do too. I am just baffled by the fact  
2680 that, you know, drug pricing is one of the issues -- is the issue  
2681 that most citizens when polled identify as being something that  
2682 Congress needs to be active on and I am just trying to figure.

2683 In Oversight they have already addressed it.

2684 Mr. Roy. You know, one thing I will say about this topic,  
2685 Mr. Carter, is that it is one of the real opportunities for  
2686 bipartisan policy in this Congress. We have a Republican  
2687 administration and a Democratic House where there has been a lot  
2688 of interest in reducing the cost of prescription drugs and I am  
2689 optimistic that we really have an opportunity here to get  
2690 legislation through Congress.

2691 Mr. Carter. And I thank you for bringing that up because  
2692 Representative Schrader and I have already cosponsored a bill  
2693 to stop what I think is the gaming of the system of the generic  
2694 manufacturers and the brand name manufacturers of what they are  
2695 doing in delaying generic products to get onto the market.

2696 So, Madam Chair, I am just wondering when are we going to  
2697 have --

2698 Ms. Eshoo. Gentleman yield? Would the gentleman yield?

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2699 Mr. Carter. And if I could ask a question.

2700 Ms. Eshoo. Mm-hmm.

2701 Mr. Carter. When are we going to have a hearing on  
2702 prescription drug costs?

2703 Ms. Eshoo. I can't give you the date. But it is one of  
2704 the top priorities of the majority. It is one of the issues that  
2705 we ran on with the promise to lower drug -- prescription drug  
2706 prices. I believe that there is a partisan appetite -- bipartisan  
2707 appetite for this and we will have hearings and we will address  
2708 it and we welcome your participation.

2709 Mr. Carter. Well, reclaiming my time. I appreciate that  
2710 very much, Madam Chair, because it is a pressing issue and it  
2711 is an issue that needs to be addressed now and today, unlike what  
2712 we are discussing here today that is not impacting one single  
2713 person at this point.

2714 So, you know, with all due respect, Madam Chair, I hope that  
2715 we can get to prescription drug pricing ASAP because it is  
2716 something that we need to be and that we are working on.

2717 And, Mr. Roy, you could not be more correct -- this is a  
2718 bipartisan issue. I practiced pharmacy for over 30 years. Never  
2719 did I once see someone say, oh, this is the price for the Democrat  
2720 -- this is the price for the Republican -- this is the price for  
2721 this person and that person. It was always the same. It was  
2722 always high. That is why we need to be addressing this.

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2723 So I thank you for being here. I thank all of you for being  
2724 here and, Madam Chair, I yield back.

2725 Ms. Eshoo. I thank the gentleman.

2726 I now would like to recognize a new member of the  
2727 subcommittee, Ms. Barragan from California. Welcome.

2728 Ms. Barragan. I thank you. Thank you, Ms. Chairwoman.

2729 My friend from Georgia asked why we are having this as the  
2730 first hearing and I just have to say something because, you know,  
2731 I am in my second term and in my first term when the Republicans  
2732 were in the majority they spent all of their time trying to take  
2733 away health care coverage for millions of Americans.

2734 They talk about preexisting conditions and talk about saving  
2735 people with preexisting conditions. But this very lawsuit is  
2736 going to put those people at stake.

2737 So why are we having this hearing? Well, because you guys  
2738 have been working to take away these coverages and we are trying  
2739 to highlight the importance of this lawsuit.

2740 Now, you had two years and, yes, you could have started with  
2741 prescription drug prices and reducing those and that wasn't done.

2742 So you are darn right the Democrats are going to take it up.

2743

2744 You are darn right that we are going to have hearings on  
2745 this and I am proud to say that our chairwoman and our chairman  
2746 have been working hard to making sure we are going to work to

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2747 bring down prescription drug prices. But the hypocrisy that I  
2748 hear on the other side of the aisle can't just go -- just completely  
2749 unanswered in silence.

2750 So, with that said, I am going to move on to what my comments  
2751 have been. I want to thank you all for your testimony here today.

2752 It has been really helpful to hear us understand the potentially  
2753 devastating impact of this lawsuit and of the district court's  
2754 decision.

2755 The court's decision would not only eliminate for  
2756 preexisting conditions but would also adversely impact the  
2757 Medicaid program and end the Medicaid expansion.

2758 Now, the Affordable Care Act's expansion of Medicaid filled  
2759 a major gap in insurance coverage and resulted in 13 million more  
2760 Americans having access to care.

2761 I represent a district that is a majority minority -- about  
2762 88 percent black and brown people of color and, you know, black  
2763 and brown Americans still have some of the highest uninsured rates  
2764 in the country. Both groups have seen their uninsured numbers  
2765 fall dramatically with the ACA. You know, between 2013 and 2016,  
2766 more than 4 million Latinos and 1.9 million blacks have secured  
2767 affordable health coverage. Ultimately, black and brown  
2768 Americans have benefitted the most from the ACA's Medicaid  
2769 expansion program.

2770 Ms. Young, I would like to ask can you briefly summarize

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2771 the impact of the lawsuit on Medicaid beneficiaries and, in  
2772 particular, the expansion population?

2773 Ms. Young. Medicaid expansion is, as you note, a very  
2774 important part of the Affordable Care Act's coverage expansion  
2775 and it is benefitting millions of people in the 37 states that  
2776 have expanded or are in the process of expanding this year.

2777 Medicaid expansion has been associated with better financial  
2778 security and failure to expand is associated with higher rates  
2779 of rural hospital closures and other difficult impacts in  
2780 communities.

2781 If this decision were to be upheld, then the federal funding  
2782 for Medicaid expansion would no longer be provided and states  
2783 would be -- would only be able to receive their normal match rate  
2784 for covering the population that is currently covered through  
2785 expansion. That is an impact of billions of dollars across the  
2786 country and a very large impact in individual states.

2787 States will have the choice between somehow finding state  
2788 money to make up that gap or ending the expansion and removing  
2789 those people from the Medicaid rolls or potentially cutting  
2790 provider rates or making other changes in the benefit package  
2791 or some combination.

2792 So you are looking at a potentially loss of -- see very  
2793 significant losses of coverage in that group as well as an  
2794 additional squeeze on providers.

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2795 Ms. Barragan. Thank you.

2796 Ms. Hung, how has Medicaid helped your family afford  
2797 treatment and why is Medicaid and Medicaid expansion so important  
2798 for children with complex medical needs and their families?

2799 Ms. Hung. Medicaid is a lifesaving program. I say this  
2800 without exaggeration. Medicaid is the difference between life  
2801 and death. It covers what health insurance doesn't cover for  
2802 a lot of children with complex medical needs.

2803 Notably, it covers long-term services and supports including  
2804 home and community-based services that enable children's  
2805 independence. For a lot of families who do have health insurance  
2806 like mine, health insurance doesn't really cover certain DME --  
2807 durable medical equipment -- certain specialists, the ability  
2808 to go out of state.

2809 And so that is the difference for a lot of our families.

2810 Ms. Barragan. Great. Well, thank you all. I yield back.

2811 Ms. Eshoo. Thank you very much.

2812 Now, the patient gentleman from Montana, Mr. Gianforte.

2813 Mr. Gianforte. Thank you, Madam Chair, and thank you to  
2814 the panelists for your testimony today.

2815 Every day I hear from Montanans who ask me why their health  
2816 care costs keep going up and continue to increase while their  
2817 coverage seems to shrink at the same time.

2818 While we look for long-term solutions to make health care

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2819 costs more affordable and accessible, I remain firmly committed  
2820 to protecting those with preexisting conditions.

2821 In fact, I don't know anyone on this committee, Republican  
2822 or Democrat, who doesn't want to protect patients with preexisting  
2823 conditions. Insuring Americans with preexisting conditions can  
2824 keep their health insurance and access care is not controversial.

2825 It shouldn't be -- we all agree on it -- which brings us  
2826 to today. In the ruling in *Texas v. Azar*, it has not ended  
2827 Obamacare. It hasn't stripped coverage of preexisting  
2828 conditions and it hasn't impacted 2019 premiums.

2829 While we sit here today talking about it, the Speaker has  
2830 moved to intervene in the case and the judge ruling has been  
2831 appealed. The case is working itself through the courts.

2832 We could have settled this with a legislative solution less  
2833 than a month ago. One of the earliest votes we took in this  
2834 Congress was to lock in protection for patients with preexisting  
2835 conditions.

2836 Unfortunately, Democrats rejected that measure. And yet,  
2837 here we are in full political theater talking about something  
2838 we all agree on -- protecting Americans with preexisting  
2839 conditions.

2840 We should be focused instead on the rising cost of  
2841 prescription drugs, telehealth, rural access to health care, and  
2842 other measures to make health care more affordable and accessible.

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2843 I hope this committee will hold hearings and take action  
2844 on these issues important to hardworking Montanans. I can  
2845 understand, however, why my friends on the other side of the aisle  
2846 do not want to take that path.

2847 Some of their party's rising stars and other jockeying for  
2848 Democratic nomination in 2020 have said we should do away with  
2849 private insurance. They advocate for a so-called Medicare for  
2850 all. In reality, Medicare for none.

2851 Their plan would gut Medicare and the VA as we know it, and  
2852 force 225,000 Montanan seniors who rely on Medicare to the back  
2853 of the line. Montana seniors have earned these benefits and  
2854 lawmakers shouldn't undermine Medicare and threaten health care  
2855 coverage for Montana seniors.

2856 Since we all agree we should protect patients with  
2857 preexisting conditions, let us discuss our different ideas for  
2858 making health care more affordable and accessible.

2859 We should put forward our ideas -- on the one hand, Medicare  
2860 for all -- a government-run single payer health care system that  
2861 ends employer-sponsored health plans -- on the other, a health  
2862 insurance system that protects patients with preexisting  
2863 conditions, increases transparency, choice, and preserves rural  
2864 access to care and lowers cost.

2865 I look forward to a constructive conversation about our  
2866 diverging approaches to fixing our health care system. In the

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2867 meantime, I would like to direct a question to Mr. Miller, if  
2868 I could.

2869 Under Medicare for all, Mr. Miller, do you envision access  
2870 to care would be affected for seniors and those with preexisting  
2871 conditions in rural areas in particular?

2872 Mr. Miller. Well, that is a particular aspect. I think,  
2873 in general, the world that seniors are currently used to would  
2874 be downgraded. You are taking -- spreading the money a little  
2875 wider and thinner in order to help some. This is the story of  
2876 the ACA.

2877 We can create winners but we will also create losers. Now,  
2878 the politics as to who you favor sort out differently in different  
2879 folks. It is hard to get a balancing act where everybody comes  
2880 out on top unless you make some harder decisions, which is to  
2881 set priorities and understand where you need to subsidize and  
2882 what you need to do to improve care and the health of people before  
2883 they get sick.

2884 Mr. Gianforte. So it is your belief that if this Congress  
2885 were to adopt a Medicare for all approach, seniors would be  
2886 disadvantaged? They have -- it will be more difficult to access  
2887 care?

2888 Mr. Miller. They would be the first to be disadvantaged  
2889 as well as those with employer-based coverage because -- if you  
2890 swallowed it whole. I mean, there are lots of other problems

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2891 Avik mentioned. It is not just the spending. It is actually  
2892 the inefficiency of the tax extraction costs.

2893 When you run that much money through the government, you  
2894 don't get what you think comes out of it.

2895 Mr. Gianforte. One other topic, quickly, if I could.  
2896 Telehealth is very important in rural areas. It is really vital  
2897 to patients in Montana. How do you see -- foresee telehealth  
2898 services being affected under a single payer system?

2899 Mr. Miller. Well, Medicare has probably not been in the  
2900 forefront of promoting telehealth. I think there is a lot more  
2901 buzz about telehealth as a way to break down geographical barriers  
2902 to care, to have more competitive markets.

2903 And so if past history is any guide of Medicare fee for  
2904 service, it is not as welcoming to telehealth as private insurance  
2905 would be.

2906 Mr. Gianforte. Okay. And I yield back.

2907 Ms. Eshoo. I thank the gentleman.

2908 I now would like to recognize the gentleman from Vermont,  
2909 Mr. Welch.

2910 Mr. Welch. Thank you. I will be brief. Just a few  
2911 comments.

2912 I think it is important that we had this hearing. It is  
2913 -- this did not come out of thin air. I mean, I was on the  
2914 committee when we wrote the Affordable Care Act. Very

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2915 contentious. It was a party line vote.

2916 I was on the committee when we repealed it -- this committee  
2917 repealed the Affordable Care Act, and we never saw a bill. We  
2918 never had a hearing.

2919 And now we have a continuation of this effort by the  
2920 Republican attorneys general to attack it and we have the unusual  
2921 decision by the administration where instead of defending a  
2922 federal law they are opposing a federal law.

2923 So it is why I have been continuing to get so many letters  
2924 from Vermonters who are fearful that this access to health care  
2925 that they have is really in jeopardy.

2926 Loretta Heimbecker from Montgomery has a 21-year-old who  
2927 is making \$11.50 an hour. He has got a medical condition from  
2928 birth, and absent the access to health care he wouldn't be able  
2929 to work and the mother would probably be broke.

2930 I have got a cancer patient, Kathleen Voigt Walsh from  
2931 Jericho, who would not have access to the treatment she needs  
2932 absent this. I mean, Ms. Hung, you really, in your own personal  
2933 presentation, have explained why people who really need it would  
2934 be scared if we lost it.

2935 And I also served in Congress when the essential agenda on  
2936 the Republican side was to try to repeal it. I mean, it was a  
2937 pretty weird place to be -- Congress -- when on a Friday afternoon  
2938 if there is nothing else to do we would put a bill on the floor

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2939 to repeal health care for the sixtieth time. I mean, we are just  
2940 banging our head against the wall.

2941 So thank you for having this hearing because I see it as  
2942 a reassurance to a lot of people I represent that we mean business  
2943 -- that we are going to defend what we have.

2944 Now, second, on some of the criticisms about this not being  
2945 a hearing on prescription drugs, Mr. Roy, you were in -- did a  
2946 great job helping us start the process in Oversight and Government  
2947 Reform.

2948 But I know our chair of this subcommittee -- this is the  
2949 committee where there is actual jurisdiction -- is totally  
2950 committed to pursuing this and I thank -- I thank our chair.

2951 And I have been hearing very good things from President Trump  
2952 about the need to do this. So my hope is that we are going to  
2953 get a lot of Republican support to do practical things so we are  
2954 not getting ripped off, as the president has said, by us paying  
2955 the whole cost of research -- a lot of it, by the way, from  
2956 taxpayers, not necessarily from the companies -- and have to pay  
2957 the highest prices.

2958 So I am commenting and not asking questions. But I know  
2959 that there has been extensive and excellent testimony. But I  
2960 just want to say to the chair and I want to say to my colleagues,  
2961 Republican and Democrat, if the net effect of this hearing is  
2962 that we are affirming a bipartisan commitment not to mess with

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2963 the Affordable Care Act, then I am going to be able to reassure  
2964 my constituents that their health care is safe.

2965 And if the criticism is essentially we have got to do more,  
2966 we are ready to do more, right?

2967 Madam Chair, so I thank you for this hearing and I thank  
2968 the witnesses for their excellent testimony and look forward to  
2969 more down the line.

2970 Ms. Eshoo. I thank the gentleman for his comments and his  
2971 enrichment of the work at this subcommittee. I think it is  
2972 important to know that on the -- note that on the very first day  
2973 of this Congress that House Democrats voted to intervene in this  
2974 case -- the very first day of the Congress -- as it moves through  
2975 appeal.

2976 So we are the ones that are representing the government,  
2977 and I think that for my colleagues on the other side of the aisle  
2978 you may not like my suggestion but if you are for all of these  
2979 things that you are talking about, write to the attorneys general  
2980 and the governors that were -- that brought the suit and say,  
2981 we want it called off.

2982 We want to move on and strengthen the health care system  
2983 in our country. You will find a partner in every single person  
2984 on this side of the aisle.

2985 With that, I would like to recognize Mr. O'Halleran -- what  
2986 state?

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2987 Mr. Burgess. Arizona.

2988 Ms. Eshoo. Arizona -- from the great state of Arizona --  
2989 who is, I believe, waiving on to the subcommittee, and we have  
2990 a wonderful rule in the full committee that if you are not a member  
2991 of a subcommittee you can still come and participate. But you  
2992 are the last one to be called on. So thank you for your patience  
2993 and thank you for caring and showing up.

2994 Mr. O'Halleran. I thank you, Madam Chair. I am also  
2995 usually last in my house also to be called on.

2996 Thank you, Madam Chair. Although I am not a permanent member  
2997 of the subcommittee, I appreciate your invitation for me to join  
2998 you today to discuss this issue that is so critical to families  
2999 across Arizona, and thank you to the witnesses.

3000 As some of you know, the district I represent is extremely  
3001 large and diverse -- the size of Pennsylvania. Twelve  
3002 federally-recognized tribes are in my district.

3003 Since I came to Congress two years ago, I have been focused  
3004 on working across the aisle to solve health care issues. We face  
3005 these issues together because it is one thing that I hear about  
3006 every single corner of my rural district and one of the overriding  
3007 issues in Congress.

3008 A district where hospitals and the jobs they provide are  
3009 barely hanging on and where decades of toxic legacy of uranium  
3010 mining has left thousands with exposure-related cancers across

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3011 Indian country.

3012 A district where Medicaid expansion made the difference for  
3013 some veterans getting coverage, some hospitals keeping their  
3014 doors open, where essential health benefits meant some struggling  
3015 with opiate addiction could finally get substance abuse  
3016 treatment.

3017 I am here because the lawsuit we are discussing today isn't  
3018 about any of those policies and how they save taxpayer dollars  
3019 and protect rural jobs. I am a former Republican state  
3020 legislator. I know that this lawsuit is purely motivated not  
3021 by what is best for the people we are representing but by politics.

3022 Ms. Young, I have three questions for you. The first is,  
3023 the first letter I ever sent as a member of Congress was a  
3024 bipartisan letter to congressional leadership about dangers of  
3025 ACA repeal on the Indian Health Care Improvement Act, which was  
3026 included in the ACA.

3027 Madam Chair, I ask unanimous consent to enter my letter into  
3028 the record.

3029 Ms. Eshoo. So ordered.

3030 [The information follows:]

3031

3032 \*\*\*\*\* COMMITTEE INSERT 7 \*\*\*\*\*

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3033 Mr. O'Halleran. Ms. Young, can you describe what the fate  
3034 of this law would be if this lawsuit succeeds and what it means  
3035 for tribal communities?

3036 Ms. Young. The district court's opinion as written struck  
3037 down the entire Affordable Care Act so it would -- even unrelated  
3038 provisions like the Indian Health Care Improvement Act.

3039 So if the decision were upheld then the Indian Health Care  
3040 Improvement Act would no longer have the force of law and the  
3041 improvements included in that law like better integration with  
3042 the Veterans Health Service and better integration for behavioral  
3043 health and other core benefits for the Indian Health Service would  
3044 be eliminated.

3045 Mr. O'Halleran. Thank you, Ms. Young.

3046 Are cancers caused by uranium exposure considered a  
3047 preexisting condition?

3048 Ms. Young. I suspect that under most medical underwriting  
3049 screens they would be, yes.

3050 Mr. O'Halleran. Thank you. And, Ms. Young, over 120 rural  
3051 hospitals have closed since 2005. Right now, 673 additional  
3052 facilities are vulnerable and could close. That is more than  
3053 a third of rural hospitals in the United States.

3054 If this lawsuit succeeds, do you anticipate rural hospitals  
3055 and the jobs they provide would be endangered as a result of fewer  
3056 people having health coverage?

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3057 Ms. Young. As you know, rural hospitals face a number of  
3058 challenges and a number of difficult pressures. There has been  
3059 research demonstrating that a state's failure to expand Medicaid  
3060 is associated with higher rates of rural hospital closures. And  
3061 so if funding for the federal -- the federal funding for Medicaid  
3062 expansion were removed then it is likely that that would place  
3063 additional stress on rural hospitals.

3064 Mr. O'Halleran. Thank you.

3065 Madam Chair, this is why last year I led the fight to urge  
3066 my state's attorney general to drop this partisan lawsuit. So  
3067 much is at stake in Arizona for veterans, the tribes, for jobs  
3068 in rural communities like mine.

3069 I am interested in finding bipartisan solutions to the  
3070 problems we have got and I will work with anyone here to do that.

3071 But this lawsuit doesn't take us in that direction. It takes  
3072 us back, and my district can't afford that.

3073 Thank you, and I yield back.

3074 Ms. Eshoo. I thank the gentleman for making the time to  
3075 be here and to not only make his statement but the -- ask the  
3076 excellent questions that you have.

3077 At this time I want to remind members that pursuant to the  
3078 committee rules they have 10 business days to submit additional  
3079 information or questions for the record to be answered --

3080 Mr. Burgess. Madam Chair?

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3081 Ms. Eshoo. Yes.

3082 Mr. Burgess. Could I seek recognition for a unanimous  
3083 consent request?

3084 Ms. Eshoo. Sure. Just a minute. Let me just finish this,  
3085 all right?

3086 I want to remind members that pursuant to committee rules  
3087 that members have 10 business days to submit additional questions  
3088 for the record to be answered by the witnesses who have appeared  
3089 and I ask each of the witnesses to respond promptly to any such  
3090 questions, and I see your heads nodding so I am comforted by that,  
3091 that these questions that you may receive.

3092 And I would recognize the ranking member and I also have  
3093 a list of -- to request unanimous consent for the record.

3094 Mr. Burgess. Oh, I can go after you.

3095 Ms. Eshoo. Okay. The first, a statement for the record  
3096 from the American Cancer Society, Cancer Action Network, and 33  
3097 other patient and consumer advocacy organizations; a statement  
3098 for the record from the American Academy of Family Physicians,  
3099 a statement for the record from the American College of  
3100 Physicians, the Wall Street Journal editorial, Texas Obamacare  
3101 -- entitled "Texas Obamacare Blunder." I think that was  
3102 referenced by Mr. Lazarus earlier today.

3103 Jonathan Adler and Abbe Gluck, New York Times op-ed entitled  
3104 "What the Lawless Obamacare Ruling Means"; a brief of the amicus

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3105 curiae from the American Medical Association, the American  
3106 Academy of Family Physicians, the American College of Physicians,  
3107 the American Academy of Pediatrics, and the American Academy of  
3108 Child and Adolescent Psychiatry.

3109 Isn't it extraordinary what we have in this country? Just  
3110 the listing of these -- of these organizations.

3111 The U.S.A. Community Catalyst, the National Health Law  
3112 Program, Center for Public Policy Priorities, and Center on Budget  
3113 and Policy Priorities; the brief of the amicus curiae from the  
3114 American Cancer Society, the Cancer Action Network, the American  
3115 Diabetes Association, the American Heart Association, the  
3116 American Lung Association, and National Multiple Sclerosis  
3117 Society, supporting defendants, and a statement for the record  
3118 from America's Health Insurance Plans.

3119 So I am asking unanimous -- a unanimous consent request to  
3120 enter the following items in the record. I hear no objections  
3121 and I will call on -- recognize the ranking member.

3122 [The information follows:]

3123

3124 \*\*\*\*\* COMMITTEE INSERT 8 \*\*\*\*\*

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3125 Mr. Burgess. Thank you, first off. Thank you for reminding  
3126 me why I have not yet paid my AMA dues this year.

3127 [Laughter.]

3128 Mr. Burgess. I have a unanimous consent request. I would  
3129 ask unanimous consent to place into the record the letter that  
3130 was sent by Mr. Walden and myself regarding the Medicare for all  
3131 hearing.

3132 Ms. Eshoo. No objection.

3133 [The information follows:]

3134

3135 \*\*\*\*\* COMMITTEE INSERT 9 \*\*\*\*\*

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3136 Ms. Eshoo. The only request that I would make is that maybe  
3137 on your email mailing list that when you notify the chairman of  
3138 the full committee that maybe my office can be notified as well.

3139 Mr. Burgess. Welcome to the world that I inhabited two years  
3140 ago.

3141 Ms. Eshoo. That's why I think you will understand.

3142 Mr. Burgess. I never found -- I never found out until after  
3143 the fact.

3144 Ms. Eshoo. Right. Right.

3145 Mr. Burgess. But I would take that up with your full  
3146 committee chair. I am sure they will recognize the importance  
3147 of including you in the email distribution list.

3148 Ms. Eshoo. I thank the gentleman.

3149 Let me just thank the witnesses. You have been here for  
3150 almost three hours. We thank you for not only traveling to be  
3151 here but for the work that you do that brings you here as witnesses.

3152 Dr. -- Mr. Lazarus says he is retired but he brings with  
3153 him decades of experience. We appreciate it. To each witness,  
3154 whether you were -- you are a majority or minority witness, we  
3155 thank you, and do get a prompt reply to the questions because  
3156 members really benefit for that.

3157 So our collective thanks to you and to Ms. Hung, what a  
3158 beautiful mother. You brought it all. I am glad that you are  
3159 sitting in the center of the table because you centered it all

**NEAL R. GROSS**

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3160 with your comments.

3161 So with that, I will adjourn this subcommittee's hearing  
3162 today.

3163 Thank you.

3164 [Whereupon, at 1:03 p.m., the committee was adjourned.]

3165