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

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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.

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
65 discussing the *Texas v. United States* lawsuit and its implications

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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.

89 Twenty attorneys general, led by the attorney general from
90 California, our former colleague, Javier Becerra, have appealed

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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
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

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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
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

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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
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

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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.

185

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

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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
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

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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.

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

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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
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

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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
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

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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,
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

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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.

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.

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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
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

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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
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

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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
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,

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416 frankly, in some cases, continued to misrepresent.

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

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

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

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

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

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

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441 well.

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

446 When the Affordable Care Act passed, Democrats promised
447 people that their insurance premiums would go down \$2,500.
448 Unfortunately, the exact opposite has occurred for many
449 Americans, and not only have premiums gone up, not down, but think
450 of what out-of-pocket costs have done. They have skyrocketed.

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

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

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

465 A majority of House Democrats supported Medicare for all

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466 in the last Congress. In fact, two-thirds of the committee --
467 Democrats' 20 members, 11 whom are on this subcommittee -- have
468 cosponsored the plan.

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

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

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

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

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

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

494 So the question is when will we see the bill and when we
495 will have a hearing on the legislation. Meanwhile, we need to
496 work together to help states stabilize health markets damaged
497 by the ACA.

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

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

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

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

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

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516 Now we will go to the witnesses and their opening statements.
517 We will start top -- from the left to Ms. Christen Linke Young,
518 a fellow, USC-Brookings Schaeffer, Initiative for Health Policy.

519

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

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

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

534

535 STATEMENT OF MS. YOUNG

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

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

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

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

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

551 Ms. Eshoo. Do you have the -- excuse me, do you have the
552 button pushed? Is it on? The microphone.

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553 Ms. Young. It looks like it.

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

555 Ms. Young. Is that any better?

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

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

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

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

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

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

577 Consumers have a right to buy and renew a policy regardless

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

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

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

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

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

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

601 DOJ's position, that the law's core protections for people
602 with preexisting conditions should be removed, would leave

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603 Americans with health needs without a reliable way to access
604 coverage in the individual market.

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

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

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

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

622 The FDA couldn't approve biosimilar drugs.

623 Indeed, these are just some of the many and far-reaching
624 effects of eliminating a law that is deeply integrated into our
625 health care system.

626 Before I close, I would like to briefly note that *Texas v.*
627 *United States* is not the only recent development that threatens

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628 Americans with preexisting conditions. Recent policy actions
629 by the Trump administration also attempted to change the law in
630 ways that undermine the ACA.

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

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

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

645
646 The lawsuit would also damage other health care policies
647 and this litigation coincides with administrative attempts to
648 undermine the ACA's protections for people with preexisting
649 conditions.

650 Thank you.

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

652

653

***** INSERT 1 *****

654 Ms. Eshoo. Thank you very much.

655 Next, Mr. Avik Roy, president of the Foundation for Research
656 and Equal Opportunity. Welcome.

657 STATEMENT OF MR. ROY

658

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

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

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

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

676 Thirty-two million U.S. residents go without coverage today.
677 Fewer than half of those eligible for subsidies in the ACA
678 exchanges have enrolled in ACA-based coverage.

679 This failure is the result of the flawed theory first
680 articulated by MIT economist Jonathan Gruber underlying Title
681 1 of the Affordable Care Act -- that if Congress requires that

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

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

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

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

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

704 The limited enrollment period, not the mandate, ensures that
705 people can't game the system by dropping in and out. While
706 community rating by health status does cause some adverse

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707 selection by overcharging healthy people who buy coverage,
708 thereby discouraging healthy people from signing up, among
709 enrollees of the same age this is not an actuarially significant
710 problem.

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

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

723 The Trump Justice Department has merely echoed this belief.
724 Both administrations are more correct than the district judge
725 in *Texas v. Azar*, who, in an egregious case of judicial activism,
726 argued that the entirety of the ACA was inseparable from the
727 mandate.

728 However, it is clear that both Justice Departments are also
729 wrong. The zeroing out of the mandate penalty has not blown up
730 the insurance market. Indeed, it has had no effect.

731 To be clear, it is not just ACA enthusiasts who have bought

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732 into Gruber's flawed theories. Many conservatives have as well.

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

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

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

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

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

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

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

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757

Thank you.

758

[The prepared statement of Mr. Roy follows:]

759

760

***** INSERT 2 *****

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

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

766 Mr. Roy. I apologize.

767 Ms. Eshoo. Yes.

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

772 Ms. Eshoo. Yes.

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

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

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

781 STATEMENT OF MS. HUNG

782

783 Ms. Hung. Thank you. Good morning.

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

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

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

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

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

804 This past year was her best year yet healthwise and,
805 ironically, it was also when her access to health care has been

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806 the most threatened. I sit before you today because families
807 like mine -- families with medically complex children -- are
808 terrified of what this lawsuit may mean for our kids.

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

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

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

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

825 I sit before you today on behalf of families like mine who
826 fear that the only certainty we know could be taken away, pending
827 the outcome of this lawsuit -- this lawsuit that seeks to eliminate
828 protections for people with preexisting conditions -- and if that
829 happens our children's lives will then depend on Congress where
830 every so-called replacement plan proposed over the last two years

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831 has offered far less protection for our kids than the ACA does.

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

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

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

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

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

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

851 These are my friends, my friends that I love. These are
852 Xiomara's friends. This is our life. I co-founded the Little
853 Lobbyists, this group of families with medically complex
854 children, some of -- some of whom are here today, because these
855 are stories that desperately need to be told and heard alongside

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856 the data and numbers and policy analysis.

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

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

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

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

869 Thank you.

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

871

872 ***** INSERT 3 *****

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

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

880 STATEMENT OF MR. MILLER

881

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

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

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

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

901 So welcome back to Groundhog Day, ACA litigation version.
902 The plaintiff's overall case is not frivolous but it does rely
903 heavily on taking the actual text of the ACA literally and thereby
904 limiting judicial scrutiny to what the Congress that enacted

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905 appeared on the limited record of that time to intend by what
906 it did.

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

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

916
917 It did not and could not extend to the ACA's other
918 nonbudgetary regulatory provisions nor did it change the findings
919 of facts still in statutory law first made by the 111th Congress
920 that insisted the individual mandate was essential to the
921 functioning of several other ACA provisions, notably, guaranteed
922 issue and adjusted community rating.

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

927 Since that's the story for ACA defenders they should have
928 to stick to it, at least until a subsequent Congress actually
929 votes to eliminate or revise those past findings of fact already

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930 in permanent law.

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

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

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

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

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

952 On the health policy front, we might try to remember that
953 when congressional action produces as flawed legislative product
954 justified in large part by mistaken premises and

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955 misrepresentations, it won't work well.

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

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

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

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

973 However, we are not back in 2012 or 2010 or even 2017 anymore,
974 at least outside of our court system. Changes in popular
975 expectations and health industry practices since 2010 are
976 substantial breaks on even well-structured proposals for serious
977 reform. But that is where the real work needs to be restarted.

978 It is often said with apocryphal attribution that God takes
979 care of children, drunks, or fools, and the United States of

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980 America. Well, let's not press our luck.

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

983 Thank you.

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

985

986 ***** INSERT 4 *****

987 Ms. Eshoo. Thank you.

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

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

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

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

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

993 witness and be instructive to us.

994 You have five minutes.

995 STATEMENT OF MR. LAZARUS

996

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

1001 I have had the privilege of testifying before this
1002 subcommittee and other congressional committees numerous times.

1003 I am currently retired and the views that I express here are
1004 my own and cannot be attributed to any of the organizations for
1005 which I previously worked or other organizations.

1006 I have to say that I am not sure how important my task is
1007 because I think all of the witnesses have pretty much agreed with
1008 the bottom line and that includes the witnesses invited by the
1009 minority, and that is that this decision to invalidate the entire
1010 ACA is, in significant respects and I think many of us agree that
1011 in all respects, completely baseless legally and has close to
1012 zero chances of being upheld on appeal.

1013 And in light of all of that, Tom, I have to -- I am puzzled
1014 by your assertion that the lawsuit is not frivolous because that
1015 sounds to me like the definition of frivolousness in a lawsuit.

1016 In any event, I think it should be underscored that it is
1017 not a coincidence that even the minority witnesses think very
1018 little of this lawsuit because as soon as the decision came down
1019 it was attacked in extremely strong terms across the political

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1020 spectrum.

1021 As the Wall Street Journal editorialized, while no one
1022 opposes Obamacare more than we do, Judge O'Connor's decision is
1023 likely to be overturned on appeal. Legal experts, including
1024 prominent anti-ACA conservatives, have blistered Judge
1025 O'Connor's result.

1026 For example, Phillip Klein, the editor -- executive editor
1027 of the Washington Examiner, called the decision an assault on
1028 the rule of law. Professor Jonathan Adler, who is an architect
1029 of the second fundamental legal challenge to the ACA -- that's
1030 King v. Burwell -- which I think the idea for which was hatched
1031 at a meeting that you probably hosted --

1032 Mr. Miller. I have been here before.

1033 Mr. Lazarus. Okay. And that effort to kill the ACA was
1034 rejected by the Supreme Court in 2015. In any event, Professor
1035 Adler called the decision, quote, "an exercise of raw judicial
1036 power unmoored from the relevant doctrines concerning when judges
1037 may strike down a whole law because of a single alleged legal
1038 infirmity buried within it."

1039 And on the courts, if one is going to be a prognosticator,
1040 just look at the basic facts. Chief Justice John Roberts'
1041 pertinent opinions nearly ensure at least a 5-4 Supreme Court
1042 majority to reverse Judge O'Connor and, moreover, it should be
1043 noted that Justice Brett Kavanaugh, looking at his prior decisions
1044 as a D.C. circuit judge, also looks very likely to join a larger

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1045 majority to reverse Judge O'Connor.

1046 So my job here is just to try to explain what the legal reasons
1047 are for this negative judgment on O'Connor's decision so I am
1048 going to try to briefly do that.

1049 To begin with, the court could well dismiss the case for
1050 lack of standing to sue on the part of any of the plaintiffs who
1051 brought the case. The state government plaintiffs barely pretend
1052 to have a colorable standing argument.

1053 The two individual plaintiffs complain that though it is
1054 enforceable the mandate nonetheless imposes a legal obligation
1055 to buy insurance and they would feel uncomfortable violating that
1056 obligation.

1057 The problem with this is that Chief Justice Roberts in his
1058 2012 *NFIB v. Sebelius* decision, which upheld the mandate,
1059 expressly ruled that and based his decision, really, on the
1060 determination that if individuals did not buy insurance, thus,
1061 quote, "choosing to pay the penalty rather than obtain insurance"
1062 they will have fully complied with the law.

1063 Now, post-TCJA -- the Tax Cut and Jobs Act -- a nonpurchaser
1064 will still not be in violation of the law simply because Congress
1065 reduced to zero the financial incentive to choose the purchase
1066 option.

1067 So no one is compelled the buy insurance in order to avoid
1068 a penalty since none exists nor to follow the law because he will
1069 be following or she will be following the law.

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1070 So there is no injury period, no standing to sue. That is
1071 a very likely result, even in the Fifth Circuit, I would say.

1072 Ms. Eshoo. Mr. Lazarus, can you just summarize --
1073 Mr. Lazarus. Okay. I am sorry.

1074 Well, in addition, I would just say on the merits the ACA's
1075 mandate provision remains a valid exercise of the tax power and
1076 that is pretty much for the same reasoning that there is no
1077 standing and that is because Congress's determination after the
1078 original ACA passed to drop the penalty to zero did not strip
1079 Congress of its constitutional power under the -- under the tax
1080 authority.

1081 And nor can its subsequent determination sensibly mean that
1082 it was no longer using that power. And finally, I would just
1083 want to add really to what other people have said and some of
1084 the members of the subcommittee have eloquently said, that to
1085 take the further leap that if the -- if the mandate provision
1086 is unconstitutional after the passage of -- after the reduction
1087 of the penalty to zero, which it really should not be found, but
1088 if it is there is absolutely no basis whatsoever for holding --
1089 for striking down the rest of the ACA.

1090 [The prepared statement of Mr. Lazarus follows:]

1091

1092 ***** INSERT 5 *****

1093 Ms. Eshoo. Thank you very much.

1094 All right. I am going to -- we have now concluded the
1095 statements of our witnesses. We thank you again for them. Each
1096 member will have five minutes to ask questions of the witnesses
1097 and I will start by recognizing myself for five minutes.

1098 I appreciate the discussion about the legalities and, of
1099 course, we are discussing *Texas v. United States* today. But the
1100 issue of preexisting conditions keeps coming up and I would like
1101 Ms. Young and anyone else to chime in.

1102 This issue of what our Republican colleagues say that they
1103 are for, and I listen to C-SPAN a lot and especially during the
1104 days running up to the election and they covered Senate races
1105 and House races, and I heard Republicans over and over and over
1106 again in those debates with their opponents saying, I am for
1107 preexisting conditions.

1108 Now, can anyone address how you extract that out of what
1109 we have now, the Affordable Care Act, and have standalone
1110 insurance policies? Where is the guarantee about what the price
1111 would be for that policy?

1112 Would you like to --

1113 Ms. Young. The Affordable Care Act -- absolutely.

1114 Ms. Eshoo. Uh-huh.

1115 Ms. Young. Can you hear me okay?

1116 Ms. Eshoo. Uh-huh.

1117 Ms. Young. Great. The Affordable Care Act requires that

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1118 all insurance plans charge consumers the same price regardless
1119 of --

1120 Ms. Eshoo. That I understand. That's what we put in. But
1121 the -- but the minority is saying that they are for preexisting
1122 conditions except they have voted against the ACA countless times.

1123 So if you were to extract just that one issue and write a
1124 bill on it, where is the guarantee that -- on what the price would
1125 be for that standalone policy?

1126 Ms. Young. In my view, it is very difficult to put together
1127 a system of protections for people with preexisting conditions
1128 that doesn't include a panoply of reforms similar to many of the
1129 reforms that were included in the Affordable Care Act.

1130 So you need to ensure people can buy a policy. You need
1131 to ensure that that policy doesn't exclude coverage for their
1132 particular health care needs.

1133 You need to ensure that they are able to purchase at a fair
1134 price and you needed to surround that with reforms that really
1135 create a functioning insurance market by providing financial
1136 assistance, stable risk adjustment, and other associated
1137 provisions like that.

1138 Ms. Eshoo. I want to get to something that is out there
1139 and that is what I refer to in my opening statement. I refer
1140 to them as junk plans. It is my understanding that many of these
1141 plans exclude coverage for prescription drugs, for mental health
1142 and substance use disorders.

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1143 Who would like to address this? Is this correct?

1144 Ms. Young. I can address that.

1145 Ms. Eshoo. Uh-huh. Go ahead.

1146 Ms. Young. I believe you are referring to short-term
1147 limited duration coverage.

1148 Ms. Eshoo. Right. Mm-hmm.

1149 Ms. Young. Those plans are not required to cover any
1150 particular benefit and many of them can and likely will exclude
1151 coverage for benefits like prescription drugs, maternity care,
1152 substance use and mental health services, things like that.

1153 Ms. Eshoo. Now, are these plans medically underwritten?

1154 Ms. Young. Many of them are, yes.

1155 Ms. Eshoo. And how does that differ from the process by
1156 which Americans get health insurance on the individual market
1157 today?

1158 Ms. Young. Medical underwriting refers to a process where
1159 insurance companies require individuals to fill out a detailed
1160 health history questionnaire and then use the resulted of that
1161 to determine if the individual can purchase a policy and if so
1162 on what terms.

1163 That was a common practice in the individual market before
1164 the Affordable Care Act. It is permitted for short-term limited
1165 duration plans today.

1166 In contrast, in the ACA -- compliant individual market,
1167 insurers are not prohibited to medically underwrite. Consumers

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1168 sign up for a policy based only on information about their age
1169 and their income if they are seeking tax credits with no health
1170 history screening.

1171 Ms. Eshoo. I see. Mr. Lazarus --

1172 Mr. Miller. Chairwoman Eshoo, could you ask the rest of
1173 the panel and we are getting a one-sided view of this. The ACA's
1174 protections are --

1175 Ms. Eshoo. I didn't call on you. I would like to call on
1176 Mr. Lazarus. Are you giving us comfort that the lawsuit is not
1177 going to go anywhere? Is that what you believe?

1178 Mr. Lazarus. I think all of the witnesses have basically
1179 said that, at least with respect to the notion that if the mandate
1180 provision is now found to be unconstitutional, which I don't think
1181 it will be or should be, the quantum leap that the Republican
1182 attorneys general and Judge O'Connor took to then say the whole
1183 law has to go, I don't think any member of the panel thinks that
1184 there is much chance of that occurring.

1185 So I don't know whether that answers your -- that doesn't
1186 mean, however, that the -- that the fact that there is this dagger
1187 pointed at the heart of our health care system is out there causing
1188 uncertainty, that it was -- basically, opponents of the ACA have
1189 outsourced to a judge, which Chairman Pallone correctly said was
1190 forum -- was a target of forum shopping who has a widespread
1191 reputation of, one article said, tossing out Democratic policies
1192 that Republican opponents don't like.

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1193 Ms. Eshoo. I think my time has more than expired. Thank
1194 you.

1195 I now would like to recognize the ranking member of the
1196 subcommittee, Dr. Burgess.

1197 Mr. Burgess. I thank you for the recognition.

1198 Mr. Miller, let me just give you an opportunity. You were
1199 trying to respond with something about the ACA protections.

1200 Mr. Miller. Sure. It is a complex issue, but we need to
1201 remember that in the best of the world, the ACA left a lot of
1202 other folks unprotected. If you didn't comply with the
1203 individual mandate you didn't get coverage. You got fined. You
1204 got insult on top of injury and there is no coverage to it.

1205 So there are breakdowns in any imagined perfect system.
1206 There are other approaches which can also fill that hole. You
1207 are going to have to put some money in. You are going to have
1208 to resolve.

1209 I don't think the Republicans did a good job of it in 2017
1210 in explaining and defining what that meant. They began
1211 backfilling as they went along with reinsurance. There are ways
1212 to extend HIPAA over to the individual market.

1213 Those are all thoughtful alternative approaches, and if you
1214 don't have an individual mandate you should come up with something
1215 else and we are not going to have an individual mandate. That
1216 appears to be the case.

1217 So you are leaving a hole there and there are other ways

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

1222 So there are ways to connect the dots. It is heavier lifting
1223 and it is more work than just waving your arms and saying, we
1224 mandated it -- it must work, even though it doesn't.

1225 Mr. Burgess. And I thank you for that clarification and
1226 just continuous coverage was part of the bill that we worked on
1227 two years ago.

1228 Mr. Miller. A number of options. Yes.

1229 Mr. Burgess. Which, of course, is what exists in Medicare.
1230 I mean, if you do not purchase Medicare within three months of
1231 your sixty-fifth birthday, guess what? You get an assessment
1232 for the rest of your life that -- in Part B of Medicare.

1233 So, Mr. Miller, I actually agree with you and I guess other
1234 witnesses. My expectation is that this case will not be
1235 successful on appeal and I base that on the fact that I have been
1236 wrong about every assumption I have made about the Affordable
1237 Care Act ever since its inception in 2009.

1238 So perhaps I can be wrong about that assumption but I do
1239 assume that it will not -- that it will not survive on appeal.

1240 Let me just ask you, because I have had difficulty finding
1241 this information -- you may have some sense -- how much money
1242 has been collected under the individual mandate? The fines that

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1243 have been paid -- do we have an idea what that dollar figure is?

1244 Mr. Miller. Yes. I did that a couple years ago in the Ways
1245 and Means. I knew it was going to come up today. I can supply
1246 it for you.

1247 Mr. Burgess. Great.

1248 Mr. Miller. This is -- with a bit of a lag it ends up being
1249 calculated. Not a lot, and it's somewhat randomly distributed.
1250 It tends to be the lower income people who didn't know how to
1251 get out of the individual mandate who ended up paying it,
1252 surprisingly enough. But it did not amount to a large amount
1253 and it didn't have a lot of coverage effects.

1254 Mr. Burgess. So, basically, the effect of the Tax and Jobs
1255 Act of 2017 was current law because no one behaved as if it was
1256 a real thing anyway.

1257 Mr. Miller. Well, it had some other ripple consequences.
1258 But in that practical consequences were not as significant as
1259 is often said.

1260 Mr. Burgess. Well, let me ask you this. I mentioned in
1261 my opening statement that perhaps ways to end this lawsuit would
1262 be to either repeal the individual mandate outright or reestablish
1263 the tax within the individual mandate. Do you agree that that
1264 is -- either of those activities would --

1265 Mr. Miller. That requires actually legislating, which is
1266 a hard thing to do these days on Capitol Hill.

1267 Mr. Burgess. I think -- yes, sir. But it would achieve

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1268 the goal of breaking the lawsuit.

1269 Mr. Miller. Sure. And there is lots of other things. I
1270 mean, states could pay us their own individual mandate. As I
1271 said, you could also just rescind your findings of fact in the
1272 old Congress and say, we were wrong -- we are sorry.

1273 Mr. Burgess. I don't think that is going to happen.

1274 Let me -- let me just ask you. I mentioned the phenomenon
1275 of silver loading in my opening statement. Would you walk us
1276 through, for people who are not familiar with that as a technical
1277 term --

1278 Mr. Miller. Sure.

1279 Mr. Burgess. -- the phenomenon of silver loading?

1280 Mr. Miller. It is a bit of a ripple of the other litigation
1281 over the cost-sharing reduction subsidies and that has got a
1282 tangled web in itself.

1283 But, cleverly, a number of states, insurance regulators,
1284 and insurers figured out a way to game the system, which is how
1285 do you get bigger tax credits for insurance by increasing your
1286 premiums.

1287 There was also worry about what those market were doing,
1288 which fueled some of that increase, and a lot of spikes in the
1289 individual market over the previous two years as a result of that
1290 and the silver loading embellished that.

1291 Now, that was great for folks who were already covered where,
1292 because of the comprehensiveness of their subsidy income related,

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1293 they weren't out any extra dollars as those premiums went up.

1294 But the folks in the rest of the individual market -- and
1295 Avik can talk to this as well -- that is where we had our coverage
1296 losses and that is where you got the damage being done. Those
1297 are the victims -- the by-products of doing good on one hand and
1298 it spills over into other people.

1299 Mr. Burgess. That's the teacher and policeman that I
1300 referenced in my district who have two children. They are outside
1301 the subsidy window.

1302 Mr. Roy, could you just briefly comment on the effect of
1303 a Medicare-for-all policy on what union members receive as their
1304 -- as their health insurance?

1305 Mr. Roy. Well, I mean, of course, there are many different
1306 definitions of Medicare for all but if we define it as the
1307 elimination of private insurance then, obviously, union members
1308 who have either Taft-Hartley-based plans or employer-sponsored
1309 insurance that would be replaced by a public option or something
1310 like that. I assume that is what you mean.

1311 Mr. Burgess. Yes, sir. Thank you. Thank you for being
1312 here.

1313 I yield back.

1314 Ms. Eshoo. Thank you, Ranking Member.

1315 And who are we going to? To recognize the gentlewoman from
1316 the great state of California and its capital, Sacramento -- Ms.
1317 Matsui.

1318 Ms. Matsui. Thank you, Madam Chair.

1319 Thank you all for joining us today. The topic of this
1320 hearing is incredibly important to me and my constituents and
1321 all Americans whose lives have been changed by the Affordable
1322 Care Act.

1323 A special thank you to Ms. Hung for sharing her daughter's
1324 story and for your incredible advocacy work on behalf of children
1325 and families everywhere.

1326 When we started writing the ACA nine years ago, I consulted
1327 with a full range of health care leaders in my district in
1328 Sacramento. They called together the hospitals, the health
1329 plans, the community health centers, the patients, and all those
1330 who contribute to our health care systems and all those who use
1331 it also.

1332 Everything was carefully constructed. We tried to think
1333 about everything but, obviously, you can't think of everything.

1334 But we consulted as widely as possible because we also knew that
1335 each policy would affect the next and the system as a whole.

1336 You simply cannot consider radical changes to the law in
1337 a vacuum yet that is exactly what this ruling of the lawsuit does.

1338 By using the repeal of the individual mandate in the GOP tax
1339 bill as justification of this suit, the court has declared the
1340 entire Affordable Care Act invalid.

1341 Millions of Californians and Americans stand to lose
1342 critical health protections including protections for people

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1343 especially with preexisting conditions. Vital protections for
1344 Medicare beneficiaries including expanded preventive services
1345 and closing the prescription drug donut hole will be thrown into
1346 chaos.

1347 I was pleased to join my colleagues to vote for the House
1348 of Representatives to intervene in this lawsuit and defend the
1349 ACA in our continued fight to protect people with preexisting
1350 conditions and for the health care of all Americans and I think
1351 you know that that is something that all Americans care about
1352 when you think about preexisting conditions. Everybody has some
1353 sort of pre-existing conditions.

1354 For me, the potential consequences of the lawsuit are too
1355 great to not fully consider, especially for the impact on people
1356 confronting mental illness and substance abuse.

1357 The passage of the ACA was a monumental step forward in our
1358 fight to confront the mental health and substance abuse crisis
1359 in this country and led to the largest coverage gains for the
1360 mental health in a generation through the expansion of Medicaid.

1361 Ms. Linke Young, can you briefly discuss why the consumer
1362 protections of the ACA are so important to individuals struggling
1363 with mental illness or substance abuse?

1364 Ms. Young. Absolutely. Preexisting law -- law that
1365 existed prior to 2009 established a baseline protection for people
1366 with mental illness that said that if their insurance plan covered
1367 mental illness -- mental health needs -- then it had to do so

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1368 on the same terms that it covered -- it covered their physical
1369 treatment.

1370 But it didn't require any insurance product to include
1371 coverage of mental health benefits. And so it was typical for
1372 coverage in the individual market to exclude -- to exclude mental
1373 health benefits completely.

1374 With the Affordable Care Act, plans were required to include
1375 coverage for mental health and substance use disorder services
1376 and to do so at parity on the same terms as they include -- as
1377 they include coverage for physical health benefits and that
1378 brought mental health benefits to tens of millions or -- about
1379 10 million Americans who wouldn't have otherwise had it.

1380 In addition, the Medicaid expansion in the 37 states and
1381 D.C. and that have taken that option has enabled many, many people
1382 with serious mental health needs including substance use disorder
1383 to access treatment that they would not otherwise have been able
1384 to access.

1385 Ms. Matsui. So this would be very serious and I am thinking
1386 about the 37 states that did expand Medicaid if this decision
1387 was upheld.

1388 I just really feel, frankly, that it is difficult enough
1389 when you have mental illness or someone in your family goes the
1390 stigma that is attached to it, whereas with the Medicaid expansion
1391 I believe that most people will seek the treatment that they really
1392 need.

1393 And what do you foresee with the loss of this expansion if
1394 it were to happen?

1395 Ms. Young. If federal funding for Medicaid expansion was
1396 no longer available then the states that have expansion in place
1397 would need to choose whether to find state funding to fill that
1398 gap or to scale back their expansion or cut benefits or reduce
1399 provider rates or some combination of those policies.

1400 The Congressional Budget Office and most experts expect that
1401 many states would retract the expansion and move those residents
1402 that were covered through expansion off the Medicaid rolls and
1403 most of them are likely to become uninsured and would not continue
1404 to have access to mental health and substance use disorder
1405 coverage.

1406 Ms. Matsui. So, in essence, we will be going backwards then
1407 once again. Okay.

1408 Thank you very much, and I yield back the balance of my time.

1409 Ms. Eshoo. Thank you, Ms. Matsui.

1410 I would now like to recognize the gentleman from Kentucky,
1411 Mr. Guthrie.

1412 Mr. Guthrie. Thank you very much, and again,
1413 congratulations on your --

1414 Ms. Eshoo. Thank you.

1415 Mr. Guthrie. -- on being the chair. I enjoyed being vice
1416 chair -- vice a couple of times and learned a lot about the health
1417 care system and moving forward.

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1418 And I know today the title is how does the Texas case affect
1419 preexisting conditions and I think we are hearing from everybody
1420 that it would probably be near unanimous if we did a legislative
1421 fix to preexisting conditions regardless of where the case goes
1422 and so I was listening to Dr. Burgess talk earlier about having
1423 a hearing for Medicare for all, and I think the chair of the full
1424 committee said that, well, why would you want to have a hearing
1425 for a piece of legislation you say you're not for.

1426 I think it is important for us to talk about and the issues
1427 that would come because there are, I think, at least four or five
1428 presidential candidates that already said they were for it.

1429 So it is not just some obscure bill that somebody files every
1430 year. It has now gotten into the public space that we need to
1431 discuss.

1432 And Ms. Hung, I appreciate your testimony. I have nothing
1433 compared to your issues with your child but I had a son that had
1434 some issues when he was a boy. He is 23 now, and so about a month
1435 of just what is going to happen.

1436 So I understand the preexisting conditions, and then another
1437 year and a half, maybe two years, in and out of children's
1438 hospitals. But we got the best words a parent can hear when a
1439 physician walks in, we know what the problem is now and we can
1440 fix it.

1441 Matter of fact, just last fall he thought he was having some
1442 problems -- so he lives in Chicago, west of Chicago. Went to

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1443 see a -- to a doctor with him and the doctor said, hey, it is
1444 something else -- it is something routine we can treat. He goes,
1445 by the way, you had a really great surgeon when he was eight.
1446 So we were just reinforced with it. So everything kind of works.

1447 And so what has kind of impressed me, and I guess I am going
1448 to just talk a little bit instead of ask questions, but what has
1449 always impressed me about the care -- Vanderbilt Children's
1450 Hospital is where we were -- that he has received and just the
1451 innovation our health care system is producing.

1452 It is absolutely amazing innovation coming out in our health
1453 care system. The artificial pancreas is real now. People can
1454 have it now. You can cure hepatitis C with a pill. It is just
1455 amazing what is happening in some people -- with some people,
1456 not a lot. It is not universal but stage four melanoma is being
1457 cured with precision medicine.

1458 I mean, those things are happening in our health care system.
1459 They are expensive, and my biggest concern if we go to a
1460 government-run that we just lose that health care. We innovate
1461 and the world, and President Trump talked about it a little last
1462 night, is living off our investment in innovation. But if we
1463 don't invest and innovate, who is going to do it and who is going
1464 to have the care that we have?

1465 As a matter of fact, we are investing and innovating so
1466 quickly, this committee spent an awful lot of time over the last
1467 couple of years to put 21st Century Cures in place so the

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1468 government regulatory structure can keep up with the vast
1469 investment.

1470 I know we spent a lot of time in the last couple years doing
1471 oversight. I hope we will continue to do oversight of
1472 implementation of 21st Century Cures.

1473 So my only point is, and I will yield back in just a couple
1474 seconds, is that it is important when we look at such massive
1475 changes to our health care system the way people get health
1476 insurance.

1477 You know, most people still get it through their employer.
1478 Is that going to go away? People get it through -- we talked
1479 about the Indian Health Services. Is that going to go away?
1480 Is it a road to get rid of the VA?

1481 Just there is so much change that is proposed in what people
1482 boil down to one -- a bumper sticker, Medicare for All -- that
1483 it has implications for everybody. It has implications for the
1484 whole country, and universal coverage is a positive thing.

1485 But if you get to the -- I tell you, if you get to the Medicare
1486 reimbursements throughout the entire health care system, I am
1487 convinced we won't have the innovation that completely -- my son
1488 is completely healed -- that had some innovative surgeries --
1489 for his privacy I won't say -- but 15 years ago that now are
1490 probably completely different on what you see.

1491 My cousin is a NICU doctor and the stuff that -- the babies
1492 that he now sees that are surviving, and we have a colleague here

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1493 that had a daughter born without kidneys who I guess -- Abby must
1494 be about five or six now.

1495 And so it is just -- that is a concern and I think that when
1496 we are going to have a piece of legislation that has kind of been
1497 boiled down to a bumper sticker but it is going to have impact
1498 on everybody living in this country and everybody throughout the
1499 world because I wish the world would help subsidize some of the
1500 innovations that we are producing -- that it is worthy for us
1501 to have serious discussions and not just dismiss it as we are
1502 not being serious.

1503 So and I can tell you I am, I know Dr. Burgess is and I think
1504 the rest of the committee would be, and I appreciate you guys
1505 all being here and sharing your stories.

1506 But we can fix preexisting conditions. I think we are all
1507 on board with that, and Madam Chair, I yield back.

1508 Ms. Eshoo. I thank you, Mr. Burgess. Always a gentleman.

1509 Let us see. Who is next? The chairman of the full
1510 committee, Mr. Pallone.

1511 The Chairman. Thank you.

1512 I wanted to ask Ms. Young a couple questions -- really, one
1513 question. On the day of the Texas district court's ruling,
1514 President Trump immediately praised Judge O'Connor's decision
1515 to strike down protections for preexisting conditions.

1516 The next day he referred to the ruling as, quote, "great
1517 news for America," and just last week in an interview with the

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1518 New York Times, President Trump boosted that the Texas lawsuit
1519 will terminate the ACA and referred to the ruling as a victory.

1520 In his testimony, Mr. Roy claims that President Trump
1521 supports protecting people with preexisting conditions. I think
1522 that could not be further from the truth. The truth is President
1523 Trump has sought to undermine and unravel protections for more
1524 than 130 million Americans living with preexisting conditions
1525 and, understandably, that is not a record that Republicans want
1526 to promote.

1527 But I also want to remind folks that since this is not a
1528 fact that my colleagues on the other side seem to want to
1529 acknowledge and that is that the Republican lawsuit brought by
1530 Republican attorneys general, who asked the district court to
1531 strike down the entire ACA.

1532 So the fact that my colleagues and our minority witnesses
1533 today are trying to disassociate themselves from Judge O'Connor's
1534 ruling which did exactly what the Republican AGs asked for, I
1535 think is quite extraordinary.

1536 Mr. Roy asserts in his written testimony that Congress should
1537 pass a simple bill reiterating guaranteed issue and community
1538 rating in the event that the district court's decision is upheld
1539 by the Supreme Court.

1540 So and then we have this GOP bill or motion during the rules
1541 package where they said that, you know, they would do legislation
1542 that would only include guaranteed issue and community rating

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1543 and that would ensure sufficient protections for preexisting
1544 conditions, whatever the courts decide.

1545 So, basically, Ms. Young, I have one question. Can you
1546 explain why what Mr. Roy is asserting -- that reinstating only
1547 these two provisions on guaranteeing issue and community rating
1548 -- is insufficient to protect individuals with a preexisting
1549 condition and the same, of course, is with the House GOP bill
1550 that would do that.

1551 Why is this not going to work to actually guarantee
1552 protection for individuals with preexisting conditions?

1553 Ms. Young. The district court's opinion, as you note,
1554 struck down the entirety of the ACA. So not just its protections
1555 for people with preexisting conditions but the financial
1556 assistance available to buy marketplace coverage, funding for
1557 Medicaid expansion, a host of provisions in Medicare, protections
1558 through the employer insurance and associated reforms.

1559 So a standalone action that reinstated two preexisting
1560 conditions protections without wrapping that in the financial
1561 assistance and the risk adjustment and the Medicaid expansion
1562 and the other components of the ACA that are, in my view, important
1563 to make the system function, would not restore the system that
1564 we have today where people with preexisting conditions have access
1565 to a functioning market where they can buy coverage that meets
1566 their health needs.

1567 In fact, there have been some efforts by the Congressional

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

1573 So implementing those two provisions on their own without
1574 financial assistance and other protections would be insufficient.

1575 The Chairman. I mean, I think this is so important because,
1576 you know, the -- you know, again, Mr. Roy and he is just reiterating
1577 what some of my Republican colleagues say. They just neglect
1578 all these other things that are so important for people with
1579 preexisting conditions.

1580 You didn't mention junk plans. I mean, my intuition tells
1581 me, and I am not -- you know, I talk to people about it in my
1582 district -- you know, that if you start selling these junk plans
1583 that don't provide certain coverage, one of the things it is
1584 important for people with preexisting conditions to have a robust
1585 plan that provides coverage for a lot of things that didn't exist
1586 before the ACA.

1587 I mean, that is, again, important -- the fact that you have
1588 a robust essential benefits is also important for people with
1589 preexisting conditions, too, right?

1590 Ms. Young. Those are both critical protections. In
1591 particular, the ACA seeks to ensure that insurance for the healthy
1592 and insurance for the sick are part of a single combined risk

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1593 pool.

1594 Efforts to promote short-term plans or other policies that
1595 don't comply with the ACA protections siphon healthy people out
1596 of the central market and drive up costs for those with preexisting
1597 conditions and anyone else seeking --

1598 The Chairman. Yes. So you are pointing out the very fact
1599 that you have a larger insurance pool, which has resulted from
1600 the ACA in itself, is important for people with preexisting
1601 conditions and if you take out the healthier or the wealthier
1602 because they -- because you don't have a mandate anymore that
1603 hurts them too, correct?

1604 Ms. Young. Efforts to move healthier people out of the
1605 individual market will increase premiums for those that remain
1606 in complaint coverage, yes.

1607 The Chairman. All right. Thank you so much.

1608 Ms. Eshoo. Thank you, Mr. Pallone.

1609 And now I want to recognize the ranking member of the full
1610 committee, Mr. Walden.

1611 Mr. Walden. Thank you, Madam Chair, and I want to thank
1612 all of our witnesses. We have another hearing -- an important
1613 one -- going on downstairs. That is why some of us are bouncing
1614 back and forth between climate change and health care.

1615 And I want to -- I want to again say thank you for being
1616 here and reiterate that as Republicans we believe strongly in
1617 providing preexisting condition protection for all consumers and

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1618 if you go back to 1996 when HIPAA was passed under Republicans
1619 we provided for continuous coverage protection for people with
1620 pre-ex.

1621 I mean, this is something we believe in before ACA and
1622 something I believe in personally and deeply and something that
1623 we are ready to legislate on, and I think at least giving that
1624 guarantee and certainty to people would make a huge level of
1625 comfort for them.

1626 And I just -- you know, I know -- I didn't mean to shake
1627 things up this morning but asking for a hearing on Medicare for
1628 all was something I thought was appropriate, given that other
1629 committees are already announcing their hearings, and that going
1630 back to when ACA was shoved through here and then Speaker Pelosi
1631 saying we had to pass it so you could find out what is in it,
1632 we don't want to repeat that. We need to know what is in it.

1633 We need thoughtful consideration. I think this committee is
1634 the place to have that. So I still think that is important.

1635 I want to thank both Tom and Avik for being here -- Mr. Roy
1636 for being here on short notice. You said, Mr. Roy, that Congress
1637 should pass a simple standalone measure guaranteeing that
1638 insurers offer coverage in the individual health insurance market
1639 to anyone regardless of prior health status.

1640 Mr. Roy. Yes, I did.

1641 Mr. Walden. And do you want to respond? You didn't get
1642 a chance to kind of respond here. So do you want to respond to

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1643 what was asked of the other witnesses around you?

1644 Mr. Roy. Well, thank you, Mr. Walden. I appreciate the
1645 opportunity to actually explain my written testimony --

1646 Mr. Walden. Go ahead.

1647 Mr. Roy. -- in this setting. The key here is that
1648 three-fourths of the variation of the premiums in health insurance
1649 in a fully underwritten market are associated with age, not health
1650 status or gender or anything else -- preexisting conditions.

1651 Mr. Walden. Okay.

1652 Mr. Roy. So the point is if everybody of the same age --
1653 all 27-year-olds, all 50-year-olds, all 45-year-olds -- if all
1654 45-year-olds are charged the same premium, the variation in
1655 premium is between the healthy paying a little more and the sick
1656 paying a little less is not that big of a difference. It doesn't
1657 cause a lot of adverse selection.

1658 What drives adverse selection in the ACA is the fact that
1659 younger people are forced to pay, effectively, double or triple
1660 what they were paying before --

1661 Mr. Walden. Right.

1662 Mr. Roy. -- to allegedly subsidize the premiums for older
1663 people. So revising age bands would be a huge step in moving
1664 in the right direction. Reinsurance, which is effectively a
1665 high-risk pool within a single risk pool, would help basically
1666 also reduce the premiums that healthy people pay so that people
1667 with preexisting conditions could get better coverage.

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1668 So you can have a standalone bill that would ensure that
1669 people have -- with preexisting conditions have access to
1670 affordable coverage.

1671 Mr. Walden. I would hope so. I think it is really
1672 important. I mean, we were for preexisting protections. I was
1673 for getting rid of the insurance caps before ACA. I thought they
1674 were discriminatory against those who through no fault of their
1675 own had a consequence of -- consequential health issues that could
1676 have blown through their lifetime caps.

1677 And so I think there are things we could still find common
1678 ground on and I wonder if you want to address the Medicare for
1679 all proposal as well.

1680 Now, we haven't seen it spelled out. I know the Budget
1681 Committee is, I guess, having it scored and hearings on it. But
1682 I am concerned about the impacts it may have on delay in terms
1683 of getting health care. I am concerned about what it might do
1684 to the Medicare trust fund.

1685 Do you have -- do you want to opine on that while you are
1686 here?

1687 Mr. Roy. Well, I have written a lot at Forbes and elsewhere
1688 about how Medicare for all from a fiscal standpoint is unworkable
1689 because of the gigantic transfers it would assign to the federal
1690 government.

1691 It would increase federal spending by somewhere between \$28
1692 trillion and \$33 trillion over a 10-year period, which would be

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1693 an increase in overall federal spending of 71 percent.

1694 Now, that is not if -- that excludes the impact of cutting
1695 what you pay hospitals and doctors and drug companies by 50
1696 percent, which is what you would have to do to effectively make
1697 the numbers work.

1698 I do want to urge you, Mr. Walden, and your colleagues that
1699 while Medicare for all is unworkable and I think most people know
1700 that, the status quo is unacceptable, too.

1701 Mr. Walden. Right.

1702 Mr. Roy. And I think it is extremely important for this
1703 committee in particular to tackle the high cost of hospital care,
1704 the high cost of drug prices.

1705 Mr. Walden. Yes. That was -- if I had stayed on as chair
1706 that was going to be our big priority this cycle. Surprise
1707 billing -- I mean, you go in. You have a procedure. You have
1708 played by all the rules and it turns out the anesthesiologist
1709 that put you under wasn't in your program and you get billed.

1710 That is wrong. That is just -- I think we can find common ground
1711 on that one.

1712 We took on the issue of getting generic drugs into market
1713 and under the change in the law we passed last year, Dr. Gottlieb
1714 now has set a record for getting new generics in the market and
1715 driving both choice and innovation but also price down, and this
1716 administration -- I have been in the meetings with the president
1717 and CEOs of the pharmaceutical companies. He is serious about

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1718 getting costs down on drugs and getting to the middle part of
1719 this, too.

1720 We need to look from one end to the other and, Madam Chair,
1721 I think we can find common ground here to do that and get
1722 transparency, accountability so consumers can have choice and
1723 so we can drive down costs.

1724 I have used up my time and I thank our witnesses again.

1725 Madam Chair, I yield back.

1726 Ms. Eshoo. I thank the ranking member.

1727 We plan to examine all of that and I think -- I hope that
1728 we can find common ground on it because these are issues that
1729 impact all of our constituents and they need to be addressed.

1730 And on the surprise billing, I know that the Senate is trying
1731 to deal with it and we should hear as well. I think that your
1732 clock is not working at the witness table.

1733 Mr. Roy. That is correct.

1734 Ms. Eshoo. But it is working up here, okay. So maybe you
1735 can refer to that one.

1736 Now I would like to call on the gentlewoman from Florida,
1737 Ms. Castor.

1738 Ms. Castor. Thank you, Madam Chair. Witnesses, thank you
1739 very much for being here and, colleagues, thank you for all of
1740 your attention here.

1741 I just think it is so wrong for the Trump administration
1742 and Republicans in Congress to continue to try to rip affordable

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1743 health care away from American families, especially our neighbors
1744 with preexisting conditions.

1745 This lawsuit is just a continuation of their efforts to do
1746 that. When they couldn't pass the bill here in the Congress --
1747 in the last Congress, despite Republican majorities, and I am
1748 sorry to say that my home state of Florida under Rick Scott's
1749 administration joined that federal lawsuit.

1750 Thirteen Democratic members of the Florida delegation have
1751 written to our new governor and attorney general, asking -- urging
1752 them to remove the state of Florida from the federal lawsuit that
1753 would kill the Affordable Care Act and rip health coverage away
1754 from American families including individuals with preexisting
1755 health conditions.

1756 This follows the letter we sent to Rick Scott as well and
1757 I would like to ask unanimous consent that these letters be
1758 admitted into the record of this hearing.

1759 [The information follows:]

1760

1761 *****COMMITTEE INSERT 6 *****

1762 Ms. Castor. American families are -- they are simply tired
1763 of the assault on affordable health care and, Chairwoman Eshoo,
1764 you raised the point about the skimpy junk insurance plans because
1765 one way that the Trump administration and Republicans are trying
1766 to undermine affordable care are these junk health plans that
1767 do not provide fundamental coverage.

1768 When you pay your hard-earned copayment and premiums, you
1769 should actually get a meaningful health insurance policy, not
1770 some skimpy plan that is just going to subject you to huge costs.

1771 These sub-par and deceptive junk plans exclude coverage for
1772 preexisting conditions. They discriminate based on age and
1773 health status and your gender.

1774 Consumers are tricked into buying these junk plans,
1775 mistakenly believing that they are the comprehensive ACA plan
1776 but then they are faced with huge out-of-pocket costs. For
1777 example, in a recent Bloomberg article Dawn Jones from Atlanta
1778 was enrolled in a short-term junk plan when she was diagnosed
1779 with breast cancer. Her insurer refused to pay for her cancer
1780 treatment, leaving her with a \$400,000 bill.

1781 Another patient in Pennsylvania faced a \$250,000 bill --
1782 in unpaid medical bills because her junk short-term policy did
1783 not provide for prescription drug coverage and other basic
1784 services.

1785 The Trump administration now is actively promoting these
1786 junk plans and I want American families and consumers across the

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1787 country to be on alert. Don't buy in to these false promises.

1788 Ms. Young, you have talked a little bit about this but will
1789 you go deeper into this? Help us educate families across the
1790 country. I understand that these plans often impose lifetime
1791 and annual limits. Is that correct?

1792 Ms. Young. It is, yes.

1793 Ms. Castor. And that is something the Affordable Care Act
1794 outlawed?

1795 Ms. Young. Correct.

1796 Ms. Castor. Can you describe what these plans typically
1797 look like and what kind of coverage they purport to provide?

1798 Ms. Young. Short-term limited duration insurance is not
1799 regulated at the federal level. None of the federal consumer
1800 protections apply. Some state law protections may apply or --

1801 Ms. Castor. Consumer protections -- name them.

1802 Ms. Young. The requirement that plans cover essential
1803 health benefits, the prohibition on annual and lifetime limits,
1804 the requirement that the insurance company impose a cap on the
1805 total copays and deductibles an individual can face over the year,
1806 requirements to cover preventive services, to not exclude -- to
1807 not exclude coverage for preexisting conditions and other --

1808 Ms. Castor. Wait a minute. Wait a minute. I have heard
1809 some of my Republican colleagues say they are all in favor of
1810 that. But can you be in favor of preexisting condition protection
1811 on the one hand and then say, oh, yeah, we believe these junk

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1812 insurance plans are the answer, like the Trump administration
1813 and Republicans in Congress are promoting?

1814 Ms. Young. Short-term limited duration plans do not have
1815 to comply with the requirements about preexisting conditions.

1816 That is correct.

1817 Ms. Castor. Can you describe why an individual who is
1818 healthy when they sign up for one of these junk plans could still
1819 be subject to hundreds of thousands of dollars in medical bills?

1820 Ms. Young. There is no requirement that short-term plans
1821 cover any particular health care cost. So an individual who
1822 doesn't read the fine print behind their policy might discover,
1823 for example, that the plan only covers hospital stays of a few
1824 days and individuals are on the hook for all additional hospital
1825 expenses.

1826 They may find that the plan has a very low annual limit so
1827 that once they have spent \$10,000 or \$20,000 they are responsible
1828 for bearing the full cost or any variation like that where they
1829 simply discover when they need to access the health care system
1830 that the plan doesn't include the coverage that they had -- that
1831 they had hoped to purchase.

1832 Ms. Castor. Thank you very much, and we will be working
1833 to ensure that consumers are protected and when they pay their
1834 premiums and copays they actually get a meaningful health
1835 insurance policy.

1836 Thank you, and I yield back.

1837 Ms. Eshoo. I thank the gentlewoman.

1838 I now would like to call on Mr. Griffith from Virginia.

1839 You are recognized for five minutes.

1840 Mr. Griffith. Thank you very much, Madam Chair. I
1841 appreciate it.

1842 Here is the dilemma that we have. In my district, which
1843 is financially stressed in many parts of it -- I represent 29
1844 jurisdictions in rural southwest -- always put the pause in there
1845 -- Virginia.

1846 So when ACA came in so many of my people immediately came
1847 to me, long before the Trump administration came in, and in their
1848 minds the ACA was junk insurance, because when they were promised
1849 that their premiums would go down they now had premiums that were
1850 financially crippling.

1851 When they were promised that they would have better access,
1852 they now found that they had high deductibles and they now found
1853 that their copays had gone through the roof.

1854 So there is no question -- I never argued -- that the
1855 preexisting condition was a problem that should have been dealt
1856 with long before the ACA, and I understand the concerns and the
1857 frustration that people had who had preexisting conditions and
1858 we need to take care of that and we will take care of that.

1859 I don't see anybody who would argue at this point that we
1860 shouldn't deal with people with preexisting conditions and make
1861 sure they have access to affordable health care, which is why

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1862 I supported our attempts to get an amendment put in on day one
1863 of this Congress that would say get the -- the committees of
1864 jurisdiction.

1865 In fact, it referenced the Energy and Commerce Committee
1866 -- this committee -- and the Ways and Means Committee to report
1867 out a bill that took care of all of the concerns we have heard
1868 today and said it guarantees no American citizen can be denied
1869 health insurance coverage as the result of a previous illness
1870 or health status and guarantees no American citizen can be charged
1871 higher premiums or cost sharing as the result of previous -- of
1872 a previous illness or health status, thus ensuring affordable
1873 health coverage for those with preexisting conditions.

1874 That is where we are. That is what we stand for. So, you
1875 know, I find it interesting that this debate has become -- you
1876 know, and I am hearing about junk insurance and how, you know,
1877 Republicans are evil that they want junk insurance.

1878 I hear it on a regular basis that my people think that what
1879 they have got now is junk. It is all they can afford and it is
1880 costing them a fortune.

1881 So, Mr. Roy, what do you have to say about that?

1882 Mr. Roy. I have found the conversation we have been having
1883 about so-called junk insurance interesting because nobody seems
1884 to be asking the question as to why people are voluntarily buying
1885 so-called junk insurance.

1886 They are buying it because the premiums are half or a third

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1887 or a quarter of what the premiums are for the Affordable Care
1888 Act for them.

1889 Mr. Griffith. And if you can't afford something else you
1890 are going to buy something that you can afford. Isn't that
1891 correct?

1892 Mr. Roy. A hundred percent. So a plan that has all the
1893 bells and whistles but it is unaffordable to you is, effectively,
1894 worthless whereas a plan that may not have all the bells and
1895 whistles but at least provides you some coverage is.

1896 And the great tragedy of the Affordable Care Act is that
1897 we did not have to have that dichotomy. We could have had plans
1898 that had robust coverage for people with preexisting conditions
1899 and protections for people regardless of health status and yet
1900 were still affordable.

1901 I have outlined it both in my written testimony, in my oral
1902 testimony, and many, many other documents that I have presented
1903 to this committee in the past how we could achieve that.

1904 Mr. Griffith. Now, you would agree with me for those people
1905 who may have bought the junk insurance without knowing what they
1906 were getting into that we probably ought to pass something that
1907 says that the things that aren't going to be covered -- if you're
1908 only getting \$20,000 worth of care and then you have to take the
1909 full bill after that, as Ms. Castor talked about.

1910 We should have that in bold language on the front of the
1911 policy. You would agree that we should put some consumer

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1912 protection in that and make sure there is transparency so people
1913 are well-advised of what they are getting or not getting. Isn't
1914 that true?

1915 Mr. Roy. I have no problem with robust disclosure about
1916 what is in a short-term limited duration plan versus an
1917 ACA-compliant plan. To a degree, we already have that in the
1918 sense if you are buying off the ACA plan I think most consumers
1919 know that those plans have fewer protections but more disclosure
1920 and more clarity in disclosure would be a good thing.

1921 Mr. Griffith. Absolutely. I agree with that.

1922 You know, what is interesting is everybody seems to have
1923 gone after Judge O'Connor. I don't know him. I haven't studied
1924 his opinions.

1925 But I do find this interesting. I thought it was the right
1926 thing to do. He put a stay on his ruling so it didn't create
1927 a national catastrophe or suddenly people are having to scramble
1928 to figure out what to do.

1929 Mr. Miller, isn't that a little unusual in this day -- I
1930 mean, people have accused him of being biased or having a political
1931 bent and using his power. But I seem to recall all kinds of
1932 opinions by judges that I thought were coming from a slightly
1933 different philosophical bent but who went out there on a limb,
1934 stretched -- pushed the envelope of the law.

1935 But instead of saying, now, let us wait until the appeal
1936 is over and make sure this is right before we affect the average

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1937 citizen they just let it go into effect. But Judge O'Connor said,
1938 no, in case this is overturned I want to make sure nobody is
1939 adversely impacted and put a stay on his own ruling.

1940 Isn't that unusual and wasn't that the right thing to do?

1941 Mr. Miller. No, it is not -- it is hopscotch. We have had
1942 some federal judges who have had nationwide injunctions reaching
1943 way beyond what you would think would be the normal process.

1944 Mr. Griffith. Yes. I have noticed that.

1945 Mr. Miller. I think all the parties understood what
1946 practically was going on here. I would just point out on the
1947 legalities of this, just to clean up the record, one of the things
1948 about --

1949 Ms. Eshoo. Just summarize quickly because your time is up.

1950 Mr. Miller. My time is up. Okay.

1951 Mr. Griffith. You could summarize, she said.

1952 Ms. Eshoo. Quickly.

1953 Mr. Miller. I will just say, real fast, we left out the
1954 argument about tax guardrails, which was in Chief Justice Roberts'
1955 opinion and Si is exaggerating what is there and isn't there.

1956 The problem is that when you take it apart there is nothing
1957 left behind.

1958 Ms. Eshoo. Okay. I think your time is expired.

1959 Mr. Miller. It was his testimony was that this tax didn't
1960 exist anymore.

1961 Ms. Eshoo. All right. We are now going to go to and

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1962 recognize Dr. Ruiz from California.

1963 Mr. Ruiz. Thank you. It is so wonderful to be on this
1964 committee finally. So thank you to all --

1965 [Laughter.]

1966 Ms. Eshoo. He hasn't stopped celebrating.

1967 Mr. Ruiz. Thank you to all the witnesses for joining us
1968 today. We have over 130 million Americans that have preexisting
1969 conditions. The ACA defended full protections for people with
1970 preexisting conditions and those are three components.

1971 One is that insurance companies cannot deny insurance to
1972 people with preexisting conditions; two, they cannot deny
1973 coverage of specific treatments related to the preexisting
1974 condition illness; and three, they cannot discriminate by
1975 increasing the prices towards people who have a preexisting
1976 condition.

1977 Let me give you some examples of some of the benefits and
1978 hardships that people would face if this lawsuit is completed.

1979 My district is home to Desert AIDS Project, an FQHC that was
1980 founded in 1984 to address the AIDS crisis.

1981 It is the Coachella Valley's primary nonprofit resource for
1982 individuals living with HIV/AIDS. They have grown to become one
1983 of the leading nonprofits and effective HIV/AIDS treatment in
1984 the nation.

1985 And the folks at Desert AIDS Project know how to end the
1986 HIV/AIDS epidemic. Basically, you need prevention and you need

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1987 treatment. They told me that the ACA has been critical in
1988 providing treatment to the HIV -- in order to get the HIV viral
1989 load at an uninfectious low level.

1990 So the problems before the ACA was that insurance companies
1991 didn't used to have to pay for HIV tests, for example, or
1992 individuals with HIV couldn't get Medicaid coverage until they
1993 were really sick on full-blown AIDS, many already on their death
1994 beds.

1995 Now, because of the ACA insurance companies must cover
1996 essential health benefits like HIV tests and anti-viral
1997 medications which, by the way, the folks on the other side have
1998 attempted to repeal.

1999 Because of the ACA and the Medicaid expansion many
2000 HIV-infected middle class families now have health insurance for
2001 the very first time. Unfortunately, I can't say that for HIV
2002 patients throughout our country including in states like Texas
2003 that didn't expand the Medicaid coverage.

2004 And, by the way, this is another example of ACA that those
2005 on the other side attempted to repeal. Before the passage of
2006 the ACA, 90 percent of Desert AIDS Project clients did not have
2007 health insurance and now, with the ACA, 99.9 percent of clients
2008 have health insurance coverage in Desert AIDS Project.

2009 Let me repeat that statistic. Insurance coverage for these
2010 patients from only 10 percent to 99.9 percent because of the ACA.

2011 And yet, the president, while claiming to be committed to

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

2016 This would be devastating to Desert AIDS Project clients
2017 and patients and, yet, this is just one example of the devastation
2018 that repeal of the ACA would cause on individuals with preexisting
2019 conditions.

2020 Ms. Young, could you discuss the potential impact of the
2021 lawsuit on individuals with preexisting conditions if the
2022 district court's decision is upheld?

2023 Ms. Young. If the district court decision were to be upheld
2024 as written, it would disrupt the coverage for people with
2025 preexisting condition in all segments of the insurance market.

2026 So we talked a lot about the individual market. The core
2027 protections in the individual market today would be eliminated
2028 along with the financial assistance that enables them to afford
2029 coverage and make those markets stable.

2030 In employer coverage, people with preexisting conditions
2031 would also face the loss of certain protections. They would once
2032 again be exposed to lifetime or annual limits and they could --
2033 they could face unlimited copays.

2034 Mr. Ruiz. Let me get to another point because, you know,
2035 we are hearing a lot of political trickery here in the
2036 conversations. A number of the folks on the other side have

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2037 introduced bills that will pick and choose which one of these
2038 three components that make up full protections for preexisting
2039 conditions that they want to have in certain bills.

2040 For example, one bill says, we want guaranteed issue and
2041 community rating which will help keep the costs low for everybody
2042 but don't include the prohibition on preexisting coverage
2043 exclusions.

2044 Another bill excludes -- includes guaranteed issue and the
2045 ban on preexisting coverage exclusion but does not include the
2046 community rating, saying, well, let us charge people with
2047 preexisting more than other folks.

2048 So they claim these bills are adequate to protect consumers
2049 with preexisting conditions. Can you explain why these bills
2050 are inadequate to protect individuals with preexisting
2051 conditions?

2052 Ms. Young. Very briefly. Requiring insurance companies
2053 to sell a policy but allow preexisting condition exclusions
2054 requires them to sell something but it doesn't have to have
2055 anything in it. It is a little bit like selling a car without
2056 an engine.

2057 And allowing unlimited preexisting condition rate-ups it
2058 tells the consumer that they can buy a car but they could be charged
2059 Tesla prices even if they are buying a Toyota Camry. That is
2060 not what the Affordable Care Act does. It puts in place a
2061 comprehensive series of protections.

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2062 Mr. Ruiz. Thank you.

2063 Ms. Eshoo. Your time has expired. I thank the gentleman.

2064 I now would like to recognize Dr. Bucshon from Indiana.

2065 Mr. Bucshon. Thank you, and congratulations on your

2066 chairmanship. Look forward to working with you.

2067 I am a physician. I was a heart surgeon before I was in
2068 Congress and we all support protections for preexisting
2069 conditions. Look, I had a couple of patients over the years who
2070 I did heart surgery on who had -- one had had Hodgkin's disease
2071 in his 20s and his entire life after that he could not afford
2072 health coverage, and that is just plain wrong. We all know that.

2073 I had an employee of mine whose wife met her lifetime cap
2074 because of a serious heart condition and had to ultimately go
2075 onto Medicaid. That is not right.

2076 So I think Republicans have -- for many years have supported
2077 protecting people with preexisting conditions. I think we are
2078 in a policy discussion about the most appropriate way to do that.

2079
2080 And so I really think what we should be focusing on is to
2081 make sure that people actually have coverage that they can afford
2082 -- quality affordable health coverage, and under the ACA, as was
2083 previously described, the deductibles can be very high. You
2084 couldn't keep your doctor and your hospital, as everyone said
2085 that supported the ACA and so we are not meeting that goal.

2086 And now we have heard from the Democrats about Medicare for

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

2092 I keep telling people if you continue to debate how to pay
2093 for a product that is too expensive, you are not going to catch
2094 up. It doesn't matter who is paying for it. It doesn't matter
2095 if the government is paying for it or a partial hybrid system
2096 like we have now.

2097 So I am hoping we can have some hearings on how we get the
2098 cost down, and the insurance problem kind of almost can solve
2099 itself if we can do that.

2100 We should be talking about the fact that people with
2101 preexisting conditions really don't have protections and it
2102 doesn't work if you don't have actual access to a physician.

2103 So Mr. Miller and Mr. Roy -- I will start with Mr. Roy --
2104 can you talk about what could happen in the U.S. if private
2105 physician practices were not allowed to participate in a single
2106 payer program, hypothetically, and would that create access
2107 issues for patients?

2108 Mr. Roy. Well, we already have access issues for patients
2109 in the Medicaid program. A lot of physicians don't accept
2110 Medicaid --

2111 Mr. Bucshon. That is correct.

2112 Mr. Roy. -- even though they theoretically participate
2113 in the Medicaid program. That is also an increasing problem in
2114 Medicare because there are disparities in the reimbursement rates
2115 between private insurers, Medicare, and especially Medicaid.

2116 And this is one of the other flaws in the ACA is it relied
2117 on a program with very poor provider access to expand coverage.

2118 I think the exchanges at least have the virtue of using private
2119 insurers to expand coverage rather than the Medicaid program with
2120 its much lower reimbursement rates.

2121 Mr. Bucshon. So I would argue that, you know, then if you
2122 go to a Medicare for all you have access issues on steroids,
2123 potentially, and especially if you -- if you don't allow private
2124 practice physicians -- what I am saying nonhospital or
2125 government-employed physicians, which is what we would all be
2126 -- to participate in the program, which is actually not what other
2127 countries do.

2128 In England, for example, you can have your private practice
2129 and also participate in the National Health Service.

2130 Mr. --

2131 Mr. Miller. [Speaking off mic]

2132 Mr. Bucshon. I think -- can you turn on your mic, Mr. Miller?

2133 Mr. Miller. Oh, I thought I had it on. It looks like --

2134 Mr. Bucshon. There it is.

2135 Mr. Miller. Okay. You are more likely to have Medicaid
2136 for all than Medicare for all until you solve the -- and say stop,

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2137 we can't deal with that. The problem is we would love to give
2138 away all kinds of stuff. We just don't want to pay for it.

2139 Now, we can shovel it off into ways in which you get less
2140 than what was promised and say we have done our job. We did that
2141 to an extent with the ACA. You find the lowest cost way to make
2142 people think they are getting something that is less than what
2143 they actually received.

2144 That is why the individual market as a whole has shrunk in
2145 recent years. It is because those people who are not
2146 well-subsidized in the exchanges are finding out they can't afford
2147 coverage anymore.

2148 Mr. Bucshon. So, I mean, and I will stick with you, Mr.
2149 Miller. I mean, do you think if the iteration of Medicare for
2150 all bans private practice physicians not to be able to participate
2151 that we would put ourselves at risk of creating a two-tiered system
2152 where the haves can have private coverage and there can be private
2153 hospitals as there is in other countries?

2154 Mr. Miller. Well, we have got -- already we have got plenty
2155 of tiers in our system to begin with. It would exacerbate those
2156 problems and I don't think we would live with it politically,
2157 which is why we would probably short circuit.

2158 But it is at least a danger when people believe in the theory
2159 of what seems easy but the reality is very different.

2160 Mr. Bucshon. Yes. I mean, I would have an ethical problem
2161 as a physician treating patients differently based on whether

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2162 or not they are wealthy or whether or not they are subjected to
2163 a Medicare for all system, right.

2164 So, ethically, I can tell you physicians would have a
2165 substantial problem with that. Other countries kind of do that
2166 because that is just the way it is there and I think in many
2167 respects their citizens don't have a problem with it because that
2168 is just what they have always lived with.

2169 But I would agree with you that in the United States there
2170 would be some issues.

2171 Mr. Roy, do you have any comments on that?

2172 Mr. Roy. I do. I would just like to add that at the
2173 Foundation for Research on Equal Opportunity we put together a
2174 detailed proposal for private insurance for all where everyone
2175 buys their own health insurance with robust protections for
2176 preexisting conditions and health status and robust financial
2177 assistance for people who otherwise can't afford coverage in a
2178 way that is affordable, that would actually reduce federal
2179 spending by \$10 trillion over three decades but would ensure 12
2180 million more people have access to health insurance than do today
2181 under current law.

2182 So there are ways to address the problem of affordability
2183 and access of health insurance while also reducing the underlying
2184 cost of coverage and care and making the fiscal system more
2185 sustainable.

2186 Mr. Bucshon. Yes. I mean, I think we should be also putting

2187 focus on the cost of the product itself, right, and it is -- the
2188 reasons why it costs so much are multi-factorial. It is a free
2189 market system.

2190 The other thing is is I told my local hospital administrators
2191 that if we get Medicare for all get ready to have a federal office
2192 in your private hospital that tells you how to run your business.

2193 I yield back.

2194 Ms. Eshoo. I thank the doctor.

2195 And last, but not least, Mr. Rush from Illinois is recognized
2196 for five minutes for question.

2197 Mr. Rush. Thank you, Madam Chair.

2198 Madam Chair, I also want to congratulate you for your
2199 becoming chair of the subcommittee and --

2200 Ms. Eshoo. I thank you very much.

2201 Mr. Rush. -- I have been a member of Congress for quite
2202 -- for, as you have, for over 26 years and this is my first time
2203 being a member of this subcommittee and I am looking forward to
2204 working with you and other members of the subcommittee.

2205 I want to -- as I recall the -- when this Affordable Care
2206 Act was passed there were millions of Americans who were without
2207 health insurance totally. They were uninsured. They had no help
2208 at all, no assistance from anyone to deal with their illnesses
2209 and their disease.

2210 And since the act was passed, approximately 20 million
2211 Americans have gained health coverage including over a million

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2212 in my state and I don't want to overlook that fact. I don't want
2213 to get that fact lost in other kind of -- in the minutia of what
2214 we -- some of the -- of any one particular aspect of our discussion.

2215 In 2016, almost 14,000 of my constituents received health
2216 care subsidies to make their health care more affordable, and
2217 one aspect of the ACA that I like is insurance companies must
2218 now spend at least 80 percent of their premium on actual health
2219 care as opposed to other kinds of pay for CEOs and also for an
2220 increase of their profits.

2221 And the insurance rate has increased between -- the uninsured
2222 rate, rather, has increased between the years 2013 and 2017 --
2223 since 2017 in my state.

2224 Ms. Young, how many Americans would expect to lose coverage
2225 if this court decision in Texas were upheld?

2226 Ms. Young. The Congressional Budget Office has estimated
2227 that repeal of the Affordable Care Act against their 2016 baseline
2228 would result in 24 million additional uninsured Americans and
2229 upholding the district court's decision we could expect sort of
2230 broadly -- broadly similar results with adjustments for the new
2231 baseline.

2232 Mr. Rush. Mm-hmm.

2233 I want to ask Ms. Hung, you've been sitting here patiently,
2234 remarkably, listening to a lot of discussion between experts.

2235 But how do you feel about your daughter? How do you feel? What
2236 is your reaction to all of this as it relates to the looming problem

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2237 that you have if this case is upheld?

2238 Ms. Hung. Thank you. No one is going to sit here and say
2239 that they are not going to protect preexisting conditions, right.

2240 No one is going to say that. But that is what we have seen.

2241 That is what families like mine has seen -- repeal efforts,
2242 proposals that don't cover preexisting conditions or claim to
2243 give a freedom of choice to choose what kind of insurance we want.

2244 Well, the choice that I want is insurance that covers, that
2245 guarantees that these protections are in place. I don't want
2246 to sit in the NICU at my daughter's bedside wondering if she is
2247 going to make it and also then have to decide what kind of insurance
2248 I am going to buy and imagine what needs that she will have in
2249 order to cover that.

2250 So I sit here and say, well, what worked for me is that I
2251 got to spend 169 days at my daughter's bedside without worrying
2252 about whether we would go bankrupt or lose our home, and that
2253 is the guarantee that we need.

2254 Mr. Rush. Madam Chair, I yield back.

2255 Ms. Hung. Thank you.

2256 Ms. Eshoo. I thank the gentleman.

2257 I now would like to call on another new member of the
2258 subcommittee and we welcome her, Ms. Blunt Rochester from the
2259 small but great state of Delaware.

2260 [Laughter.]

2261 Ms. Blunt Rochester. Thank you, Madam Chairwoman.

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2262 First of all, thank you so much for your leadership. It
2263 is an honor for me to be on this subcommittee. And excuse me,
2264 I had competing committees for my first day of subcommittees and
2265 so I have been running back and forth.

2266 But this is a very important topic and I want to acknowledge
2267 Ms. Hung. The last time I saw you we were at a press event with
2268 then Leader Pelosi highlighting the Little Lobbyists and the work
2269 that you do and have been doing, and just your support of
2270 protecting preexisting conditions for children across the
2271 country.

2272 And it is really admirable that you advocate not only for
2273 your child but for all children across the country and have been
2274 fighting for decades. And I was hoping that you could talk a
2275 little bit about the formation of the Little Lobbyists and who
2276 they are, what it is all about, how it formed.

2277 Ms. Hung. Thank you, Congresswoman, and thank you for your
2278 support. I did not set out to start the Little Lobbyists. It
2279 kind of just happened. We were following the news with families
2280 like mine, families with children with complex medical needs and
2281 disabilities.

2282 We are very concerned. We are very worried and we decided
2283 to speak up and tell our stories, and I tell my story because
2284 I know that many have been fortunate to not experience the
2285 challenges and hardships that we have seen. I also know that
2286 many have not experienced the joy and gratitude that I had in

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2287 being Xiomara's mother.

2288 So I feel a responsibility to uplift these stories that we
2289 weren't -- we weren't seeing being represented. Now, I have spent
2290 my -- more than my fair share of time in the hospital. I have
2291 witnessed my baby on the brink of life and death one too many
2292 times.

2293 I know what is possible with access to health care -- quality
2294 health care -- and I think I can say that I have a profound
2295 understanding, more than many Americans, how fragile life is and
2296 it is with that understanding that I have chosen to spend my time
2297 raising that awareness.

2298 I acknowledge my privilege. I acknowledge my proximity to
2299 Washington, D.C. to come here. There are so many stories like
2300 mine across the country of families who are just fighting for
2301 their children, who want to spend that time on their kids and
2302 not worrying about filing for bankruptcy or losing their home
2303 or wondering if they can afford lifesaving medication.

2304 Ms. Blunt Rochester. Yes, that was going to be my next
2305 question. How does this uncertainty affect your family? How
2306 is it affecting individuals that you work and are talking to and
2307 other Little Lobbyists?

2308 Ms. Hung. It is everything. It is everything. So the
2309 uncertainty is not knowing. I mean, we don't know what the future
2310 holds. None of us do. But to add this on top of what we are
2311 going through, on top of the NICU moms that I know that are

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2312 worrying, who are trying to keep their jobs and trying to be there
2313 for their children, to add this level of uncertainty on top of
2314 it is just devastating.

2315 Ms. Blunt Rochester. I wanted to have your voice heard.
2316 I know from hearing that we have a lot of great experts and a
2317 great panel here and I would like to bring it back to what this
2318 is all about. Maybe -- I don't know if I am the last one speaking
2319 or the last, but I wanted to bring it back to why we are doing
2320 this and why we are here.

2321 I have served the state of Delaware in different capacities
2322 as our deputy secretary of health and social services. I have
2323 been in state personnel so I have seen health care from that
2324 perspective and also from advocacy perspective as CEO of the Urban
2325 League.

2326 But hearing your story makes this real for us and is really
2327 one of the reasons why I wanted to be on this committee. So I
2328 thank you for your testimony. I thank the committee for your
2329 expert testimony and I yield back the balance of my time.

2330 Ms. Eshoo. Thank you very much.

2331 I don't see anyone else from the Republican side.

2332 Mr. Burgess. There's some people coming back, but proceed.

2333 Ms. Eshoo. Okay. All right. We will move on.

2334 I now would like to call -- recognize the gentleman from
2335 California, Mr. Cardenas.

2336 Mr. Cardenas. Thank you, and thank you, Chairwoman Eshoo

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2337 and Ranking Member Burgess, for -- and all the staff for all the
2338 work that went into holding this hearing of this committee and
2339 I appreciate all the effort that has gone into all of the attention
2340 that we are putting forth to health care both at the staff level
2341 and at the member level and certainly for the advocates in the
2342 community as well.

2343 Thank you so much for your diverse perspectives on what is
2344 important to the health and well-being of all Americans.

2345 I think while the legal arguments and implications of this
2346 case are important, I want to take a few minutes to focus on the
2347 very personal threats posed by these attacks to the Affordable
2348 Care Act.

2349 This ruling, if upheld, would take away health care for tens
2350 of millions of Americans, including our most vulnerable,
2351 especially children and seniors. They are especially at risk
2352 and people with preexisting conditions, we would see them just
2353 be dropped from the ability to get health care.

2354 For some of us, this is literally a death -- life and death
2355 situation and, as lawmakers, I hope that we don't lose sight of
2356 the fact of how critical this is, and as the lawmakers for this
2357 country I hope that we can move expeditiously with making sure
2358 that we can figure out a way to not allow the courts to determine
2359 the future and the fate of millions of Americans when it comes
2360 to their health care and health care access.

2361 Also, I want to thank everybody who is here today, and also

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2362 the court's ruling would ideologically and politically, you know,
2363 follow through with the motivation that I believe close to 70
2364 times or so in this Congress there was an effort to end it, not
2365 mend it, when it comes to the Affordable Care Act and I think
2366 it is inappropriate for us to look at in such a black and white
2367 manner.

2368 There are cause and effects should the Affordable Care Act
2369 go away. I happen to be personally one of those individuals that
2370 through a portion of my childhood did not have true access to
2371 health care and it's the kind of thing that no parent should go
2372 through and the kind of situation that no American should ever
2373 have to contemplate, waiting until that dire moment where you
2374 have to go to the emergency instead of just looking forward to
2375 the opportunity to, you know, sticking out your tongue and asking
2376 the doctor questions and they ask you questions and they find
2377 out what is or is not wrong, and that is the kind of America that
2378 used to be.

2379 And since the Affordable Care Act, imperfect as it is, that
2380 is not the America of today. The America of today means that
2381 if a young child has asthma, that family can in fact find a way
2382 to get an equal policy of health care just like their neighbor
2383 who doesn't have a family member with a preexisting condition.

2384 So with that, I would like to, with the short balance of
2385 my time, ask Ms. Hung could you please expand on the uncertainty
2386 that you have already described that your family would face should

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2387 this court decision end the Affordable Care Act as we know it?

2388 And then also could you please share with us, are you speaking
2389 only for you and your family or is this something that perhaps
2390 hundreds of thousands if not more American families would suffer
2391 that fate that you are describing?

2392 Ms. Hung. Thank you. I am here on behalf of many families
2393 like mine. The Little Lobbyists families are families with --
2394 Mr. Cardenas. Dozens or thousands?

2395 Ms. Hung. Thousands, across the country. Families with
2396 children with complex medical needs and disabilities, and these
2397 protections that we are talking about today they are not just
2398 for these children. They are for everyone. They are for
2399 everybody. Any one of us could suddenly become sick or disabled
2400 with no notice whatsoever. Any one of us could go suddenly from
2401 healthy to unhealthy with no notice and have a preexisting
2402 condition. An accident could happen, a cancer diagnosis, a sick
2403 child.

2404 There is no shame in being sick. There is no shame in being
2405 disabled. Let us not penalize that. There is not shame in
2406 Xiomara needing a ventilator to breathe or needing a wheelchair
2407 to go to the playground.

2408 But there is shame in allowing insurance companies to charge
2409 her more money just because of it, more for her care, and there
2410 is shame in allowing families like mine to file for bankruptcy
2411 because we can't afford to care for our children.

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2412 It is that uncertainty that is being taken away or at risk
2413 right now. Our families are constantly thinking about that while
2414 we are at our children's bedside.

2415 Mr. Cardenas. I just want to state with the balance of my
2416 time that this court case could be the most destructive thing
2417 that could have ever happened in American history when it comes
2418 to the life and well-being of American citizens.

2419 I yield back the balance of my time.

2420 Ms. Eshoo. I thank the gentleman.

2421 I now would like to recognize my friend from Florida, Mr.
2422 Bilirakis.

2423 Mr. Bilirakis. Thank you, Madam Chair, and congratulations
2424 on chairing the best subcommittee in Congress, that's for sure
2425 -- the most important.

2426 Ms. Eshoo. Oh, thank you.

2427 Mr. Bilirakis. Mr. Miller, the Texas court decision hinges
2428 on the individual mandate being reduced to zero in the law. Can
2429 you explain the court's reasoning in their decision?

2430 Mr. Miller. Well, I mean, we have to go back to a lot of
2431 convoluted reasoning in prior decisions in order to get there.

2432 So this is a legacy of trying to save the Affordable Care Act
2433 by any means possible and it gets you into a little bit of a bizarre
2434 world.

2435 But if you take the previous opinions at their face -- it
2436 was somewhat of a majority of one by Chief Justice Roberts --

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2437 he basically saved the ACA, which otherwise would have gone down
2438 before any of this was implemented, by having a construction which
2439 said, I found out it is a tax after all, and he had three elements
2440 as to what that tax was.

2441 The problem is once you put the percentage of zero and the
2442 dollar amount at zero, it is not a tax anymore. It is not bringing
2443 in revenue. You don't pay for it in the year you file your taxes.
2444 It is not calculated the way taxes are.

2445 So that previous construction, if you just look in a literal
2446 way at the law, doesn't hold anymore. What we do about it is
2447 another issue beyond that. But on the merits, we have got a
2448 constitutional problem and in that sense that court decision was
2449 accurate. People then say, what do you -- where do you go next
2450 and that is the mess we are in.

2451 Mr. Bilirakis. Yes. Could legislation be passed that
2452 would address the court's concern such as reimposing the
2453 individual mandate?

2454 Mr. Miller. All kinds of legislation. You are open for
2455 business every day. But sometimes business doesn't get conducted
2456 successfully. There are a wide range of things that I can imagine
2457 and you can imagine that would deal with this in either direction.

2458 You have to pass something. What we are doing is we are
2459 passing the buck. We are trying to uphold some odd contraption,
2460 which is the only one we have got, as opposed to taking some new
2461 votes and saying, what are you in favor of and what are you against

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2462 and be accountable for it and build a better system.

2463 Mr. Bilirakis. Thank you.

2464 Mr. Roy, you have written extensively on how to build a better
2465 health care system. The goal of the individual mandate, when
2466 the Democrats -- now the majority party -- passed the ACA, was
2467 to create a penalty to really force people to buy insurance.

2468 Are there alternative ways to provide high-quality insurance
2469 at low prices without a punitive individual mandate?

2470 Mr. Roy. Absolutely. So as we have discussed already and
2471 I know you haven't necessarily been here for some of that
2472 discussion, simply the fact that there is a limited open
2473 enrollment period in the ACA prevents the gaming of jumping in
2474 and out of the system and that is a standard practice with
2475 employer-based insurance. It is a standard practice in the
2476 private sector parts of Medicare. That is a key element.

2477 Another key element is to reform the age bands -- the 3 to
2478 1 age bands in the ACA -- because that actually is the primary
2479 driver of healthy and particularly younger people dropping out
2480 of the market.

2481 Another key piece is to actually lower, of course, the
2482 underlying cost of health care so that premiums will go down and
2483 making sure that the structure of the financial assistance that
2484 you provide to lower income people actually matches up with the
2485 premium costs that are affordable to them.

2486 And a big part of it is, again, making the insurance product

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2487 a little bit more flexible so plans have the room to innovate
2488 and make insurance coverage less expensive than it is today.

2489 Mr. Bilirakis. All right. Thank you very much.

2490 I yield back, Madam Chair, the rest of my time.

2491 Ms. Eshoo. Thank you, Mr. Bilirakis.

2492 I now would like to recognize the gentleman from Oregon,
2493 Mr. Schrader.

2494 Mr. Schrader. Thank you, Madam Chair. I appreciate that.

2495 I think sometimes we forget that the ACA was a response to
2496 a bipartisan concern about the construction of the health care
2497 marketplace prior to the ACA.

2498 It was a pretty universal opinion, not a partisan issue,
2499 that health care costs were completely out of control. Whether
2500 you were upper middle class or low income or extremely wealthy,
2501 it was -- it was unsustainable.

2502 And the ACA may not be perfect but, as pointed out at the
2503 hearings, it gave millions of Americans health care that didn't
2504 have it before. It started to begin the discussion that we are
2505 talking about here -- how do you create universal access in an
2506 affordable way to every American.

2507 Certainly, I am one of the folks that believe health care
2508 is a right, not a privilege, in the greatest country in the world.

2509 We are discussing about different ways to get at it.

2510 I think one of the most important things that doesn't get
2511 talked about a lot is the importance of the essential health

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2512 benefits. It gets demonized because, well, geez, I am not a woman
2513 so I shouldn't have to pay for maternity -- you know, I am
2514 invincible -- I am never really going to get sick so I don't need
2515 to pay for, you know, emergency health care.

2516 Those things are ancillary. I guess, Ms. Young, talk to
2517 us a little bit about why the essential health benefits are part
2518 of the Affordable Care Act, and there have been some attempts
2519 by the administration and different members not, I think,
2520 realizing how important they are with these often, you know,
2521 cheaper plans. Just get the cost down -- they are ignoring maybe
2522 the health aspects of that. Could you talk a little bit about
2523 that?

2524 Ms. Young. Absolutely.

2525 Prior to the Affordable Care Act, insurers could choose what
2526 benefits they were going to place in their -- in their benefit
2527 policies.

2528 The Affordable Care Act essential health benefit
2529 requirements require that all insurers in the individual and small
2530 group markets cover a core set of 10 benefits -- things like
2531 hospitalizations and doctors visits as well as maternity care,
2532 mental health and substance use disorder, prescription drugs,
2533 outpatient services.

2534 So, really, ensuring that the insurance that people are
2535 buying offers a robust set of benefits that provides them
2536 meaningful protection if they get sick.

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2537 If you return to a universe where an issuer can choose what
2538 benefits they are going to put inside of a policy, you could have
2539 an insurance benefit that, for example, excludes coverage for
2540 cancer services and another policy that excludes coverage for
2541 mental health needs and one that excludes coverage for a
2542 particular kind of drug.

2543 Mr. Schrader. And that might be in the fine print and people
2544 may not realize that as they sign up for policies.

2545 Ms. Young. That is correct, yes. So it would require
2546 consumers to really pile through the insurance -- different
2547 policies to understand what they were buying.

2548 It also provides a back door path to underwriting because
2549 insurers, for example, that exclude coverage for cancer from their
2550 benefit won't attract any consumers who have a history of cancer
2551 who need -- who have reason to believe that they may need cancer
2552 coverage.

2553 And so it really takes our insurance market from one that
2554 successfully pools together the healthy and the sick to one that
2555 becomes more fragmented.

2556 Mr. Schrader. Right. Well, and another piece of the
2557 Affordable Care Act that gets overlooked and, again, it has been
2558 alluded to by different members and some of you on the panel is
2559 the innovation, the flexibility -- I mean, the Center for Medical
2560 Innovation, the accountable care organizations.

2561 Instead of -- you know, it seems to me we are focused just

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2562 on cost -- how do I itemize this cost. We ask you guys these
2563 questions -- the rate bands and all that stuff. We should be
2564 concerned about health care.

2565 I mean, the goal here is to provide better health. It's
2566 not to support the insurance industry or my veterinary office
2567 or whoever. The goal is to provide better health care and the
2568 way you do that is by, I think, you know, having the experts in
2569 different communities figure out what is the best health care
2570 delivery system.

2571 Do you need more dentists in one community? Need more mental
2572 health experts in another community?

2573 I am very concerned that if the Affordable Care Act is undone
2574 that a lot of this innovation that has been spawned, the
2575 accountable care organizations that are going, you know, would
2576 begin to dissolve. There would be no framework for them to
2577 operate in.

2578 Just recently in Oregon, where I come from, we had a record
2579 number of organizations step up to participate in what we call
2580 our coordinated care organizations that deal with the Medicaid
2581 population and have over 24 different organizations vying for
2582 that book of business.

2583 Could you talk just real briefly -- I am sorry, time wise
2584 -- real briefly about, you know, what would happen if those all
2585 went away?

2586 Ms. Young. As you note, the Affordable Care Act introduced

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2587 a number of reforms and how Medicare pays to incentivize more
2588 value-based and coordinated care.

2589 If the district court's decision were to be upheld then the
2590 legislative basis for some of those programs would disappear and
2591 there would really be chaos in Medicare payment if that decision
2592 were upheld.

2593 Mr. Schrader. Okay. Thank you, and I yield back, Madam
2594 Chair.

2595 Ms. Eshoo. I thank the gentleman.

2596 I can't help but think that this was a very important exchange
2597 in your expressed viewpoints and counterpoint to Mr. Miller's
2598 description of the ACA as a odd contraption.

2599 I now would like to --

2600 Mr. Miller. I would respond on that if I had the
2601 opportunity.

2602 Ms. Eshoo. I am sure you would.

2603 Let us see who is next. Now I would like to recognize Mr.
2604 Carter from Georgia.

2605 Mr. Carter. Well, thank you, and thank all of you for being
2606 here. Very, very interesting subject matter that we have as our
2607 first hearing of the year. I find it very interesting.

2608 Mr. Miller, let me ask you, just to reiterate and make sure
2609 I understand. I am not a lawyer. I am a pharmacist, so I don't
2610 --

2611 Mr. Miller. Good for you.

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2612 Mr. Carter. Yes. I don't know much about law or lawyers
2613 and --

2614 Mr. Miller. It is a dangerous weapon.

2615 Mr. Carter. Well, let me ask you something. Right now,
2616 this court case, how many patients is it impacting?

2617 Mr. Miller. Well, people hypothetically might react
2618 thinking it is real, but otherwise, nobody.

2619 Mr. Carter. But it is my understanding it is still in
2620 litigation.

2621 Mr. Miller. Correct. Correct. And it is going to take
2622 a while and it is going to end up differently than where it starts.

2623 But we are doing this, you know, make believe because it scores
2624 a lot of points.

2625 Mr. Carter. Well, I -- make believe -- I mean, we are in
2626 Congress. We are not supposed to be make believe.

2627 Mr. Miller. Well --

2628 Mr. Carter. I mean, I am trying to understand why this is
2629 the first hearing. When it -- when it is not impacting a single
2630 patient at this time, it is still in litigation, we don't know
2631 how it is going to turn out, we don't know how long it is going
2632 to take. Judging by other court cases that we have seen, it may
2633 take a long, long time.

2634 Mr. Miller. Well, to be fair, I used to run hearings in
2635 Congress on staff.

2636 Mr. Carter. Well --

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2637 Mr. Miller. The majority can run any kind of hearing it
2638 wants to.

2639 Mr. Carter. -- we are not here to be fair. So anyway,
2640 I am trying to figure out why this is the first hearing. I mean,
2641 you know, earlier the chairman of the full committee berates our
2642 Republican leader because he asked for a hearing on something
2643 that he is opposed to and that I am opposed to, and I am just
2644 trying to figure it out.

2645 You know, one of the things that we do agree on is that
2646 preexisting conditions need to be covered. Isn't it possible
2647 for us to still be working on preexisting conditions now and
2648 legislating preexisting conditions while this is under
2649 litigation?

2650 Mr. Miller. What you need are majorities who are willing
2651 to either spend money --

2652 Mr. Carter. Well --

2653 Mr. Miller. -- change rules and move things around. But
2654 that has been hard for Congress to do.

2655 Mr. Carter. Well, I think that the record will show that,
2656 you know, the first -- one of the first bills that the -- that
2657 we proposed in the Republican Party was in -- in the Republican
2658 conference was for preexisting conditions -- Chairman Walden.
2659 In fact, I know he did because I cosponsored it.

2660 Mr. Miller. Mm-hmm. Yes. It was one of the more thorough
2661 ones, actually.

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2662 Mr. Carter. It is something that we have -- we have
2663 concentrated on that. So thank you for that. I just want to
2664 make sure.

2665 Mr. Roy, I want to ask you, didn't you -- did you testify
2666 before the Oversight Committee recently?

2667 Mr. Roy. Last week, yes.

2668 Mr. Carter. What were -- what were they talking about in
2669 the Oversight Committee? What were you testifying about?

2670 Mr. Roy. Prescription drug prices. The high cost of
2671 prescription drugs.

2672 Mr. Carter. Prescription drugs. Go figure. Here we are
2673 in the committee and the subcommittee with the most jurisdiction
2674 over health care issues and Oversight has already addressed
2675 prescription drug pricing?

2676 Mr. Roy. Well, you have two years in this committee and
2677 I look forward to hopefully being invited to talk --

2678 Mr. Carter. Well, I do too. I am just baffled by the fact
2679 that, you know, drug pricing is one of the issues -- is the issue
2680 that most citizens when polled identify as being something that
2681 Congress needs to be active on and I am just trying to figure.

2682 In Oversight they have already addressed it.

2683 Mr. Roy. You know, one thing I will say about this topic,
2684 Mr. Carter, is that it is one of the real opportunities for
2685 bipartisan policy in this Congress. We have a Republican
2686 administration and a Democratic House where there has been a lot

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2687 of interest in reducing the cost of prescription drugs and I am
2688 optimistic that we really have an opportunity here to get
2689 legislation through Congress.

2690 Mr. Carter. And I thank you for bringing that up because
2691 Representative Schrader and I have already cosponsored a bill
2692 to stop what I think is the gaming of the system of the generic
2693 manufacturers and the brand name manufacturers of what they are
2694 doing in delaying generic products to get onto the market.

2695 So, Madam Chair, I am just wondering when are we going to
2696 have --

2697 Ms. Eshoo. Gentleman yield? Would the gentleman yield?

2698 Mr. Carter. And if I could ask a question.

2699 Ms. Eshoo. Mm-hmm.

2700 Mr. Carter. When are we going to have a hearing on
2701 prescription drug costs?

2702 Ms. Eshoo. I can't give you the date. But it is one of
2703 the top priorities of the majority. It is one of the issues that
2704 we ran on with the promise to lower drug -- prescription drug
2705 prices. I believe that there is a partisan appetite -- bipartisan
2706 appetite for this and we will have hearings and we will address
2707 it and we welcome your participation.

2708 Mr. Carter. Well, reclaiming my time. I appreciate that
2709 very much, Madam Chair, because it is a pressing issue and it
2710 is an issue that needs to be addressed now and today, unlike what
2711 we are discussing here today that is not impacting one single

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2712 person at this point.

2713 So, you know, with all due respect, Madam Chair, I hope that
2714 we can get to prescription drug pricing ASAP because it is
2715 something that we need to be and that we are working on.

2716 And, Mr. Roy, you could not be more correct -- this is a
2717 bipartisan issue. I practiced pharmacy for over 30 years. Never
2718 did I once see someone say, oh, this is the price for the Democrat
2719 -- this is the price for the Republican -- this is the price for
2720 this person and that person. It was always the same. It was
2721 always high. That is why we need to be addressing this.

2722 So I thank you for being here. I thank all of you for being
2723 here and, Madam Chair, I yield back.

2724 Ms. Eshoo. I thank the gentleman.

2725 I now would like to recognize a new member of the
2726 subcommittee, Ms. Barragan from California. Welcome.

2727 Ms. Barragan. I thank you. Thank you, Ms. Chairwoman.

2728 My friend from Georgia asked why we are having this as the
2729 first hearing and I just have to say something because, you know,
2730 I am in my second term and in my first term when the Republicans
2731 were in the majority they spent all of their time trying to take
2732 away health care coverage for millions of Americans.

2733 They talk about preexisting conditions and talk about saving
2734 people with preexisting conditions. But this very lawsuit is
2735 going to put those people at stake.

2736 So why are we having this hearing? Well, because you guys

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2737 have been working to take away these coverages and we are trying
2738 to highlight the importance of this lawsuit.

2739 Now, you had two years and, yes, you could have started with
2740 prescription drug prices and reducing those and that wasn't done.

2741 So you are darn right the Democrats are going to take it up.

2742

2743 You are darn right that we are going to have hearings on
2744 this and I am proud to say that our chairwoman and our chairman
2745 have been working hard to making sure we are going to work to
2746 bring down prescription drug prices. But the hypocrisy that I
2747 hear on the other side of the aisle can't just go -- just completely
2748 unanswered in silence.

2749 So, with that said, I am going to move on to what my comments
2750 have been. I want to thank you all for your testimony here today.

2751 It has been really helpful to hear us understand the potentially
2752 devastating impact of this lawsuit and of the district court's
2753 decision.

2754 The court's decision would not only eliminate for
2755 preexisting conditions but would also adversely impact the
2756 Medicaid program and end the Medicaid expansion.

2757 Now, the Affordable Care Act's expansion of Medicaid filled
2758 a major gap in insurance coverage and resulted in 13 million more
2759 Americans having access to care.

2760 I represent a district that is a majority minority -- about
2761 88 percent black and brown people of color and, you know, black

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2762 and brown Americans still have some of the highest uninsured rates
2763 in the country. Both groups have seen their uninsured numbers
2764 fall dramatically with the ACA. You know, between 2013 and 2016,
2765 more than 4 million Latinos and 1.9 million blacks have secured
2766 affordable health coverage. Ultimately, black and brown
2767 Americans have benefitted the most from the ACA's Medicaid
2768 expansion program.

2769 Ms. Young, I would like to ask can you briefly summarize
2770 the impact of the lawsuit on Medicaid beneficiaries and, in
2771 particular, the expansion population?

2772 Ms. Young. Medicaid expansion is, as you note, a very
2773 important part of the Affordable Care Act's coverage expansion
2774 and it is benefitting millions of people in the 37 states that
2775 have expanded or are in the process of expanding this year.

2776 Medicaid expansion has been associated with better financial
2777 security and failure to expand is associated with higher rates
2778 of rural hospital closures and other difficult impacts in
2779 communities.

2780 If this decision were to be upheld, then the federal funding
2781 for Medicaid expansion would no longer be provided and states
2782 would be -- would only be able to receive their normal match rate
2783 for covering the population that is currently covered through
2784 expansion. That is an impact of billions of dollars across the
2785 country and a very large impact in individual states.

2786 States will have the choice between somehow finding state

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2787 money to make up that gap or ending the expansion and removing
2788 those people from the Medicaid rolls or potentially cutting
2789 provider rates or making other changes in the benefit package
2790 or some combination.

2791 So you are looking at a potentially loss of -- see very
2792 significant losses of coverage in that group as well as an
2793 additional squeeze on providers.

2794 Ms. Barragan. Thank you.

2795 Ms. Hung, how has Medicaid helped your family afford
2796 treatment and why is Medicaid and Medicaid expansion so important
2797 for children with complex medical needs and their families?

2798 Ms. Hung. Medicaid is a lifesaving program. I say this
2799 without exaggeration. Medicaid is the difference between life
2800 and death. It covers what health insurance doesn't cover for
2801 a lot of children with complex medical needs.

2802 Notably, it covers long-term services and supports including
2803 home and community-based services that enable children's
2804 independence. For a lot of families who do have health insurance
2805 like mine, health insurance doesn't really cover certain DME --
2806 durable medical equipment -- certain specialists, the ability
2807 to go out of state.

2808 And so that is the difference for a lot of our families.

2809 Ms. Barragan. Great. Well, thank you all. I yield back.

2810 Ms. Eshoo. Thank you very much.

2811 Now, the patient gentleman from Montana, Mr. Gianforte.

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2812 Mr. Gianforte. Thank you, Madam Chair, and thank you to
2813 the panelists for your testimony today.

2814 Every day I hear from Montanans who ask me why their health
2815 care costs keep going up and continue to increase while their
2816 coverage seems to shrink at the same time.

2817 While we look for long-term solutions to make health care
2818 costs more affordable and accessible, I remain firmly committed
2819 to protecting those with preexisting conditions.

2820 In fact, I don't know anyone on this committee, Republican
2821 or Democrat, who doesn't want to protect patients with preexisting
2822 conditions. Insuring Americans with preexisting conditions can
2823 keep their health insurance and access care is not controversial.

2824 It shouldn't be -- we all agree on it -- which brings us
2825 to today. In the ruling in *Texas v. Azar*, it has not ended
2826 Obamacare. It hasn't stripped coverage of preexisting
2827 conditions and it hasn't impacted 2019 premiums.

2828 While we sit here today talking about it, the Speaker has
2829 moved to intervene in the case and the judge ruling has been
2830 appealed. The case is working itself through the courts.

2831 We could have settled this with a legislative solution less
2832 than a month ago. One of the earliest votes we took in this
2833 Congress was to lock in protection for patients with preexisting
2834 conditions.

2835 Unfortunately, Democrats rejected that measure. And yet,
2836 here we are in full political theater talking about something

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2837 we all agree on -- protecting Americans with preexisting
2838 conditions.

2839 We should be focused instead on the rising cost of
2840 prescription drugs, telehealth, rural access to health care, and
2841 other measures to make health care more affordable and accessible.

2842 I hope this committee will hold hearings and take action
2843 on these issues important to hardworking Montanans. I can
2844 understand, however, why my friends on the other side of the aisle
2845 do not want to take that path.

2846 Some of their party's rising stars and other jockeying for
2847 Democratic nomination in 2020 have said we should do away with
2848 private insurance. They advocate for a so-called Medicare for
2849 all. In reality, Medicare for none.

2850 Their plan would gut Medicare and the VA as we know it, and
2851 force 225,000 Montanan seniors who rely on Medicare to the back
2852 of the line. Montana seniors have earned these benefits and
2853 lawmakers shouldn't undermine Medicare and threaten health care
2854 coverage for Montana seniors.

2855 Since we all agree we should protect patients with
2856 preexisting conditions, let us discuss our different ideas for
2857 making health care more affordable and accessible.

2858 We should put forward our ideas -- on the one hand, Medicare
2859 for all -- a government-run single payer health care system that
2860 ends employer-sponsored health plans -- on the other, a health
2861 insurance system that protects patients with preexisting

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2862 conditions, increases transparency, choice, and preserves rural
2863 access to care and lowers cost.

2864 I look forward to a constructive conversation about our
2865 diverging approaches to fixing our health care system. In the
2866 meantime, I would like to direct a question to Mr. Miller, if
2867 I could.

2868 Under Medicare for all, Mr. Miller, do you envision access
2869 to care would be affected for seniors and those with preexisting
2870 conditions in rural areas in particular?

2871 Mr. Miller. Well, that is a particular aspect. I think,
2872 in general, the world that seniors are currently used to would
2873 be downgraded. You are taking -- spreading the money a little
2874 wider and thinner in order to help some. This is the story of
2875 the ACA.

2876 We can create winners but we will also create losers. Now,
2877 the politics as to who you favor sort out differently in different
2878 folks. It is hard to get a balancing act where everybody comes
2879 out on top unless you make some harder decisions, which is to
2880 set priorities and understand where you need to subsidize and
2881 what you need to do to improve care and the health of people before
2882 they get sick.

2883 Mr. Gianforte. So it is your belief that if this Congress
2884 were to adopt a Medicare for all approach, seniors would be
2885 disadvantaged? They have -- it will be more difficult to access
2886 care?

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2887 Mr. Miller. They would be the first to be disadvantaged
2888 as well as those with employer-based coverage because -- if you
2889 swallowed it whole. I mean, there are lots of other problems
2890 Avik mentioned. It is not just the spending. It is actually
2891 the inefficiency of the tax extraction costs.

2892 When you run that much money through the government, you
2893 don't get what you think comes out of it.

2894 Mr. Gianforte. One other topic, quickly, if I could.
2895 Telehealth is very important in rural areas. It is really vital
2896 to patients in Montana. How do you see -- foresee telehealth
2897 services being affected under a single payer system?

2898 Mr. Miller. Well, Medicare has probably not been in the
2899 forefront of promoting telehealth. I think there is a lot more
2900 buzz about telehealth as a way to break down geographical barriers
2901 to care, to have more competitive markets.

2902 And so if past history is any guide of Medicare fee for
2903 service, it is not as welcoming to telehealth as private insurance
2904 would be.

2905 Mr. Gianforte. Okay. And I yield back.

2906 Ms. Eshoo. I thank the gentleman.

2907 I now would like to recognize the gentleman from Vermont,
2908 Mr. Welch.

2909 Mr. Welch. Thank you. I will be brief. Just a few
2910 comments.

2911 I think it is important that we had this hearing. It is

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2912 -- this did not come out of thin air. I mean, I was on the
2913 committee when we wrote the Affordable Care Act. Very
2914 contentious. It was a party line vote.

2915 I was on the committee when we repealed it -- this committee
2916 repealed the Affordable Care Act, and we never saw a bill. We
2917 never had a hearing.

2918 And now we have a continuation of this effort by the
2919 Republican attorneys general to attack it and we have the unusual
2920 decision by the administration where instead of defending a
2921 federal law they are opposing a federal law.

2922 So it is why I have been continuing to get so many letters
2923 from Vermonters who are fearful that this access to health care
2924 that they have is really in jeopardy.

2925 Loretta Heimbecker from Montgomery has a 21-year-old who
2926 is making \$11.50 an hour. He has got a medical condition from
2927 birth, and absent the access to health care he wouldn't be able
2928 to work and the mother would probably be broke.

2929 I have got a cancer patient, Kathleen Voigt Walsh from
2930 Jericho, who would not have access to the treatment she needs
2931 absent this. I mean, Ms. Hung, you really, in your own personal
2932 presentation, have explained why people who really need it would
2933 be scared if we lost it.

2934 And I also served in Congress when the essential agenda on
2935 the Republican side was to try to repeal it. I mean, it was a
2936 pretty weird place to be -- Congress -- when on a Friday afternoon

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2937 if there is nothing else to do we would put a bill on the floor
2938 to repeal health care for the sixtieth time. I mean, we are just
2939 banging our head against the wall.

2940 So thank you for having this hearing because I see it as
2941 a reassurance to a lot of people I represent that we mean business
2942 -- that we are going to defend what we have.

2943 Now, second, on some of the criticisms about this not being
2944 a hearing on prescription drugs, Mr. Roy, you were in -- did a
2945 great job helping us start the process in Oversight and Government
2946 Reform.

2947 But I know our chair of this subcommittee -- this is the
2948 committee where there is actual jurisdiction -- is totally
2949 committed to pursuing this and I thank -- I thank our chair.

2950 And I have been hearing very good things from President Trump
2951 about the need to do this. So my hope is that we are going to
2952 get a lot of Republican support to do practical things so we are
2953 not getting ripped off, as the president has said, by us paying
2954 the whole cost of research -- a lot of it, by the way, from
2955 taxpayers, not necessarily from the companies -- and have to pay
2956 the highest prices.

2957 So I am commenting and not asking questions. But I know
2958 that there has been extensive and excellent testimony. But I
2959 just want to say to the chair and I want to say to my colleagues,
2960 Republican and Democrat, if the net effect of this hearing is
2961 that we are affirming a bipartisan commitment not to mess with

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2962 the Affordable Care Act, then I am going to be able to reassure
2963 my constituents that their health care is safe.

2964 And if the criticism is essentially we have got to do more,
2965 we are ready to do more, right?

2966 Madam Chair, so I thank you for this hearing and I thank
2967 the witnesses for their excellent testimony and look forward to
2968 more down the line.

2969 Ms. Eshoo. I thank the gentleman for his comments and his
2970 enrichment of the work at this subcommittee. I think it is
2971 important to know that on the -- note that on the very first day
2972 of this Congress that House Democrats voted to intervene in this
2973 case -- the very first day of the Congress -- as it moves through
2974 appeal.

2975 So we are the ones that are representing the government,
2976 and I think that for my colleagues on the other side of the aisle
2977 you may not like my suggestion but if you are for all of these
2978 things that you are talking about, write to the attorneys general
2979 and the governors that were -- that brought the suit and say,
2980 we want it called off.

2981 We want to move on and strengthen the health care system
2982 in our country. You will find a partner in every single person
2983 on this side of the aisle.

2984 With that, I would like to recognize Mr. O'Halleran -- what
2985 state?

2986 Mr. Burgess. Arizona.

2987 Ms. Eshoo. Arizona -- from the great state of Arizona --
2988 who is, I believe, waiving on to the subcommittee, and we have
2989 a wonderful rule in the full committee that if you are not a member
2990 of a subcommittee you can still come and participate. But you
2991 are the last one to be called on. So thank you for your patience
2992 and thank you for caring and showing up.

2993 Mr. O'Halleran. I thank you, Madam Chair. I am also
2994 usually last in my house also to be called on.

2995 Thank you, Madam Chair. Although I am not a permanent member
2996 of the subcommittee, I appreciate your invitation for me to join
2997 you today to discuss this issue that is so critical to families
2998 across Arizona, and thank you to the witnesses.

2999 As some of you know, the district I represent is extremely
3000 large and diverse -- the size of Pennsylvania. Twelve
3001 federally-recognized tribes are in my district.

3002 Since I came to Congress two years ago, I have been focused
3003 on working across the aisle to solve health care issues. We face
3004 these issues together because it is one thing that I hear about
3005 every single corner of my rural district and one of the overriding
3006 issues in Congress.

3007 A district where hospitals and the jobs they provide are
3008 barely hanging on and where decades of toxic legacy of uranium
3009 mining has left thousands with exposure-related cancers across
3010 Indian country.

3011 A district where Medicaid expansion made the difference for

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3012 some veterans getting coverage, some hospitals keeping their
3013 doors open, where essential health benefits meant some struggling
3014 with opiate addiction could finally get substance abuse
3015 treatment.

3016 I am here because the lawsuit we are discussing today isn't
3017 about any of those policies and how they save taxpayer dollars
3018 and protect rural jobs. I am a former Republican state
3019 legislator. I know that this lawsuit is purely motivated not
3020 by what is best for the people we are representing but by politics.

3021 Ms. Young, I have three questions for you. The first is,
3022 the first letter I ever sent as a member of Congress was a
3023 bipartisan letter to congressional leadership about dangers of
3024 ACA repeal on the Indian Health Care Improvement Act, which was
3025 included in the ACA.

3026 Madam Chair, I ask unanimous consent to enter my letter into
3027 the record.

3028 Ms. Eshoo. So ordered.

3029 [The information follows:]

3030

3031 ***** COMMITTEE INSERT 7 *****

3032 Mr. O'Halleran. Ms. Young, can you describe what the fate
3033 of this law would be if this lawsuit succeeds and what it means
3034 for tribal communities?

3035 Ms. Young. The district court's opinion as written struck
3036 down the entire Affordable Care Act so it would -- even unrelated
3037 provisions like the Indian Health Care Improvement Act.

3038 So if the decision were upheld then the Indian Health Care
3039 Improvement Act would no longer have the force of law and the
3040 improvements included in that law like better integration with
3041 the Veterans Health Service and better integration for behavioral
3042 health and other core benefits for the Indian Health Service would
3043 be eliminated.

3044 Mr. O'Halleran. Thank you, Ms. Young.

3045 Are cancers caused by uranium exposure considered a
3046 preexisting condition?

3047 Ms. Young. I suspect that under most medical underwriting
3048 screens they would be, yes.

3049 Mr. O'Halleran. Thank you. And, Ms. Young, over 120 rural
3050 hospitals have closed since 2005. Right now, 673 additional
3051 facilities are vulnerable and could close. That is more than
3052 a third of rural hospitals in the United States.

3053 If this lawsuit succeeds, do you anticipate rural hospitals
3054 and the jobs they provide would be endangered as a result of fewer
3055 people having health coverage?

3056 Ms. Young. As you know, rural hospitals face a number of

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3057 challenges and a number of difficult pressures. There has been
3058 research demonstrating that a state's failure to expand Medicaid
3059 is associated with higher rates of rural hospital closures. And
3060 so if funding for the federal -- the federal funding for Medicaid
3061 expansion were removed then it is likely that that would place
3062 additional stress on rural hospitals.

3063 Mr. O'Halleran. Thank you.

3064 Madam Chair, this is why last year I led the fight to urge
3065 my state's attorney general to drop this partisan lawsuit. So
3066 much is at stake in Arizona for veterans, the tribes, for jobs
3067 in rural communities like mine.

3068 I am interested in finding bipartisan solutions to the
3069 problems we have got and I will work with anyone here to do that.

3070 But this lawsuit doesn't take us in that direction. It takes
3071 us back, and my district can't afford that.

3072 Thank you, and I yield back.

3073 Ms. Eshoo. I thank the gentleman for making the time to
3074 be here and to not only make his statement but the -- ask the
3075 excellent questions that you have.

3076 At this time I want to remind members that pursuant to the
3077 committee rules they have 10 business days to submit additional
3078 information or questions for the record to be answered --

3079 Mr. Burgess. Madam Chair?

3080 Ms. Eshoo. Yes.

3081 Mr. Burgess. Could I seek recognition for a unanimous

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3082 consent request?

3083 Ms. Eshoo. Sure. Just a minute. Let me just finish this,
3084 all right?

3085 I want to remind members that pursuant to committee rules
3086 that members have 10 business days to submit additional questions
3087 for the record to be answered by the witnesses who have appeared
3088 and I ask each of the witnesses to respond promptly to any such
3089 questions, and I see your heads nodding so I am comforted by that,
3090 that these questions that you may receive.

3091 And I would recognize the ranking member and I also have
3092 a list of -- to request unanimous consent for the record.

3093 Mr. Burgess. Oh, I can go after you.

3094 Ms. Eshoo. Okay. The first, a statement for the record
3095 from the American Cancer Society, Cancer Action Network, and 33
3096 other patient and consumer advocacy organizations; a statement
3097 for the record from the American Academy of Family Physicians,
3098 a statement for the record from the American College of
3099 Physicians, the Wall Street Journal editorial, Texas Obamacare
3100 -- entitled "Texas Obamacare Blunder." I think that was
3101 referenced by Mr. Lazarus earlier today.

3102 Jonathan Adler and Abbe Gluck, New York Times op-ed entitled
3103 "What the Lawless Obamacare Ruling Means"; a brief of the amicus
3104 curiae from the American Medical Association, the American
3105 Academy of Family Physicians, the American College of Physicians,
3106 the American Academy of Pediatrics, and the American Academy of

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3107 Child and Adolescent Psychiatry.

3108 Isn't it extraordinary what we have in this country? Just
3109 the listing of these -- of these organizations.

3110 The U.S.A. Community Catalyst, the National Health Law
3111 Program, Center for Public Policy Priorities, and Center on Budget
3112 and Policy Priorities; the brief of the amicus curiae from the
3113 American Cancer Society, the Cancer Action Network, the American
3114 Diabetes Association, the American Heart Association, the
3115 American Lung Association, and National Multiple Sclerosis
3116 Society, supporting defendants, and a statement for the record
3117 from America's Health Insurance Plans.

3118 So I am asking unanimous -- a unanimous consent request to
3119 enter the following items in the record. I hear no objections
3120 and I will call on -- recognize the ranking member.

3121 [The information follows:]

3122

3123 ***** COMMITTEE INSERT 8 *****

3124 Mr. Burgess. Thank you, first off. Thank you for reminding
3125 me why I have not yet paid my AMA dues this year.

3126 [Laughter.]

3127 Mr. Burgess. I have a unanimous consent request. I would
3128 ask unanimous consent to place into the record the letter that
3129 was sent by Mr. Walden and myself regarding the Medicare for all
3130 hearing.

3131 Ms. Eshoo. No objection.

3132 [The information follows:]

3133

3134 ***** COMMITTEE INSERT 9 *****

3135 Ms. Eshoo. The only request that I would make is that maybe
3136 on your email mailing list that when you notify the chairman of
3137 the full committee that maybe my office can be notified as well.

3138 Mr. Burgess. Welcome to the world that I inhabited two years
3139 ago.

3140 Ms. Eshoo. That's why I think you will understand.

3141 Mr. Burgess. I never found -- I never found out until after
3142 the fact.

3143 Ms. Eshoo. Right. Right.

3144 Mr. Burgess. But I would take that up with your full
3145 committee chair. I am sure they will recognize the importance
3146 of including you in the email distribution list.

3147 Ms. Eshoo. I thank the gentleman.

3148 Let me just thank the witnesses. You have been here for
3149 almost three hours. We thank you for not only traveling to be
3150 here but for the work that you do that brings you here as witnesses.

3151 Dr. -- Mr. Lazarus says he is retired but he brings with
3152 him decades of experience. We appreciate it. To each witness,
3153 whether you were -- you are a majority or minority witness, we
3154 thank you, and do get a prompt reply to the questions because
3155 members really benefit for that.

3156 So our collective thanks to you and to Ms. Hung, what a
3157 beautiful mother. You brought it all. I am glad that you are
3158 sitting in the center of the table because you centered it all
3159 with your comments.

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3160 So with that, I will adjourn this subcommittee's hearing
3161 today.

3162 Thank you.

3163 [Whereupon, at 1:03 p.m., the committee was adjourned.]

3164