



MEMORANDUM

Date: February 15, 2019

To: Residential Eating Disorders Consortium

From: Center Road Solutions

RE: House Energy & Commerce Committee Hearing: Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing Conditions

On February 6, the House Energy and Commerce Health Subcommittee held a hearing entitled, “Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing Conditions” which is one of several hearings held on the fate of the Affordable Care Act (ACA) by House Democrats.

Key Takeaways:

- Unanimous agreement from panel testimony that the lawsuit is more than likely to be overturned on appeal
- Congressional action to restore the individual mandate is always an option
- Republicans and conservative panelists agreed that Medicare for All is unworkable. The current health care system is broken and solutions to address hospital costs and drug costs must be addressed

Hearing Summary/Opening Statements:

(Subcommittee Chairwoman) Representative Anna Eshoo (D-CA):

- On the very first day of this Congress, House Democrats voted to intervene in the Texas vs. United States case as it moves through appeal. The House of Representatives will now represent the government in this case to defend and uphold the ACA, because this Administration refused to do so.
- In the Majority’s work to defend and strengthen the ACA, this Subcommittee will explore how the Trump Administration’s junk insurance plans are affecting the individual insurance market and harming people with preexisting conditions.

(Subcommittee Ranking Member) Representative Michael Burgess (R-TX):

- As a federal employee on the ACA, I purchased a bronze plan and did not want to access health care because my deductible was so high.
- For those who are not subsidized on the ACA marketplace, health care has become unaffordable.
- I’m disappointed that we are not discussing legislation that would address way to make health affordable for Americans today.

(Chairman) Representative Frank Pallone (D-NJ):

- I have to respectfully push back on Rep. Burgess’ statements as he was Chairman of this subcommittee last year and did nothing to address the ACA or improve the law.
- I had Ranking Members of this committee send me a letter requesting a hearing on Medicare for All when you know it is something you oppose is unheard of. The cynicism that this request comes with is completely inappropriate.

(Ranking Member) Representative Greg Walden (R-OR):

- Given we are the jurisdiction that handles Medicare for All, we need to have hearing on this because this is something Democrats run on during election season. Americans deserve to know what will happen to their health care whether they currently rely on the VA, HIS or Medicare for their insurance coverage.

Witnesses:

Christen Linke Young, J.D., Fellow, USC-Brookings Schaeffer Initiative on Health Policy ([testimony](#))

- The position of the state attorneys general would wreak havoc on Americans through the removal of pre-existing protections conditions, financial assistance for individuals and families purchasing coverage and funding for states’ Medicaid expansions.
- The Congressional Budget Office has estimated that repeal of the ACA would result in as many 24 million additional uninsured Americans.

- Importantly, the impact would extend far beyond Medicaid and the individual market. The ACA’s consumer protections for employer-based coverage.
- ACA’s changes to Medicare would be undone, reinstating copays on preventive services and re-opening the prescription drug “donut hole.”

Avik Roy, President, The Foundation for Research on Equal Opportunity ([testimony](#))

- It is simply not correct that the individual mandate is necessary for the proper functioning of the ACA’s policies meant to benefit those with pre-existing conditions, for several reasons:
 - Individual mandate is too weak to dissuade healthy individuals from purchasing costly coverage. Before repeal, many individuals were exempt from the mandate on income or affordability criteria.
 - A limited enrollment period has done far more to prevent gaming of the system than has the ACA’s weak individual mandate.
 - Skyrocketing premiums under the ACA are not a result of the ACA’s protections for those with pre-existing conditions. Rather, it is 1) community rating by age, which requires insurers to overcharge the young; 2) eliminating low-premium plans with an actuarial value below 60%.

Elena Hung, Co-founder of Little Lobbyists ([testimony](#))

- Mother of a child with a medically complex child and terrified what the lawsuit may mean for her child.
- Hung co-founded the Little Lobbyists—a group of families with medically complex children—because their stories need to be told and heard alongside the data and numbers and policy analysis.
- Hung depends upon the pre-existing conditions that the ACA provides for her daughter’s ten pre-existing conditions without penalty.

Thomas Miller, J.D., Resident Fellow in Health Policy Studies, American Enterprise Institute ([testimony](#))

- If the Supreme Court would accept this case, it is hard to envision such a matter being scheduled for oral argument before early 2020.
- The many shortcomings of the ACA as enacted and implemented persist, and the path to better alternatives remains obstructed, if not increasingly abandoned.
- On Capitol Hill, we are far better at defending or attacking the ACA in more of a continuous loop than we are at fixing it constructively.

Simon Lazarus, J.D., Retired, Constitutional Accountability Center ([testimony](#))

- Judge O’Connor’s edict so egregiously flouts applicable law and societal exigencies, that, as the *Wall Street Journal* editorialized, while “No one opposes Obamacare more than we do,” the decision “is likely to be overturned on appeal and may boomerang politically on Republicans.”
- Judge O’Connor’s acceptance of the thin legal cover fabricated to support ACA repeal should and likely will be given short shrift before the appeals process has run its course.

Q&A Session:

- **Subcommittee Health Chairwoman Eshoo (D-CA):** Mr. Lazarus, is your testimony telling us we should not be concerned about the possibility of ACA repeal through this lawsuit?
 - **Mr. Lazarus:** Every person on this panel has agreed that this lawsuit isn’t going anywhere and will be overturned on appeal. It doesn’t mean there isn’t a dagger pointed at the heart of our health care system hasn’t caused massive uncertainty.
- **Energy & Commerce Ranking Member Walden (R-CA):** Mr. Roy, I’m concerned about Medicare for All and the effects it will have on American’s timeliness to accessing health care and what it will do to the Medicare Trust Fund. Would you like to opine on that here?
 - **Mr. Roy:** Financially speaking, Medicare for All is unworkable as it would increase federal spending somewhere between \$28-\$38 trillion dollars in a 10-year period.
- **Rep. H. Morgan Griffith (R-VA):** I agree that clear disclosure of what short-term plans don’t cover should be a part of these plans. Mr. Roy, do you agree clear disclosure should be a part of short-term plans.
 - **Mr. Roy:** Yes, I think disclosure between short-term plans versus ACA-compliant plans is fine. However, I do think consumers know the difference if they’re shopping for a plan off the ACA marketplace.