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[Correct title in bold below]

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

[Wrong title below; Appropriations Subcommittee hearing title]

~~IMPACT OF THE ADMINISTRATION'S POLICIES AFFECTING THE AFFORDABLE CARE ACT~~

WEDNESDAY, FEBRUARY 6, 2019

House of Representatives

Subcommittee on Health

Committee on Energy and Commerce

Washington, D.C.

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

Members present: Representatives Eshoo, Butterfield, Matsui, Castor, Lujan, Schrader, Cardenas, Ruiz, Veasey, Kuster, Kelly, Barragan, Blunt Rochester, O'Halleran, Rush, Pallone [ex officio], Burgess, Upton, Guthrie, Griffith, Bilirakis, Bucshon, Brooks, Mullin, Hudson, Carter, and Walden [ex officio].

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

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

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

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

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

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

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

We are beginning the Health Subcommittee's work by discussing the *Texas v. Unites States* lawsuit and its implications

for the entire health care system both public and private.

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

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

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

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

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

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

Judge O'Connor's ruling.

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

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

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

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

I am going to stop here and I am going to yield the rest of my time to Mr. Butterfield.

Mr. Butterfield. Thank you, Chairwoman Eshoo, for holding this very important hearing the absolute importance of the

Affordable Care Act and thank you for giving us an opportunity to expose the poorly written Texas case.

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

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

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

Thank you for the time. I yield back.

Ms. Eshoo. I thank the gentleman.

Next week -- I just want to announce this -- our subcommittee is going to explore specific legislation to reverse the administration's actions to expand the skinny plans -- the junk insurance plans -- and we are also going to discuss legislation that would restore outreach in enrollment funding that has been slashed by the administration so we can ensure that health care is more affordable and accessible for all Americans.

We want to thank the witnesses that are here today. Welcome

to you. We look forward to hearing your testimony, and now I would like to recognize Dr. Burgess, the ranking member of the Subcommittee on Health, for five minutes for his opening statement.

Mr. Burgess. Thank you, Chairwoman Eshoo.

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

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

I want to thank our witnesses all for joining us this morning. We are here to discuss the issue of protecting access to health care for individuals with preexisting medical conditions in addition to the *Texas v. Azar* case.

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

I am glad we are holding our first hearing of the year. It is the end of the first week of February. So it is high time that we do this. It is unfortunate we are having a hearing that actually doesn't move toward the development of any policies that

actually would improve health care for Americans.

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

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

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

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

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

So they buy a bronze plan because, like everybody, they buy

on price so that is the least expensive thing that is available to them and then they are scared to death that they will have to use it because the deductible is so high.

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

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

Look, if you believe in Medicare for all, if you believe in a single-payer government-run one-size-fits-all health system, let us have a hearing right here in this subcommittee. We are the authorizing committee. That is our job.

Instead, we have the House Budget Committee holding those hearings and Democrats on that committee are introducing legislation. But these bills belong in the jurisdiction of the Energy and Commerce Committee, and yet we have not scheduled a hearing to discuss this agenda.

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

mean for the American people.

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

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

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

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

Since President Trump took office, the number of Americans in employer health coverage has increased by over 22 million. Given that the United States economy added more than 300,000 jobs in January, the number of individuals and families covered by employer-sponsored plans is likely even greater still.

Instead of building upon the success of our existing health insurance framework, radical single-payer government-run Medicare would tear it down. It would eliminate the

employer-sponsored health insurance, private health insurance, Indian health insurance, and make inroads against taking away the VA.

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

Thank you, I yield back.

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

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

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

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

Ms. Eshoo. Mm-hmm.

Mr. Burgess. I actually rejected the special deal that members of Congress got several years ago when we were required

to take insurance under the Affordable Care Act and we all were required to join the D.C. exchange.

But we were given a large tax-free monthly subsidy to walk into that exchange. I thought that was illegal under the law. I did not take that. I bought a bronze plan -- an unsubsidized bronze plan at healthcare.gov, the most miserable experience I have ever been through in my life.

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

I yield back.

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

And now I would like to recognize the chairman of the full committee, Mr. Pallone, who asked -- who requested that this hearing be the first one to be taken up by the subcommittee on Texas -- the Texas law case, and I call on the gentleman to make his statement.

Good morning to you.

The Chairman. Thank you.

Ms. Eshoo. You just shut it off.

The Chairman. I did.

Ms. Eshoo. There you go.

The Chairman. Thank you, Madam Chair, and thank you for all you have done over the years to help people get health

insurance, to expand insurance, to address the price of prescription drugs and so many other things and is glad to see you in the chair of this subcommittee hearing.

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

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

I have had so many meetings where I saw you come in and take out your copy of the hearings on the Affordable Care Act and repeatedly tell us that the Affordable Care Act was bad law, terrible law, it needs to be repealed.

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

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

You found this, you know, right-wing judge somewhere in Texas -- I love the state of Texas but I don't know where you found him -- and he -- and you did forum shopping to find him, and we

know his opinion is going to be overturned.

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

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

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

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

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

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

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

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

We will do that. But talk about the Indian Health service -- you did nothing to improve the Indian Health Service. And I am not -- am I not suggesting that wasn't true for the gentleman of Oklahoma. He was very sympathetic.

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

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

When do -- when does a member of Congress, let alone the chairman or the ranking member, I guess, in this case, ask for a hearing on something that they oppose? I ask for hearings on

things that I wanted to happen, like climate change and addressing climate change.

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

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

But the cynicism of it all -- the cynicism of coming here and suggesting that somehow you want -- you have solutions? You have no solutions. I am more than willing to work with you. I am sure the ranking -- that Chairman Eshoo is willing to as well.

But don't tell us that you had solutions. You did not and you continue not to have solutions. And I am sorry to begin the day this way but I have no choice after what you said. I mean, it is just not -- it is just not -- it is disingenuous.

Thank you, Madam Chairwoman.

Ms. Eshoo. Thank you.

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

Mr. Walden. Good morning.

Ms. Eshoo. The ranking member of the full committee, my friend, Mr. Walden.

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

taking over the subcommittee.

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

Mr. Walden. I always enjoyed working with you on telecommunications issues and I know you will do a fine job leading this subcommittee.

Ms. Eshoo. Thank you.

Mr. Walden. I look forward to working with you. As we -- I cannot help but respond a bit. I do wish we were meeting to pass bipartisan legislation and protect Americans with preexisting health conditions from losing their coverage, given the pending court case, and let me speak on behalf of Republicans because we fully support protecting Americans with preexisting conditions.

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

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

Unfortunately, that went down on a party line vote. Our amendment was consistent with our long-held views with respect to the American Health Care Act, which our Democratic colleagues,

frankly, in some cases, continued to misrepresent.

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

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

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

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

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

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

well.

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

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

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

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

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

A majority of House Democrats supported Medicare for all

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT OF MS. YOUNG

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

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

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

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

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

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

Ms. Young. It looks like it.

Ms. Eshoo. Maybe bring it a little closer.

Ms. Young. Is that any better?

Ms. Eshoo. That is better. Thank you.

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

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

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

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

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

Consumers have a right to buy and renew a policy regardless

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

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

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

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

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

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

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

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

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

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

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

In addition, consumer protections for employer-based coverage would be eliminated. Changes to Medicare would be undone. The Indian Health Service would not be reauthorized. The FDA couldn't approve biosimilar drugs.

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

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

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

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

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

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

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

Thank you.

[The prepared statement of Ms. Young follows:]

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Ms. Eshoo. Thank you very much.

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

STATEMENT OF MR. ROY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

into Gruber's flawed theories. Many conservatives have as well. A number of conservative think tank scholars have argued that because they oppose the individual mandate we should also repeal the ACA's protections for those with preexisting conditions -- that is, guaranteed issue and community rating by health status.

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

I want to state this very clearly. Those scholars are wrong. The most market-based approach for covering those with preexisting conditions is not to repeal the ACA's guaranteed issue and health status provisions but to preserve them and to integrate the principles of a high-risk pool into a single insurance market through reinsurance.

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

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

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

Thank you.

[The prepared statement of Mr. Roy follows:]

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

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

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

Mr. Roy. I apologize.

Ms. Eshoo. Yes.

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

Ms. Eshoo. Yes.

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

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

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

STATEMENT OF MS. HUNG

Ms. Hung. Thank you. Good morning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the data and numbers and policy analysis.

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

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

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

It is my plea for that to always be true.

Thank you.

[The prepared statement of Ms. Hung follows:]

********** INSERT 3 **********

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

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

STATEMENT OF MR. MILLER

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

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

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

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

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

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

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

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

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

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

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

in permanent law.

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

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

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

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

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

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

misrepresentations, it won't work well.

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

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

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

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

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

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

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

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

Thank you.

[The prepared statement of Mr. Miller follows:]

********** INSERT 4 **********

Ms. Eshoo. Thank you.

And now our last witness, Mr. Thomas Miller, resident fellow -- I am sorry -- Mr. Simon Lazarus, constitutional --

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

Ms. Eshoo. -- constitutional lawyer and writer. Welcome. It is lovely to see you and thank you for being here to be a witness and be instructive to us.

You have five minutes.

STATEMENT OF MR. LAZARUS

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

I have had the privilege of testifying before this subcommittee and other congressional committees numerous times. I am currently retired and the views that I express here are my own and cannot be attributed to any of the organizations for which I previously worked or other organizations.

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

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

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

spectrum.

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

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

Mr. Miller. I have been here before.

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

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

majority to reverse Judge O'Connor.

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

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

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

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

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

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

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

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

Mr. Lazarus. Okay. I am sorry.

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

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

[The prepared statement of Mr. Lazarus follows:]

********** INSERT 5 **********

Ms. Eshoo. Thank you very much.

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

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

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

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

Would you like to --

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

Ms. Eshoo. Uh-huh.

Ms. Young. Can you hear me okay?

Ms. Eshoo. Uh-huh.

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

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

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

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

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

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

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

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

Who would like to address this? Is this correct?

Ms. Young. I can address that.

Ms. Eshoo. Uh-huh. Go ahead.

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

Ms. Eshoo. Right. Mm-hmm.

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

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

Ms. Young. Many of them are, yes.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Burgess. I thank you for the recognition.

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

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

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

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

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

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

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

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

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

Mr. Miller. A number of options. Yes.

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

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

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

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

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

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

Mr. Burgess. Great.

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

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

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

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

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

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

the goal of breaking the lawsuit.

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

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

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

Mr. Miller. Sure.

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

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

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

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

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

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

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

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

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

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

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

I yield back.

Ms. Eshoo. Thank you, Ranking Member.

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

Ms. Matsui. Thank you, Madam Chair.

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

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

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

Everything was carefully constructed. We tried to think about everything but, obviously, you can't think of everything. But we consulted as widely as possible because we also knew that each policy would affect the next and the system as a whole.

You simply cannot consider radical changes to the law in a vacuum yet that is exactly what this ruling of the lawsuit does. By using the repeal of the individual mandate in the GOP tax bill as justification of this suit, the court has declared the entire Affordable Care Act invalid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Eshoo. Thank you, Ms. Matsui.

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

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

Ms. Eshoo. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

government regulatory structure can keep up with the vast investment.

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

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

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

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

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

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

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

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

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

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

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

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

The Chairman. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

In fact, there have been some efforts by the Congressional

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

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

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

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

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

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

pool.

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

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

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

The Chairman. All right. Thank you so much.

Ms. Eshoo. Thank you, Mr. Pallone.

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

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

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

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

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

And I just -- you know, I know -- I didn't mean to shake things up this morning but asking for a hearing on Medicare for all was something I thought was appropriate, given that other committees are already announcing their hearings, and that going back to when ACA was shoved through here and then Speaker Pelosi saying we had to pass it so you could find out what is in it, we don't want to repeat that. We need to know what is in it. We need thoughtful consideration. I think this committee is the place to have that. So I still think that is important.

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

Mr. Roy. Yes, I did.

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

what was asked of the other witnesses around you?

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

Mr. Walden. Go ahead.

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

Mr. Walden. Okay.

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

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

Mr. Walden. Right.

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

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

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

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

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

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

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

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

an increase in overall federal spending of 71 percent.

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

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

Mr. Walden. Right.

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

Mr. Walden. Yes. That was -- if I had stayed on as chair that was going to be our big priority this cycle. Surprise billing -- I mean, you go in. You have a procedure. You have played by all the rules and it turns out the anesthesiologist that put you under wasn't in your program and you get billed. That is wrong. That is just -- I think we can find common ground on that one.

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

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

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

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

Madam Chair, I yield back.

Ms. Eshoo. I thank the ranking member.

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

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

Mr. Roy. That is correct.

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

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

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

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

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

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

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

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

[The information follows:]

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

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

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

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

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

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

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

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

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

Ms. Young. It is, yes.

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

Ms. Young. Correct.

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

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

Ms. Castor. Consumer protections -- name them.

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

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

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

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

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

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

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

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

Thank you, and I yield back.

Ms. Eshoo. I thank the gentlewoman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Griffith. Absolutely. I agree with that.

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

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

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

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

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

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

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

Mr. Griffith. Yes. I have noticed that.

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

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

Mr. Miller. My time is up. Okay.

Mr. Griffith. You could summarize, she said.

Ms. Eshoo. Quickly.

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

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

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

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

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

recognize Dr. Ruiz from California.

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

[Laughter.]

Ms. Eshoo. He hasn't stopped celebrating.

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

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

Let me give you some examples of some of the benefits and hardships that people would face if this lawsuit is completed. My district is home to Desert AIDS Project, an FQHC that was founded in 1984 to address the AIDS crisis.

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

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

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

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

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

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

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

Let me repeat that statistic. Insurance coverage for these patients from only 10 percent to 99.9 percent because of the ACA. And yet, the president, while claiming to be committed to

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ruiz. Thank you.

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

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

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

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

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

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

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

And now we have heard from the Democrats about Medicare for

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

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

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

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

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

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

Mr. Bucshon. That is correct.

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

And this is one of the other flaws in the ACA is it relied on a program with very poor provider access to expand coverage. I think the exchanges at least have the virtue of using private insurers to expand coverage rather than the Medicaid program with its much lower reimbursement rates.

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

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

Mr. --

Mr. Miller. [Speaking off mic]

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

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

Mr. Bucshon. There it is.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield back.

Ms. Eshoo. I thank the doctor.

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

Mr. Rush. Thank you, Madam Chair.

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

Ms. Eshoo. I thank you very much.

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

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

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

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

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

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

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

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

Mr. Rush. Mm-hmm.

I want to ask Ms. Hung, you've been sitting here patiently, remarkably, listening to a lot of discussion between experts. But how do you feel about your daughter? How do you feel? What is your reaction to all of this as it relates to the looming problem

that you have if this case is upheld?

Ms. Hung. Thank you. No one is going to sit here and say that they are not going to protect preexisting conditions, right. No one is going to say that. But that is what we have seen. That is what families like mine has seen -- repeal efforts, proposals that don't cover preexisting conditions or claim to give a freedom of choice to choose what kind of insurance we want.

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

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

Mr. Rush. Madam Chair, I yield back.

Ms. Hung. Thank you.

Ms. Eshoo. I thank the gentleman.

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

[Laughter.]

Ms. Blunt Rochester. Thank you, Madam Chairwoman.

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

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

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

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

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

being Xiomara's mother.

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

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

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

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

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

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

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

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

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

Ms. Eshoo. Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Cardenas. Dozens or thousands?

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

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

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

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

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

I yield back the balance of my time.

Ms. Eshoo. I thank the gentleman.

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

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

Ms. Eshoo. Oh, thank you.

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

Mr. Miller. Well, I mean, we have to go back to a lot of convoluted reasoning in prior decisions in order to get there. So this is a legacy of trying to save the Affordable Care Act by any means possible and it gets you into a little bit of a bizarre world.

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

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

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

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

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

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

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

and be accountable for it and build a better system.

Mr. Bilirakis. Thank you.

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

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

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

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

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

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

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

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

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

Ms. Eshoo. Thank you, Mr. Bilirakis.

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

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

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

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

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

Certainly, I am one of the folks that believe health care is a right, not a privilege, in the greatest country in the world. We are discussing about different ways to get at it.

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

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

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

Ms. Young. Absolutely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Eshoo. I thank the gentleman.

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

I now would like to --

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

Ms. Eshoo. I am sure you would.

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

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

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

Mr. Miller. Good for you.

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

Mr. Miller. It is a dangerous weapon.

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

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

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

Mr. Miller. Correct. Correct. And it is going to take a while and it is going to end up differently than where it starts. But we are doing this, you know, make believe because it scores a lot of points.

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

Mr. Miller. Well --

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

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

Mr. Carter. Well --

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

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

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

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

Mr. Carter. Well --

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

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

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

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

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

Mr. Roy. Last week, yes.

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

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

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

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

Mr. Carter. Well, I do too. I am just baffled by the fact that, you know, drug pricing is one of the issues -- is the issue that most citizens when polled identify as being something that Congress needs to be active on and I am just trying to figure. In Oversight they have already addressed it.

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

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

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

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

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

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

Ms. Eshoo. Mm-hmm.

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

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

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

person at this point.

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

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

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

Ms. Eshoo. I thank the gentleman.

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

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

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

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

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

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

Now, you had two years and, yes, you could have started with prescription drug prices and reducing those and that wasn't done. So you are darn right the Democrats are going to take it up.

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

So, with that said, I am going to move on to what my comments have been. I want to thank you all for your testimony here today. It has been really helpful to hear us understand the potentially devastating impact of this lawsuit and of the district court's decision.

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

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

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

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

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

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

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

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

States will have the choice between somehow finding state

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

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

Ms. Barragan. Thank you.

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

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

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

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

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

Ms. Eshoo. Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Gianforte. Okay. And I yield back.

Ms. Eshoo. I thank the gentleman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Burgess. Arizona.

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

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

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

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

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

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

A district where Medicaid expansion made the difference for

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

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

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

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

Ms. Eshoo. So ordered.

[The information follows:]

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

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

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

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

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

Are cancers caused by uranium exposure considered a preexisting condition?

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

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

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

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

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

Mr. O'Halleran. Thank you.

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

I am interested in finding bipartisan solutions to the problems we have got and I will work with anyone here to do that. But this lawsuit doesn't take us in that direction. It takes us back, and my district can't afford that.

Thank you, and I yield back.

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

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

Mr. Burgess. Madam Chair?

Ms. Eshoo. Yes.

Mr. Burgess. Could I seek recognition for a unanimous

consent request?

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

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

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

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

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

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

Child and Adolescent Psychiatry.

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

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

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

[The information follows:]

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

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

[Laughter.]

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

Ms. Eshoo. No objection.

[The information follows:]

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

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

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

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

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

Ms. Eshoo. Right. Right.

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

Ms. Eshoo. I thank the gentleman.

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

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

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

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

Thank you.

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