



## FEDERALISM ISSUE: WHAT ROLE SHOULD THE STATES PLAY IN HEALTH CARE?



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The Patient Protection and Affordable Care Act was signed into law by President Obama in March of 2010, and sought to improve access to health insurance for citizens and to remedy cost-shifting problems in the insurance market. Questions arose regarding Congressional authority to mandate an individual to purchase health insurance. In *National Federation of Independent Businesses v. Sebelius* (2012), the Supreme Court evaluated the constitutional merits of the Affordable Care Act (ACA). The Court determined that, while Congress could not mandate insurance purchase using the Commerce Clause, Congress had the authority to penalize, in the form of a tax, individuals who did not purchase insurance. The court also concluded that the federal government could not mandate states to accept expanded Medicaid coverage, especially because failure to expand coverage meant states could lose all of their federal Medicaid funding. The ruling changed the expansion from a mandate to an opt-in preference decided by each state. Though the ruling in *Sebelius* limited the ability of Congress to pressure states into accepting more Medicaid funding, it generally preserved the federal government's power to become involved in national health care. The case

changed the conversation about the ACA away from a discussion of constitutionality towards a question about the states' role.

The ACA has elicited strongly polarized responses from Congress and from state governors. States with Democratic governors have generally chosen to accept the Medicaid expansion, and about half of them have chosen to host their own state-centered healthcare marketplaces instead of relying on the federally-run exchange. Republican governors have generally refrained from accepting the Medicaid expansion, and tend to rely on the federally-run marketplace. While the federal exchange, *healthcare.gov*, was met with criticism during its troubled first year online, some state exchanges have also run into problems with implementation. Oregon, Hawaii, and Nevada have all switched from running their own exchanges to using the federal exchange, citing technical and, in Hawaii's case, financial difficulties. Kentucky's Governor Matt Bevin recently announced that Kentucky would also follow suit, despite the relative success of *Kynect*, their exchange website. After numerous attempts in the House of Representatives, Congress as a whole voted to repeal the ACA in January 2016, only to

have the repeal vetoed by President Obama. The presidential and congressional elections of 2016 will help decide whether the ACA survives and, if not, what will replace it—specifically, what role states will play in the health system to come.

## THE CANDIDATES

Democratic candidates seek to further the foundational objectives of the ACA in different ways requiring varying levels of centralization. Hillary Clinton has professed support for the existing ACA mandates, promising to maintain and expand the health care coverage created by the ACA. She has also proposed reforms to certain details of the ACA, including the repeal of the so-called “Cadillac tax,” an excise tax on high-cost plans provided by employers, which was designed to help off-set the funding necessary for the expansive health care program. Bernie Sanders has advocated for a single-payer health care system, where universal “comprehensive coverage” would be publicly financed. This system would bring health care coverage under federal purview alone, and remove the state-centered markets which emerged to meet ACA requirements. His campaign estimates the plan will cost \$1.38 trillion a year, paid for chiefly by premiums and taxes.

When discussing the national health care system, the GOP candidates overwhelmingly call for the repeal of the Affordable Care Act, but they differ on whether the ACA should be replaced with an alternative plan, and what that alternative plan would look like. Republican candidate Donald Trump has called the Affordable Care Act “a complete disaster,” advocating for a more free-market centered health care system. At the Fox News Debate in August, 2015, Trump suggested that getting rid of traditional health care markets centered in the states would create more competition, and thus result in better health care prices for consumers. Marco Rubio remains committed to repealing the ACA in full and “replacing it with a market-driven alternative.” His health care proposal includes tax credit to help citizens purchase health insurance, insurance regulations reforms, and “fiscally-sustainable” reforms of Medicare and Medicaid. New Jersey Governor Chris Christie, whose state has opted to have a federally-facilitated health care marketplace instead of a state-based marketplace, has proposed a “per capita cap system,” where states receive Medicaid funding proportional to the number of state citizens

enrolled in Medicaid. The respective states of both Ohio Governor John Kasich and former Florida Governor Jeb Bush also host federally-facilitated health care marketplaces. Kasich’s campaign website advocates a repeal of the ACA and adoption of more “patient-centered primary care” and “episode-based payments” for health services. Under Kasich’s governorship, Ohio accepted the expanded Medicaid funding and coverage. Jeb Bush also advocates for a repeal of the ACA, but more specifically addresses whether power over the health care market should be centered in federal or state government. Bush declares “states should have responsibility, freedom and accountability” to designate the distribution of a capped amount of federal funds within their own health care system, though they must meet competitive market and safety net standards for spending.

Altogether, while Bush’s statement is the most direct acknowledgement of the federalism question at stake in the Affordable Care Act debate, most of the Republican candidates also call for a more state-centered health care system. This in contrast to the posture of the Democratic candidates, who seek solutions to difficulties with the ACA through federal means.

BY CAROLINE PECK  
& ELLEN LEMPRES

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