



**King v. Burwell: The Facts and Implications
Ascension Health
Alliance for Health Reform
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ED HOWARD: Welcome, my name is Ed Howard, I am with the Alliance for Health Reform and I want to welcome you to this program on a pending Supreme Court case that could affect millions of Americans when the Court issues its opinions sometime in the next few weeks. I'm talking of course about King v. Burwell, in which the legality of paying subsidies towards the cost of private insurance for lower income Americans under the Affordable Care Act is called into question, at least in those states that don't operate their own insurance marketplaces for individuals. I think I got all the caveats and footnotes into that sentence. What we do know is that a finding for the plaintiffs could threaten the continued payment of those subsidies and change a lot of the landscape around coverage in America.

Now, quick recap. The federal government is operating insurance marketplaces in more than 30 states, subsidies to help pay for health insurance are available to individuals with incomes between 100% and 400% of the federal poverty line, which for an individual means somewhere between just under \$12,000 and just over \$47,000. Today we are going to take a look at the legal issues that are before the court and perhaps even more importantly, if the challenge is successful, how many Americans would lose coverage, how will policy makers in Congress and at the state level respond? Are the states going to rush to become state marketplaces? Can they? Will Congress tie any relief to those who would lose subsidies to some major changes in the underlying law? A lot of questions remain and we are fortunate in having some great folks to address them.

We are also going to take a look at what happens if the court rules for the government. The world goes on, but there are -- I am told -- still some underlying issues with the Affordable Care Act that we will be talking about in the weeks following the decision.

Our partner today is Ascension Health. Those of you are not familiar with it, it is the largest non-profit health system in the country. They have facilities in something like 23 states and are also the largest of the Catholic Health Systems that are in the country.

I have a little bit of housekeeping before we get to our panelists. If you are Tweeting, you see the hashtag on the slides, King v. Burwell. If you need WiFi to tweet, the credentials are up on the screen and on a sheet on your table. In your packets, there is a lot of good information, including biographical information for our speakers. You are going to find a one page materials list that has all of the pieces that are actually in your packets and a number of other additional resources that you can get to online without sacrificing trees. There will be a webcast available of this briefing, probably Monday at our website, Allhealth.org and a transcript at the same website just a couple days later. The slides that one of our speakers -- we have only one set of slides, is using, are also on that website.

At the appropriate time you can ask a question either tweeting, using that hashtag, using your green question card in your packets, using one of the microphones that are at the opposite ends of this room. And finally, if you would take a moment at the end of the briefing or as we get to the end of the briefing and fill out the blue evaluation form, particularly those of you from Congressional staffs, we want to be responsive to what you would like to have us be focusing on and the kinds of

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folks you would like to hear from and we only know that if you will tell us. So thank you very much.

As I said, we have a terrific panel today. Well equipped to address everything from the legal issues to the effect of different stakeholders including patients and individuals and also to give us a glimpse of how the justices might look at this. And what the American public thinks of these issues. So we are going to start with Simon Lazarus, who is the Senior Counsel at the Constitutional Accountability Center, who is going to summarize the key legal issues in the case, give us a glimpse of what factors the Justice's might be reviewing to decide this issue and what that means for the outcome. Then we will hear from Michael Cannon who is the Director of Health Policy Studies at the Cato Institute and one of the first people to raise the question of the legality of subsidies in the states with federally facilitated exchanges. Michael is going to discuss the implications of the case and give us a hint perhaps at the likely Republican reactions either way. Then Dan Crippen, who is the Executive Director of the National Governor's Association, will help us look at the challenges that states are going to face if the plaintiffs prevail in the King case. Finally, Robert Blendon, who is a professor of Health Policy and Political Analysis at Harvard's T.H. Chan School of Public Health, is going to explore electoral opinion about the ACA and the Supreme Court case and how policy makers might respond in either outcome.

So we are going to start with Simon Lazarus and -- take it away.

SIMON LAZARUS: Thanks, Ed. I hope that I got the mic on. Did I get the mic on? Okay. I must say, first of all, thanks very much for inviting me, this is truly a great panel and it's a particularly exciting thing not only to be facing off against my very frequent friend and debating partner, Michael Cannon, another lawyer advocate, even though he claims not to be a lawyer, he's actually quite a good one. But also the people who are really experts in how all of this plays out and affect the real world. And I do want to say, Ed, that that was an intimidating introduction and you passing out these WiFi credentials and tweeting encouragements is certainly a discipline for us up here to try to keep our remarks short and interesting enough so that people don't dive into their devices and find something more interesting to do. So I will try to do that.

Now, you assigned me to summarize the key legal aspects of the case and explain how the justices are reviewing the issue and what that means for the outcome. So I am actually going to try to do just what you assigned me to do as best I can. You have already explained, Ed, what the case is basically about and I don't really need to go into that, I just want to note that this challenge, which seeks to bar tax credits and subsidies in federal exchange states, has been ably quarterbacked by the Competitive Enterprise Institute and by my co-panelist, Michael Cannon, and his Cato Institute. Its claim is just what Ed said and that is that there should be no tax credits and subsidies in states where HHS operates the exchange rather than the state. So to summarize my summary, there are three -- this is just so in case I don't finish, you will have at least heard the outline of what I want to let you know -- there are three legal questions or legal frameworks with which the Justices will wrestle to decide this case. The first one is whether the challenger's interpretation, which would bar credits in federal exchange states, could violate constitutional safeguards for federalism or state's rights.

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Now, one thing to note about this and I will explain this in greater detail in a few minutes, this is the rare, almost unique instance in which the state's rights argument cuts against the right and in favor of the left. And I will explain why that is true in a bit. The second legal framework or question is what is the legally required approach to interpret statutes? How much weight should judges give to particular sections or phrases in a law viewed in isolation versus how much weight should they give or should they emphasize, putting individual provisions in the context of the overall statutory scheme? So that is the second legal framework that is at play here. There is a third legal framework that could become significant or not, depending upon what happens with the first two. That is, the Court could decide on the basis of the legal framework that exists for reviewing interpretations of federal laws that are made by federal agencies. If the Court finds that the relevant ACA provisions are ambiguous and can reasonably be interpreted in more than one way, then it must defer to the IRS's determination that the law makes the credit available nationwide, as long as that interpretation is reasonable or permissible, even if it is not the only reasonable or permissible way to read the law. So that is the third way.

Now, in terms of practical consequences, we will learn a lot more from Dan I think, but all of you know pretty much what is going to happen if the challenger's interpretation wins the day. According to an HHS report released earlier this week, such a decision will price health insurance out of reach of 87% of the 7.3 million individuals enrolled on exchanges now -- or as of March, in the 34 Healthcare.gov states or 6.4 million people. This will render the affected exchanges effectively inoperable and it will shut them down, in fact, and quite likely in most cases actually formally shut them down as well. Finally, premiums across affected states entire market for individual, that is to say, non-group health insurance, premiums in that market will rise sharply. Not just on the exchanges. This will drive healthier individuals to forego insurance, causing prices to rise even more sharply and eventually causing some, perhaps all insurers to exit the market. This is the vicious cycle known as a "death spiral" and many of you, I'm sure, are familiar with this scenario. Now, this picture of chaos is not a scare tactic. On the contrary, in the oral argument, in the case which occurred on March 4th, one justice in particular, Justice Anthony Kennedy, made it clear that he considers this scenario of insurance market chaos, to be central to the decisive legal issue in the case. Here is what Justice Kennedy said, and this is in many ways the single most important development that has occurred in this case since it began a couple of years ago. He said, "Let me say that from the standpoint of the dynamics of federalism, it does seem to me that there is something very powerful to the point that if your argument is accepted..." Your argument, he is talking to the lawyer, Michael Carvin, a very able lawyer for the challengers. "If your argument is accepted, the states are being told, either create your own exchange or we will send your insurance market into a death spiral." He then said that, "Such a threat could amount to unconstitutional 'coercion' to force states to set up exchanges. And hence," he observed, "there is a serious constitutional problem if we adopt your argument." Now, in saying this, Justice Kennedy completely reset the legal framework on which the decision the expected to rest. If his perspective controls, they -- and I'm following Ed's -- or the Alliance's instruction to show how the Justices are looking at this, could affect their decision. If that perspective controls, then the most likely result is a decision that upholds the nationwide availability of the subsidies and credits on the basis of a doctrine called "constitutional avoidance". This doctrine requires that a federal law be construed in a manner that avoids raising difficult constitutional questions. The administration's interpretation

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avoids the constitutional question of whether the law is unconstitutionally coercive and it also avoids the related question about whether the law blindsided states by failing to provide adequate notice of the disastrous consequences of not doing so. At least in Justice Kennedy's view at the oral argument, the challenger's interpretation does the opposite.

Now, to be sure, the federalism angle does not absolutely rule out a decision for the challengers. I certainly acknowledge that, but it's the most likely outcome and again, Justice Kennedy himself made that clear because after counsel for the challengers and Justice Scalia, who is an extremely enthusiastically supportive of their position -- or at least was in their argument. After they insisted that Constitutional avoidance would not apply here because the law is unambiguously the way the challengers read it, Kennedy said, "I fully understand that, but I think the court and counsel for both sides should confront the proposition that your argument raises a serious Constitutional question." And then he went on to say, "It is in the background of how we interpret this statute." Now that is not the only thing he said in the oral argument, there are some things he said which kind of cut the other way, but that is essentially a statement of how the Doctrine of Constitutional Avoidance would apply in his view in this case.

So let me just say also -- Ed, how much time do I have left? Okay, before Kennedy spotlighted the adverse federalism impact of the challenger's interpretation as he saw it, the case had been perceived as exclusively a straightforward matter of statutory interpretation law. Now, in this statutory interpretation framework, the challengers target a subsection of the law, which sets out the formula for computing the amount of tax credit owed to each individual who is eligible to receive it. And that subsection contains the phrase "established by the state". I expect Michael will elaborate a little bit more about how this interpretation works, because he thought it up and it was very, very clever. He thought it up about nine months after the law was passed, nobody had ever imagined it then or before. In a nutshell, the challenger's argument is that this phrase requires that the ACA as a whole be interpreted to -- okay, I get 10 more seconds -- as a whole be interpreted to bar tax credits and subsidies on exchanges in which the state government failed to set up an exchange. Now, unsurprisingly, the Obama Administration and its allies have a different take, they say that the law that that phrase has to be read in the context of the overall statute and they -- that is to say, "we", point to a number of other provisions which completely cut against it and in our view, make the overall statute clearly provide for tax credits nationwide. I'm not going into detail about those provisions now, but if anybody is interested, I can certainly do so when the little *New Republic* article has some sketches of that toward the end of it.

Finally, there is the third legal wrinkle, which is this Doctrine of Deference to administrative agencies and the thing that I just like to note about that is that Chief Justice Roberts, who was very uncharacteristically quiet during the whole argument, the only substantive remark he made, was a reference to this Doctrine of Deference and that is at least some indication that he was thinking about being agnostic on what the statute means, but deferring to the Administration's interpretation on the ground that it was reasonable. And I will be quiet for the time being.

ED HOWARD: Great, thanks Simon. Michael Cannon, don't you agree?

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MICHAEL CANNON: Thank you Ed and Marilyn and my co-panelists and all of you for the opportunity to be here. I want to get to what happens after a ruling for the challengers. It's really important to discuss that. That is the practical impact that this is going to have on everyone's lives. We can't really understand what that impact would be and what it means unless we talk a little bit about the legal issues, few of which Si got right.

What that statute says, the provision that is in dispute here is that the ACA, for better or for worse, even if some of the people who voted for this law, don't want it to say this now, that 34 or however many states have refused to establish exchanges. What it says is that the employer mandate and to a large extent, the individual mandate and the exchange subsidies, only operate if a state establishes an exchange. It conditions all of those things on state action by saying that the subsidies, and therefore the penalties that those subsidies trigger, are available only "through an exchange established by the state." And the statute even defines "state" to mean each of the 50 states and District of Columbia. Now what does that mean? What does that phrase mean? Everyone here knows what that phrase means. I know what it means, you know what it means, Si knows what it means. And Congress -- now, that doesn't necessarily mean that the IRS is wrong or that the challengers in this case should win because Congress could have taken that phrase through an exchange established by the state and defined it to mean something other than what we all know that it means. They could have defined "state" to mean something other than a state and in fact, they did. I just gave you the definition. They define state to mean each of the 50 states and District of Columbia. DC is not a state, but they defined it as a state. So the law does authorize exchange subsidies through an exchange established by DC, even though DC is not a state. They could have defined "exchange" to mean "an exchange established by the state". They could have defined the federal government to be a state. Congress didn't do that. They could have defined all exchanges to have been established by the state. They didn't do that either. They could have done what they did with territories. They said that -- in section 1323, Congress said that a territory that establishes an exchange shall be treated as a state. So they could have said that an exchange established by the federal government will be treated as a state established exchange, even without technically defining it as -- they did none of these things. They did none of these things. So the whole debate that we are having in court is over whether there is -- Si and a lot of other defenders of the IRS, the government itself, have just combed through this statute all 2,000 or 900 or however many pages there are, trying to find something, anything that will allow them to claim that no, the statute does actually authorize tax credits in an exchange established by the federal government, not just established by the state. And I should mention that the subsidy eligibility rules make no mention of the exchanges established by the federal government at all. They are very tightly worded. Every single reference to exchanges in those eligibility rules is to exchanges established by the state. In fact, that requirement was added to that part of the statute in multiple places and multiple stages during the legislative process. No one paid any attention to it and no one even asked the question, including a lot of reporters in this room who I have talked to and I have asked, "Did you ask anyone in Congress about the status of tax credit and federal exchanges during this debate?" And they have all said no and they have looked in their notes and they can't find any indication that anyone even asked about it, but it was always there.

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So what the government is left arguing and Si is left arguing, is that Secretary Burwell is a state. Which is absurd on its face, unless you think maybe she should get to pick one representative for the House and get to pick two Senators to represent herself, maybe participate in amendment conventions and ratifications, but that is the argument that they are making and it's just a silly argument. However, as I like to say, the facts are 100% on the side of the challengers in *King v. Burwell*. The law is 100% on the side of the challengers in *King v. Burwell*, so their odds of winning in court are 20%. And the reason for that -- well, there are a couple of reasons for that. One of them is that courts are notoriously deferential to administrative agencies in cases like this. And that alone tells you that the fact that *King v. Burwell* made it all the way to the Supreme Court tells you that the government has no case here. Because if there were anything that were doing anything even remotely close to what the government is saying, then every single court would have thrown this out. A couple courts have taken the bait that the government offered them and reached some really ridiculous conclusions and in those cases, the government won, but two of the three standing opinions in these cases found for the challengers. So two of the three standing opinions in these cases -- two federal courts actually validated the challenger's arguments.

Also, Justices are human and so a lot of disruption could follow this ruling. Not be caused by this ruling, but follow it. And they don't want to be criticized for that and so the IRS and its defenders have tried mightily to offer the court some way, any way will work really. When you look at some of these arguments, the government called, through an exchange established by the state, a term of art that encompasses a federal exchange. Terms of arts have to be defined in statutes and the government didn't even offer a definition that did that. They just called it a term of art and the administrative record shows that not even the IRS believed this. The IRS thought that that language was actually an obstacle to what they were trying to do, not a term of art that allowed them to do what they were trying to do, but what Si and other defenders of the IRS have tried mightily to do is to offer the court some way to override what everyone knows the law says. And there are victims here. The IRS's attempt to rewrite the law is actually subjecting 57 million people in those 34 more states to illegal taxes. One of those people is a jazz musician and music teacher not far from here, just over the river in Virginia, his name is Kevin Pace. And when the IRS imposed the ACA's employer mandate on his employer, Virginia being a federal exchange state, which was illegal. When they did that, that led to his employer cutting his hours, he took a hit to his income of \$8,000.

I see a lot of young faces here. You are probably some interns here on Capitol Hill, maybe some entry level staffers here. I know what people get paid on Capitol Hill, I know it's not pretty. If you think \$8,000 is a lot of money to you, imagine how much money it is to a jazz musician. And there have been estimates that affected workers, workers who have been affected by this IRS rule have taken a hit to their income on average almost \$7,000. There are 11 million people who are being unlawfully subjected at the individual mandate and penalties that average \$1200. These are illegal taxes that no Congress ever authorized, that are reducing people's incomes and reducing job opportunities.

Now, why Si is so enthusiastic about Justice Kennedy's comments, he did a pretty good job of explaining that and how it could cut either way. It could -- I don't think that his comments really are on balance, help the government. They could help the government win this case, but if they do, it

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will hurt the government over the long term because it will open up constitutional challenges to a lot of other cooperative federalism programs run through the EPA, No Child Left Behind, so forth. But I want to talk about what a ruling for King would actually mean. Suppose the court rules for the challengers here. What the court is saying then is that those subsidies and those taxes were illegal. That they were always illegal. That the IRS never had any authority to issue and impose those subsidies and taxes and the law was so clear on this point that there should have been no mistake. And that is the only way that the challengers win, is the court says that the law is so crystal clear that there should have been no mistake. And I think what is most important is that if the court rules for the challengers and what the court is saying is that this is Obama Care. This is the ACA; this is how it operates, this is how it always should have operated, this is the law that Congress passed. If you don't like federal exchanges with no tax credits, you don't like the ACA. If you don't like the disruption that follows a King ruling, you don't like the ACA. Now, I know there are a lot of ACA supporters who will say to me, "Oh, Michael, you are just making that up, this is a partisan attempt to undermine a law that was duly enacted by Congress and ratified by the Supreme Court." And then they will huddle with friends of theirs who they debated in 2009 over whether -- "You know, he's kind of right, we really don't like this law very much, it was really a lousy compromise, I can't believe we had to sign under this thing." This is one of the compromises that was made in passing this law.

A ruling for King also means then that the entity responsible for the dislocation that would follow this ruling, is primarily the Obama Administration because faced with clear statutory language and an IRS that was about to implement the law according to that clear statutory language, political appointees intervened and then that statutory requirement through an exchange established by the state was dropped from the implementing regulations and now we've got what we've got. But there are also a lot of other steps along the road to this point where the administration could have taken an off ramp. I was one of the first people to blow the whistle on the fact that the IRS's tax credit rule was illegal. They could have changed the rule from proposed to final; they could have expedited court consideration of these cases. Instead, they dragged them out for adulatory motions and missed filing deadlines in fact. Because they wanted to get past January of 2014 and Secretary Sebelius, Secretary Burwell's predecessor was very explicit about this. She said that they wanted to get to that point because once they got that money in those people's hands, those people would fight with a member of Congress to keep those subsidies flowing and they knew that was the case even if the court declared them illegal. So they wanted to get those, arguably illegal subsidies into people's hands to change the political dynamics surrounding this law.

There is more to be said about that, my time is up but I think that you have to understand that before we have our discussion about what could follow a King ruling. Thank you.

ED HOWARD: Thanks, Michael. Now if we are going to have political consequences for terrible things happening, Dan Crippen is going to tell us about the terrible things. Dan, what might happen.

DAN CRIPPEN: Let me first start out by saying that I'm not a lawyer, I mostly masquerade as an economist and I tell you that because I want to relate to what my father used to tell me all too frequently. Something Will Rogers once commented about economists. "You can ask an economist

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his opinion about almost anything and he's as likely to be right as the next man." There is a lot of that certainly in this debate and as you will be able to conclude before I'm done, not a lot of clarity to be had. The only one who has real data here today is probably Bob, the rest of us are talking about our opinions that we hope that somebody might agree with.

Let me first say that among the states who are affected here, obviously those with federal exchanges, perhaps those with partnership exchanges or federally supported, those many states, most of them assume that there will be some delay in the effect of the decision if it is adverse to the government, so that it won't be that the day after the decision, the exchanged subsidies for federally facilitated exchanges would disappear immediately. In fact, a number of the Supreme Court justices or several of them suggested there would be some delay. So the assumption is that there will be some time between the court's decision later this month and the effective date of whatever that rule might be. That is important because I think it does suggest or does give some rationale to why the states are not diligently planning today what they will do three weeks from now. They have obviously thought about this as hard as they can, but the truth is, there needs to be a lot of definition that will come out of Washington even after an adverse decision to the government. For example, what defines state-based exchange? Now, this is speculation that has appeared almost everywhere, but our federally supported or the state partnership exchanges, are they state-based or are they federal exchanges? Would subsidies be allowed to be received in those that are not pure federally facilitated or federally run exchanges? Would, for example, the renting of the federal marketplace be something that would be allowed as a state-based? So unless the court is very prescriptive, which it could be, I guess. Michael and Simon would know more than I, but unless the court is very prescriptive about what it is or is not state-based, there may well be room for maneuver here and that definition will be very important to have states react.

Secondly, what actions would a state have to take to meet whatever the new definition is? If it requires legislation, as most of you know, state legislatures are out of session largely. By now and if not by now, certainly soon, there are only a few that run all year, would be in session to react to whatever the new definition might be. Would the way that the state definition takes place or be structured, allow a governor to act on his own? For example, if you were able to lease the federal exchange, can a governor in most states who might have the authority to sign a contract that would allow such leasing to take place? So part of the concern here or certainly the interest is, what actions will states have to take? Will they have to call special sessions, for example, what time would that take, would it meet whatever the timelines are? What happens in those states that ultimately are ineligible for subsidies? I think Michael and Simon both have talked a bit about how individual mandate would likely not be enforceable and without the individual mandate being enforceable, the employer mandate would probably fall, so although the consequences that flow from that are important to be known, are there other ways that the states might provide subsidies? There have been some creative discussions going on, much of which you have seen probably in the press as well. The question of section 1332, for example, for those of you who are into Trivial Pursuit on ACA, you will have probably run across section 1332 which gives a large bit of discretion to the states upon application to HHS for waiving big pieces of not only the ACA, but also Medicare. You would have to meet the same number or have the same beneficiaries definitions, the same benefit package, but there is still a lot of discussion and a 1332 waiver might allow states, because it

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explicitly anticipates it, to receive the subsidies in lieu of going through the exchange or two individuals directly. So 1332 might be viable, although in a statute, it only is effective or can take effect in 2017 and beyond. So there might be a further delay required or a change in that effective date somehow. But it's one viable possibility that states are looking at as a way to both meet the Supreme Court decision as well as transform their own state laws.

Could CHIP be used? The Children's Health Insurance Program, an expansion of that, just on it's own? Probably couldn't cover a childless adults, but at least you might be able to expand them to cover moms and kids. There is also legislation that has been introduced that would essentially piggy back on the CHIP program, would give states the equivalent of a block grant for the subsidies and the states would administer the program much like the CHIP program is administered now with the states running the system and giving the subsidies to beneficiaries under CHIP. So those are some of the options that states are looking at to see what might be done.

As I think others have said and Simon certainly did, without mandates, what happens to the risk pools in the states and around the exchanges? What happens to the health plan bids and premiums that have already been offered and accepted in some cases for the upcoming year? Many states have made provisions to say that if the decision is adverse to the government, that the health plans can come back and re-bid if you will, given the assumption of the change of the risk pool. Some states have actually asked for two sets of bids -- one under what perceived to be current law and what would be current law after the Supreme Court rules. But that is an important piece of what more definition may be needed and what changes the states would have to make in order to react to an adverse decision. We also have, of course, imbedded in the ACA, notions of risk adjusting, risk insurance and risk corridors. All of those could be redefined in a way that might make the exchange risk pool more viable for plans if there are people who are eliminated from the risk pool because of the Supreme Court decision. And of course, importantly, what is the new timing for the operation of exchanges in the insurance market. If the court delays for say, a year at the outset, the assumption being there will be at least some delay, when would the new bids be accepted? For this year or for next year -- so there are lots of timing questions and that is just one of the obvious ones that could be altered by regulation that would flow from an adverse decision of the court.

What is the process for applying for whatever permissions the states need from the federal government? You have seen a number of states already apply for state exchanges -- Delaware and Pennsylvania most notably, using something that the ACA anticipated, called a blueprint. Is that going to be the process that is used to alter exchanges in the wake of an adverse decision to the federal government?

We have seen in the press and lots of places, what states can do in effect to react. The most obvious one is for states to become state-based exchanges, however that is defined. Again, we have seen at least two states so far apply to become state-based exchanges, even before the court's decision. It's not too surprising, given those states; the governor of Pennsylvania has said he wanted to have a state-based exchange even before he became governor. The governor of Delaware has said all along that its not philosophical with him or with the state that they are not a state-based exchange, but rather an economic decision where they are so small that trying to operate an exchange on their own

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didn't make sense to them. So if they need to go to state-based in order to receive the subsidies, they are perfectly willing to do that, and you have seen the blueprint that they have offered, which would be some state supported activities and some maintained federal activities. Again, if that meets the new definition of state-based, they have already anticipated how to become, but that is one of the most likely ways that states could react to become a state-based exchange.

Using other state's IT, something they are talking to each other about, we have had successful state exchanges in Connecticut, Kentucky, a few other places. Those might be the foundation for contracting or picking up the back room or doing something else that would facilitate a state-based exchange by using other successful states. I have already mentioned leasing or otherwise paying for the federal exchange with or without the state operating some substantial portions of the system, providing functionality and services such as health centers. Would the state be able to provide the call center or rely on a federal one?

Finally, there is some discussion about the development of regional exchanges, where states could use piggy back on successful exchanges or cooperate in things like call centers and other more expensive pieces of operating an exchange. So all of those things are possibilities, but stopping where I started, states are very much anticipating, waiting for the decision, not just for the outcome, but for whatever may flow from that in terms of further regulation out of the federal government.

ED HOWARD: Thank you, Dan. We will turn to Bob Blendon. Bob?

ROBERT BLENDON: Hi, Bob Blendon. When you talk about the future of the ACA, there are actually two communities. There is a policy community and a political community. I'm a student of the political community. So I am going to talk about -- and people in politics speculate about the future in ways that never should be allowed, so I will join that community. And I'm going to explain to you, looking ahead, why I think what would happen is that there would be two bills in the Congress. There will be a Republican bill and the bill will mention and have some level of subsidies, but it will structurally change the ACA very considerably from what it exists today and I will explain what it is. Then there will be a Democratic bill, which will just basically say -- the wording was mixed up, let's fix the wording and go on with the current program. It would take extraordinary bipartisan leadership to actually get the two bills to actually get to the President's desk. But I'm going to explain to you why actually Republicans will need a bill, why doing nothing may look good at some particular meeting, but it will not look good broadly in the public dimension. But once you do something, you may not have to as a party actually have to have something passed. So I will show you some data and in order to do this, I'm going to open a door and I'm very uncomfortable with this door, it's what people in politics do quietly. And I'm going to introduce to you something called electoral opinion versus public opinion. Electoral opinion is the opinion of those who actually vote for that and particularly in moments like off-year elections and in primaries. I'm going to introduce very quickly -- almost no one discusses the fact that after the court makes this decision, we are going to have 11 months of primaries. Not only for Presidential candidates but every member of the House is up for re-election and has to run in a primary.

So what I'm going to tell you just very quickly is, this is what electoral opinions secretly looks like. In the 2014 election only 36% of adults voted. Sixty-four percent did not. In every election, the voters and non-voters differ on issues. In 2014, it was one of the widest differences we have ever seen. One of the issues they differ on was voters were more negative about the ACA than non-voters for that. This is painful and please, nobody write down "Professor endorses few people in America vote." That's just not my position, it bothers me like crazy. But now we are going to enter the primary season and you have to understand that in general a subset of the 36% will vote in the primary. The 64% who did not vote, will not vote in these primaries. So what this is, the *Huffington Post* runs an aggregator, which I love, there are 450 polls on the ACA, it keeps a lot of us busy. There are seven in the last six weeks and that just shows what the average is. But what I need you to understand is that people beyond me know that 64% of people in that poll did not vote, will not vote in the primaries. So I think it's exciting every week. It's up, it's down, they don't like it. They are worried, they are going to do that, but somebody who works for members of the Congress will look at those people who are actually voting. And these are the views of people who basically actually voted in 2014. So Republicans, essentially, if you look very quickly, what do you want to do with the ACA? The majority wanted to appeal or replace it with the next category of being scaled back. Democrats live in another world. They love this bill. I want to be on record -- they love it. Not only that, in the voters there, the plurality said, it's not big enough, it doesn't do enough for that. So that is actually who voted and Independents were more conservative in this election in that they were more on the more negative scale back, but definitely not repealing this bill. So I'm not going to take you in the primaries, which go on for the next 11 months and will be dominated by Presidential candidates who can buy 10 million dollars of advertising at a spot. And they are going to be asked where they stand. And this is what a Republican Presidential candidate will know is, only voting in my primaries is that bottom bar. That's it. I'm sorry. The Blendon 64% over here and its going up and down -- they are not voting in the primaries. Likewise, in the Democratic primary, I have people who love this bill, want you to fight like crazy to keep it going, don't mumble about how we can have some sort of a deal. That is what the primary is going to look like for 11 months that that's going on. But I'm going to explain to you that the Republicans are going to have to switch to basically replace from repeal and they are going to have to have some basically subsidies in it. So very quickly, a lot of my colleagues say, "Bob, that was November, June is a whole world. America has changed. Did you see the enrollment numbers?" Well, this is *The New York Times* just two weeks ago and they asked Republicans and Democrats, can you vote for somebody who doesn't stand where you do on the healthcare issue? Guess what? Half of them said, "No." And it's called a litmus test issue. It doesn't have to be the top issue; it is an issue where I just can't vote for somebody who doesn't believe what I do. So if I'm a Republican running in a primary, I'm going to have an audience that expects me to be on this side of that bar and if I'm a Democrat, I am on the other. The only reason why I agreed to do this is to tell you a secret thing. People on all sides of the aisle like subsidies. I know, it's going to drive people crazy, they do. What they differ on is who should get it and how many?

Let me just warn you and I will do this before we get to the end again -- so Republicans and Democrats are going to differ on the extent -- I will show you in a second, of who should be getting subsidies. But you have to think about this from a news point of view. Republicans believe -- I'm talking about voters -- that some human being out there warrants a subsidy. So when the newspaper

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says, the most seriously ill mother who works 18 jobs lost her subsidy, some Republican votes will say, that's not right! I don't want to give it to these other people. It's not right! So to go from 8 million covered to zero one day is going to be a problem for people even in primaries. So does it mean you have to cover everybody and why doesn't Bob say "cover everybody." Because we have a split in this country among voters about the idea about whether or not the train is going to universal coverage or it isn't. Among Republican voters, it shouldn't go to universal coverage. Among Democratic voters, that is the next stage. But that does not mean that a Republican voter wants nobody covered that was covered today. So what you are going to see is pressure in the primaries to have a bill, but the bill must start out with, "This is the first step to replace existing bills and by the way, it has subsidies." That is what I believe will be done. So at the moment, well who is going to win or lose on this? I believe if there are two bills, it's not going to be a big winner, big loss for either. At the moment there is in the polling world what I call "one tailed questions". A one tail question is, if they strike down the subsidy, should it continue? Everybody says, yeah. Then only the AP said, "Well, there could be another alternative. How about states having the right to decide?" Half the people said, "Oh, I like that, how do you do that?" Guess who the half who moved right over? It's all the Republicans. They just said, whatever the alternative is, I'm just chucking right over on the poll. So if there is an alternative which says, we will cover some of the south cities, but we are going to change the law, you will have a division. The dilemma will be for those of you who care about subsidies, is there any way in the middle of a primary to get this thing resolved because the dilemma will be is -- if you are running in that primary, your tendency will be to want to stay in the safety zone. The safety zone is among the bar. I'm just not gonna leave that bar. Among 12 Presidential candidates, [unintelligible] but if you are in a room with them, going to too far out of that bar is not a smart thing when you are going to win by 2% one way or the other. So it's going to be very hard to get them together. There will be a Republican alternative. It will be unacceptable once the media picks it up, for a Republican to say, every single person who has the subsidy doesn't deserve it. It's not going to be feasible. I myself could make the ABC specials; I'm crying just thinking about who I would find. But that does not mean everybody has to be covered, there has to be mandates or anything like that. There has to be an alternative for a Republican voter that must start out by saying, this is the first step in replacing the bill. A Democratic voter absolutely will be horrified. That is not what they are coming to a primary for, is to have a discussion about changing the bill. That is how I think this is going to play out and the question is, whether or not at the end of day, there is an agreement where this just carries into the election.

ED HOWARD: Well, there is a few of the future electoral fallout and it is about time to open things up to questions. As I mentioned, there are microphones you can use to ask your question orally. Hold your green card up if you are writing a question on it and someone will bring it forward and if you want to tweet a question, you can see the hashtag there.

Dan, let me just start off by asking you to fill in a few of the blanks about the connection between a plaintiff victory and the end of mandates. There wasn't a whole lot of discussion about that in the court, but it is sort of the neck bone connected to the shoulder bone.

DAN CRIPPEN: Well, I believe -- and again, not being the lawyer on the panel, at all, that an adverse finding for the government would mean subsidies and these exchanges would disappear. A

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general agreement on that. At that point, then the premiums, even currently, let alone those for upcoming years, would prove to be unaffordable as defined by the ACA for many of the individuals who now get subsidies. So once that happens, they would no longer be subject to the individual mandate. In return or in relation to that, the employer mandates could be used in a way or employers could try to effectuate them in a way that would also make the policies unaffordable for employees who currently might now be receiving subsidies and therefore the employer mandate could be essentially eviscerated by employer activity. So it's widely assumed, again, I'm not the best at saying exactly what part of the law would do this, but my understanding is that both the individual mandate and the employer mandate would effectively be rendered moot by an adverse finding for the federal government.

ED HOWARD: Simon?

SIMON LAZARUS: Just to point out that a Republican bill has been described here, I think, if they are able to get their multiple acts together to come up with a bill they can agree on, which is very far from clear. If they were, it would very likely, temporarily extend the subsidies to some degree and it would also, as Robert has said, repealed some parts of the law and politically most likely would be to repeal the individual mandate and probably the employer mandate. That is the way they would frame it, but what that also repeals is the feasibility of requiring that insurers cover people who have pre-existing conditions. That insurers not throw people off of their policies as soon as they actually need insurance because they get sick or get hurt. All of these vital insurance reforms that are in the ACA, which are very popular across a broad section of the public for good reasons, they will go with the mandate. And so if the Democrats are any good at all at messaging, that is what they will be sending about these bills. So I think that it will be a very difficult road to hoe politically to do what even those Republicans who think they need to come up with something that looks like an alternative, will be able to do because it will crash the whole scheme and it will crash the scheme in ways that are perceived as extremely valuable by a broad section of the public.

MICHAEL CANNON: I want to try to clarify how the mechanics of this work. A ruling for the challengers means that this IRS regulation is being challenged falls, which means the subsidies disappear. That doesn't affect the premiums. Not yet, anyway. The premium is always 100% of the premium. What happens is, right now, people receiving subsidies are paying on average 28% of the premium. When the subsidy disappears, they have to pay 100% of the premium. Another way of putting that is, they are exposed to the full cost of the very expensive coverage that the ACA requires them to purchase. That is what supporters of the -- I was about to call them the supporters of the ACA. They don't actually support the ACA, they are trying to rewrite it. But defenders of the IRS, that is what frightens them so much about their not being subsidies in federal exchanges. Is that people will see the full cost of these very beloved regulations that Si is talking about and they will demand that the regulations be removed once they see the full cost. So that is what happens and it doesn't repeal anything. It doesn't repeal these subsidies. A ruling for the challengers wouldn't repeal the individual or the employer mandates, it would just give exemptions effectively to a lot more people because penalties against any employer -- about 250,000 employers in these 34 or so states, and 11 million individuals, there would be nothing to trigger penalties against them so they would be effectively exempt from the individual mandate. What happens then is -- and this is

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actually important to understand because what the President will want is he will want a one page bill that says, "A federal exchange is an exchange established by the state." Boom. That means that all of those subsidies would start flowing again and all of those taxes would be re-imposed. There is absolutely no way Republicans can sign on to that. Every one of 'em will get primaried, Bob is absolutely right. Because not only will they have expanded Obama Care beyond -- remember the Supreme Court is saying, "This is what the law is." Expanded Obama Care beyond what Democrats were able to accomplish at the height of their power in 2009. But they will also be putting their fingerprints on the individual mandate, which is the least popular part of this law by expanding it to 34 more states. No way they are going to do that. They might want to keep some subsidies flowing, but unless they do really exactly what the President wants them to do, people will still be exposed to the costs of those regulations, they will still refuse ACA coverage, there will be adverse selection, precisely because people don't like the regulations that Si thinks they do and that will cause insurance markets to unravel. So any Republican plan is going to be completely anathema to not only the President, it will draw his veto, but also to the left wing base of the Democratic party and so you are going to have these two groups that are not -- they are gonna have a hard time meeting in the middle. I think they are going to have to because a lot of people are going to see the full cost of this law and there is going to be a lot of discontent. It's tough to predict exactly where they will leap, but I think they are going to have to do that.

ED HOWARD: Just one other aspect of this. I know there is a percentage of income, which if exceeded by the premium cost, allows someone to escape the individual mandate, right?

MICHAEL CANNON: You want to get way into the weeds? It's 8% of income. If the amount you have to pay for health insurance exceeds 8% of your income, then you are exempt from the individual mandate because it's not affordable. And when tax credit disappears, the amount you have to pay goes from 28% of the premium to 100% of the premium, which for a lot of people -- for 11 million people, is going to be above 8% of their income and that is actually how the plaintiffs in *King v. Burwell* were able to establish standing. They said, "We don't want these tax credits and the fact that you are offering them to us subjects us to the individual mandate and that \$1200 or whatever tax." So that is how they got standing to challenge this regulation. Where usually people don't have standing to challenge, something that just illegally expanding government spending.

ED HOWARD: Thank you, you just answered one of the questions that came in on a card.

SIMON LAZARUS: Can I make one quick comment on Dan's presentation? I just wanted to note that all of the possible scenarios about how states might be able to respond and keep their exchanges afloat if the Supreme Court rules for the challengers, Michael and his colleagues already have the summer interns in Jones Day and other law firms hard at work on the complaints that they will file to challenge each one of those things. And if they haven't thought of one of them, which I'm sure they have, they have now. They have heard about it. And so they will be beaver away as soon as this panel is over. So if the Supreme Court is of a mind to narrowly interpret -- to turn the ACA on its head as the challengers wanted to do. The chances that any of those paths to redemption would survive the litigation that they will be challenged to are very remote. So I wouldn't be too confident. The fact is, as Michael himself is really saying, if the government loses it and the people who are

benefiting from its interpretation of the ACA, are gonna lose and the states that are affected are gonna lose.

ED HOWARD: We have someone at a microphone? I would ask you to keep your question brief and identify yourself if you would.

AUDIENCE MEMBER: I'm Julie Rovner from Kaiser Health News. I have a question about the way in which what Michael was saying and what Dan is saying seem to contradict each other. Dan, you are saying -- and I know Justice Leito mentioned this at the oral argument, I think he was the only one that if they ruled for the challengers, they might somehow stay the ruling. But if what Michael is saying is correct, which is the only way in which they can win is if this was the law all along, how can they possibly stay it? How can they have a decision that says, this is what Congress meant, that there will be no subsidies in state based exchanges, but we are not going to let that take affect right away?

MICHAEL CANNON: Was that a question for Dan or for me? Isn't the law fun? This is the Supreme Court, they can do whatever they want. It would be awkward for them to say, these subsidies and these taxes are illegal. The Executive Branch does not have the authority to make the law, to impose taxes, to spend money; therefore, we are going to do it for another six months because it would be disruptive to stop. They may well do that and I think Nick Bagley has found examples where they have -- discussed examples where they have kind of -- in fact the [inaudible] University of Michigan, where the court has kind of done that; granted equitable relief -- I'm not a lawyer, so tell me if I'm using that term correctly. And so they may well do that and that would give some breathing room to healthcare.gov and [inaudible] receiving subsidies to members of Congress and everyone else. I would have a hard time squaring that with -- if I were a Supreme Court Justice, squaring that with my duty to the -- my oath to the Constitution. But the Supreme Court has rewritten laws before.

SIMON LAZARUS: Julie, it's a very important thing to point out that I noted but didn't want to take time to do and that is that only Justice Leito made a very vague allusion to the possibility that they may might somehow delay the effective date of that decision. No one else got on that bandwagon. So I would say it's not terribly likely. It isn't really true that they can do anything they want and there have been a number of very good articles written that explain why even if they could delay it and delay the effective date until the end of this year, which would be about the longest you could possibly imagine them doing it, that is just not enough time for this Congress as Solicitor General really remarked, Riley, in the oral argument, for this Congress or for affected states with maybe one or two exceptions to qualify as state exchanges. And there is just going to be months and years of massive insurance market chaos if this decision goes the other way.

ED HOWARD: We have about 15 minutes left and as we listen to the Q and the A in this last period, I would appreciate you not walking out until you fill in your evaluation form to help us evaluate future programs like this. Yes, go right ahead.

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AUDIENCE MEMBER: Hi, Betsy Wieand from the American Congress of Obstetricians and Gynecologists. The focus has been on the IRS regulation and the interpretation of that, however there is also language in the Medicaid maintenance of effort for adults about state exchanges going live and states being able to drop their maintenance of effort for adult eligibility. In a ruling for the challenger, do you see issues around states that have dropped their eligibility for Medicaid adults? I'm thinking of Louisiana and Oklahoma that have dropped their pregnancy eligibility income thresholds.

MICHAEL CANNON: What the maintenance of effort provision says is that those provisions will remain in place until there is an exchange established by the state. And so it would seem that they would kick in again. Right now the -- not only is the IRS pretending that it can disregard the plain meaning of that term over here in the Internal Revenue code, but HHS is pretending that it can do the same -- ignore the plain meaning of that term in the social security act. So it would seem that that would kick in again, however there might be relief for Louisiana and other states because there is another case that is not yet before the Supreme Court, they filed for CERT, it was brought by Maine called [unintelligible] v. Burwell. Secretary Burwell's lawyers are very busy. That case has claims that HHS was wrong to hold Maine to that maintenance of effort mandate because the Supreme Court made the provision of the statute optional in the Medicaid part of its NFIB decision and I can walk you through why I think that's correct. Both because it's part of the Medicaid expansion that the court made optional and because that provision of the ACA meets the -- independently, all by itself, meets the test the court used to decide whether a condition imposed on federal funds unconstitutionally coerces the states.

ED HOWARD: Bob, a question directed to you, asks whether there is polling on whether Republicans or Democrats will be viewed as responsible if the subsidies are struck down and if there is no formal polling, they are interested in your opinion.

ROBERT BLENDON: I'm not sure I'm allowed to have an opinion. My view is, if there is no Republican option, the Republicans actually will be help responsible not only for the ACA, but a lot of people realize they are going to hurt, they are going to be on the TV, they are going to be radio and the answer is, we don't think anyone is deserving of help -- I've done enough polling on this -- that doesn't play out. If you have two alternatives, it very well could be blaming the administration for not being able to reach a compromise between Republicans and Democrats, but there has to be an alternative on the table from the other party which says, we will keep a lot of these subsidies going, you change the law. But if the answer is, just say no on one side, then actually, that will be very difficult for Republicans and rolling into independent voters in the following November, it just won't be [inaudible]. That is why I have great respect for political advisors who walk people around, put ice on the back of their neck and say, "You are going to have an alternative." That there will be two alternatives here and then I don't think there is going to be a terrific gain for one or the other.

MICHAEL CANNON: I can add to that. Two things. One is, I'm very interested in that question too. I don't know the answer. It seems to me, the closest analogue we have is the plan cancellations from late 2013 when a lot of people who are told, if you like your health plan, you can keep it,

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found out that was not true. That is notable, I think, because it is the one time where public opinion and even the media clearly turned against the Obama Administration on Obama Care. Most -- would say it's fair to say that most -- the media coverage -- proponents of the ACA would say it's balanced and that it favors the ACA, but not -- not in those couple of weeks or months. The media was outright hostile to the Obama Administration and I think that is the closest analogy to what we have here, because what did the administration do? It said under Obama Care you will have secure, affordable coverage and then the Supreme Court says, this is how Obama Care works and people see their insurance bills triple. Or how much they are being charged for their insurance triples. You might think that they are going to work through -- okay, how did this happen and who is responsible or if they are low information voters or non-voters, they might just say, okay, I guess Obama Care doesn't work. It's not affordable and that would suggest to me that not only the public, but the media may repeat their performance. The other thing I wanted to mention is, about a Republican alternative, I agree with Bob. I'm not a pollster, but in my experience if you are seen as uncaring, you lose; especially in healthcare. However I think Republicans are going to offer some form of assistance to people who cannot afford health insurance. But it doesn't have to be very big or anything even remotely on the scale of what will disappear after ruling for the King challengers. I say that because if you remember, Obama Care included something called the "preexisting condition insurance program". It is what we call a high risk pool for people who are uninsurable and was supposed to cover them until 2014 when the exchanges came online. The number of people who enrolled was vastly below the CBO's estimates. Not your CBO, I don't think, Dan. Vastly below the CBO's estimates of how many people would enroll -- which is interesting in itself. It says that Congress is maybe trying to solve a problem that wasn't as big as it thought. And if you look at the number of people who actually enrolled in that program -- uninsurable people -- state by state and you look at how many people are in states that would lose -- the federal exchange states that would lose subsidies, it's not six million people. It's not six hundred thousand people. It's eighty thousand people across 34 states. You are talking two orders or magnitude smaller than what the President will want to spend in these states. So what I anticipate Republicans would do is that their alternative would be, look, for the vast majority of people who just saw their bills go from 28% to 100% of the premium, the best thing we can do for them is repeal the law because that gets rid of all the regulations that is making their health insurance so expensive. Let's them buy their old health plans. Let's them buy health insurance any time during the year. For those people who cannot afford health insurance after we do that, we can have a high risk pool that will cover those 80,000 people or 100,000 across the other states as well. And that will be their alternative and the amount of money that they are spending will be dramatically smaller, while still being able to claim that they are making health insurance affordable for everyone.

SIMON LAZARUS: I know that there are people on this panel and particularly the one in the center, who knows a great deal more than I do about high risk pools and so forth and alternative ways of trying to cover uninsured people. But we all know that really doesn't work. What we do know is that given the opportunity to buy insurance with the subsidies, a whole slew of people went out and bought it and we know the Health Corporation of America, which is not a bleeding heart liberal organization, but is the biggest health provider -- non-government health provider in the country, said in it's [friend of] court brief that it filed with the Supreme Court, it said, its internal data show that the ACA is working as intended. That it is inducing people to stop relying so much

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on what was for them free care and HCA was zero income, from emergency rooms when they finally got sick. Instead was inducing them to go out and buy insurance and have to put some skin in the game and it was inducing them to behave more responsibly about taking care of their health. So, those are the results that we know have happened and that will be eliminated if the challengers win this Supreme Court case.

ED HOWARD: Yes, go right ahead, Mary Agnes.

AUDIENCE MEMBER: I'm Mary Agnes Carey with Kaiser Health News. I just wanted to go back to this issue of state accommodation if the subsidies are thrown out in the exchanges run by the federal government. How much power, if any, does the Department of Health and Human Services, in particular Secretary of HHS have to make these kinds of accommodations that Dan Crippen discussed or other accommodations to help them if the subsidies are thrown out?

SIMON LAZARUS: I will very briefly respond to that and then Michael can add his understanding. We only know that when we see the Supreme Court decision and the extent to which it goes into defining what it takes under the law to be a state exchange and how much flexibility that would give states to outsource parts of functions to healthcare.gov and be within the court's definition of the law. So we have to wait and see that. Secondly, I just say, any court that decides in favor of these challengers on how to read this law is not likely to give the states much flexibility in that regard, I wouldn't think. Thirdly, what I said a little bit earlier, Michael and his colleagues will be in court about ten seconds after any measure of that sort is adopted, no matter what it is, because they are objective, is to eliminate major steps towards government sponsored universal health insurance and they will certainly do that. So I wouldn't be too optimistic.

MICHAEL CANNON: Actually, my goal is better health care for everybody. But the question of what can the Secretary get away with, is really what is at stake at the heart of *King v. Burwell*. The Secretary of Health and Human Services did play an important role in the rule that is being challenged by the IRS. The IRS rule refers to a work around that HHS tried to include in its own implementing regulations. If the administration responds to a ruling for the challengers by trying to gut another part of the statute, but trying to rewrite another part of the statute and lift some of the requirements that block it unilaterally, erase some of the requirements that prevent it from taxing people, those people are probably going to challenge that action, as they should. This country fought its first war over taxation without representation and that is what is at stake in this case. I think that this is a problem that only can be fixed by Congress. I don't want to see years of litigation about this. I would rather the President and Congress get together and come up with some sort of solution and stable reforms that make healthcare better and more affordable and more secure for people. They are really diametrically opposed about how to do that but I certainly hope that the administration doesn't try to do -- after the Supreme Court -- if the Supreme Court slaps down the Administration for breaking the law, my hope is that they don't turn around and do the same thing all over again.

ED HOWARD: We have several questions that are asking us to try to address the situation that might obtain if the federal government prevails in this case, different aspects are being raised, one

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of them has to do with the financial stability of the state exchanges if they are allowed to continue or if there are some other states that convert to it. As I understand it, the subsidies that are available through the ACA and this year and states are looking for ways to finance the cost of the exchanges to varying degrees of futility and I wonder what kind of movement we can see or you can anticipate, Dan, in trying to hang on to the state exchanges that do exist?

DAN CRIPPEN: It's interesting, some of the things that are being discussed among states as a potential response to an adverse ruling against government, also some of the things that they are discovering might be useful to help the sustainability of state exchanges. Those are running their own exchanges now, as Ed suggested, several of those states are having difficulty trying to figure out how to pay for them. The subsidies Ed was referring to in this case are those that the federal government is giving to states to build, maintain the state exchanges and those federal payments do expire, dry up. So the question is how to maintain a financial viability. The most common way of paying for the exchanges so far has been premium taxes so that premiums -- health insurance premiums are taxed at some level to provide income to run the exchanges. In some states that doesn't look to be enough to keep the exchanges going, so what is being considered in many places or how to reduce the cost of the exchange in addition to the notion of how would you supplement income for it, and some of those things are, as I suggested earlier, the same kinds of solutions that are being discussed as a response to Supreme Court. For example, could there be a call center, which is an expensive proposition -- could there be a call center for a number of states? So there would be a Northeast call center for example in Boston as opposed to each state having its own call center. So a regional cooperation might be a viable way of cutting some of the more expensive pieces of the state exchange. So there are options under consideration to try to make them more financially viable and not just in raising taxes but in how to make things more efficient and share resources.

ED HOWARD: Well, we have come to the end of our time and we haven't quite answered all of our questions. But if you will watch your alert systems on your iPhones, you will find out soon enough what the basic structure of the activity of the next few months is going to be. We will come back to it as we can with further briefings after the court decision. Let me just ask you one more time to fill out the blue form if you haven't done it yet. Thanks to our colleagues at Ascension for encouraging us to help you understand this bundle of issues better and ask you to thank the panel with me, for slogging through some really tough legal and predictive situations that we have tried to help you understand.

[applause]