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The Inequity of the Patient Protection and Affordable Care Act: Over 4,200,000 Left Uninsured

Archie L. Roundtree, Jr.

AUTHOR'S NOTES

The Affordable Care Act (ACA), referred to as “Obamacare” affects millions of Americans. Daily worldwide press releases give credence to the fact that this contemporary topic pulls at the heartstrings of Americans. People across the political spectrum feel strongly about how the government is shaping the health care system; it has created heated discussions across the country—striking a chord within millions. The media is on high alert with daily updates, opinions, and discussions. This controversial topic in our political climate is current and constantly evolving. Although the desire for the ACA is strong, the developing events surrounding it may change. It is interesting, stimulating, and extremely rare to see events unfolding right before your eyes and ears—because the ACA-related events are happening as this paper is developing. This article gives readers a front row view of current events, political mayhem, and the people’s choice—all at the same time. The need for change and implementation, and the desire for a better health care system, gives one an overwhelming glimpse into all aspects of the need for medical care. This article provides distinct solutions designed to address a broken health care system and to ensure coverage for the millions of Americans who are uninsured. Further, this article advocates for fulfilling a need in our society

to provide health care coverage. The article will enlighten, educate, and engage readers, in hopes of witnessing a transformation in the health care system.

I. INTRODUCTION

The Patient Protection and Affordable Care Act (PPACA) is important because it is "a far-reaching law with extensive impact and implications," and many people are affected by its healthcare mandates.¹ Nineteen states refused to implement the Medicaid expansion provision of the PPACA, denying over 6 million Americans access to health care.² The law is also known as the Affordable Care Act (ACA), colloquially referred to as "Obamacare."³

The topic of healthcare is important because millions of citizens are denied benefits.⁴ The nation's most vulnerable citizens are denied basic medical coverage and used as pawns by uncaring politicians.⁵ It is a political irony that Republicans began their fight to repeal the ACA within weeks of its passage.⁶ A replacement for the ACA was not proposed until

¹ Tevi Troy & Mark Wilson, *The ACA's Impact on Employer-Provided Health Benefits*, REALCLEARHEALTH (Nov. 16, 2016), http://www.realclearhealth.com/articles/2016/11/16/the_acas_impact_on_employer-provided_health_benefits_110255.html.

² See *A 50-State Look at Medicaid Expansion*, FAMILIESUSA (Apr. 2017) <http://familiesusa.org/product/50-state-look-medicare-expansion>.

³ *2016 Obamacare – Affordable Care Act Glossary*, OBAMACARE.NET, <https://obamacare.net/obamacare-glossary/> (last visited Mar. 8, 2017).

⁴ See *A 50-State Look at Medicaid Expansion*, *supra* note 2.

⁵ See Robert Scheer, *Racism and Cruelty: What's Behind the GOP's Healthcare Agenda?* THE NATION (Oct. 8, 2013), <https://www.thenation.com/article/racism-and-cruelty-whats-behind-gops-healthcare-agenda/>.

⁶ Igor Volsky, *Blow by Blow: A Comprehensive Timeline of The GOP's 4-Year Battle to Kill Obamacare*, THINKPROGRESS (Mar. 23, 2014), <https://thinkprogress.org/blow-by-blow-a-comprehensive-timeline-of-the-gops-4-year-battle-to-kill-obamacare-5dd069a5518a>.

seven years later, in March 2017, after Republicans gained control of the executive branch, the Senate, and the House of Representatives.⁷

The population that will benefit most from health care reform is the poor and needy, as that population will require subsidies to support the cost. Subsidies may require higher taxes, redistribution of resources, and more governmental involvement—actions typically inconsistent with Republican policies.⁸ Families, who have a legal right to full health care coverage, and a mechanism to obtain it, are being denied that right due to the political agendas of their state, local, and congressional representatives. The legal right to health care is embodied in the federal statute encompassing the ACA Medicaid expansion program, which authorizes medical care for all legal residents with earnings of \$33,948 for a four-person household, or \$16,643 for an individual, as of 2017.⁹ Congressional Republican representatives have been actively working to repeal the ACA since it became law in March 2010; they have voted to repeal or amend the law more than 60 times.¹⁰

State legislators and governors who have refused to opt in to Medicaid/Medicare have caused irreparable harm to their constituents. The unjust and unintended consequences of allowing states to opt out of implementing the Medicaid expansion provision of the ACA is that millions

⁷ See MJ Lee, *House Republicans pass bill to replace and repeal Obamacare*, CNN: POLITICS (MAY 4, 2017), <http://www.cnn.com/2017/05/04/politics/health-care-vote/>.

⁸ John C. Goodman, *Why Don't Republicans Have an Alternative to Obamacare*, FORBES (Jan. 19, 2015), <http://www.forbes.com/sites/johngoodman/2015/01/19/why-dont-republicans-have-an-alternative-to-obamacare/#541a5c1ec39d>.

⁹ See *ObamaCare Medicaid Expansion*, OBAMACARE FACTS, <http://obamacarefacts.com/obamacares-medicaid-expansion/> (last visited Mar. 29, 2017).

¹⁰ Alex Zielinski, *GOP Lawmakers Vote to Repeal Obamacare, Again, On Groundhog Day*, THINKPROGRESS (Feb. 2, 2016), <https://thinkprogress.org/gop-lawmakers-vote-to-repeal-obamacare-again-on-groundhog-day-6f0c931a8549#.64szhhpli>.

of Americans are denied their right to health care.¹¹ More than five million additional citizens could be insured if Texas, Georgia, and Florida were to implement the Medicaid expansion provision of the ACA.¹² Health care coverage afforded by the ACA applies to every American citizen, yet 19 states chose to deny residents the benefits of coverage offered through the expansion of Medicaid.¹³ In 2012, the Supreme Court ruled that in accordance with language in the ACA, states have a right to opt-out of providing Medicare coverage.¹⁴ The unjust and unintended consequences of the ACA are caused by state legislators and governors who refuse to implement the Act's provisions.¹⁵ It is unreasonable for state legislators and governors to deny insurance to American citizens eligible to receive Medicaid—insurance that is available and paid for by the federal government.¹⁶

The history of the ACA is fraught with controversy.¹⁷ This article will examine that history and evolving controversy surrounding the ACA.¹⁸ First, this article will scrutinize votes and arguments presented by congressional legislators opposing the ACA. Second, and most importantly, I will provide an avenue to drastically reduce the uninsured rate and provide

¹¹ See M. Buettgens & G. Kennedy, *What if More States Expanded Medicaid in 2017? Changes in Eligibility, Enrollment, and the Uninsured*, RWJF (Jul. 2016), <https://www.rwjf.org/en/library/research/2016/07/what-if-more-states-expanded-medicaid-in-2017-.html>.

¹² *Id.*

¹³ *Id.*

¹⁴ Scheer, *supra* note 5.

¹⁵ Scheer, *supra* note 5.

¹⁶ *A 50-State Look at Medicaid Expansion*, *supra* note 2; Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).

¹⁷ See *Why is Obamacare so Controversial?*, BBC (May 4, 2017), <http://www.bbc.com/news/world-us-canada-24370967>.

¹⁸ See *Affordable Care Act (Obamacare)*, HEALTHREFORMVOTES.ORG, <https://www.healthreformvotes.org/congress/roll-call-votes/s396-111.2009> (last visited Mar. 12, 2017).

health care to virtually every American. Finally, I will recommend that Congress pass a law requiring all states to expand Medicaid, and open health care exchanges to implement the Medicaid expansion, because doing so would reduce the current national uninsured rate by nearly 50 percent—to a low of 4.5 percent.¹⁹ This discussion is limited to an analysis of the effects of specific healthcare legislation on the citizens in the United States, but does not address comparisons to other countries' similar legislation.

II. BACKGROUND

The ACA is a culmination of health care proposals spanning several decades, championed by both Republicans and Democrats.²⁰ Former President Barack Obama signed the bill into law on March 23, 2010.²¹ The Congressional Budget Office estimated that as many as 21 million people would be insured through the ACA by 2016.²² The actual number of people insured according to the Obamacare Facts website is approximately 20 million as of February 2016.²³ The ACA was designed to provide affordable health care to Americans with little or no insurance.²⁴ Uninsured citizens qualify for the Medicaid Expansion provision if their household income

¹⁹ See Buettgens & Kennedy, *supra* note 11, at 1.

²⁰ See *History of the Individual Health Mandate, 1989-2010*, PROCON (Feb. 9, 2012), <http://healthcarereform.procon.org/view.resource.php?resourceID=004182>.

²¹ *Id.*

²² Director Douglas W. Elmendorf, Congressional Budget Office Letter to Speaker Nancy Pelosi on H.R. 4872, the Reconciliation Act of 2010 (Mar. 20, 2010), <https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/amendreconprop.pdf>.

²³ *ObamaCare Enrollment Numbers*, OBAMACARE FACTS, <http://obamacarefacts.com/sign-ups/obamacare-enrollment-numbers/> (last visited Feb. 12, 2017).

²⁴ John Scar, Jules Clark, & Like Delorme, *Understanding the Affordable Care Act*, AM. INST. ECON. RES. (May 8, 2014), <https://www.aier.org/research/understanding-affordable-care-act>.

falls below 133 percent of the federal poverty level.²⁵ When former President Obama signed the ACA into law, the uninsured rate among the nonelderly population was 16.7 percent.²⁶ This high percentage represents more than 50 million people without health insurance.²⁷ The massive number of uninsured occurred at a time when the country was in the middle of a great recession; employers were laying off workers, companies were eliminating benefits, and nearly one in six Americans had no health insurance.²⁸ Key provisions of the law were to take effect in January 2014.²⁹ During the mere 30 months between the signing of the ACA and its initial implementation, the uninsured rate soared to a high of 18.7 percent.³⁰ In October of 2013, federal and state agencies began enrolling citizens for insurance through the online ACA health care exchanges.³¹ Between October 1, 2013, and March 31, 2014, over 8 million people used the

²⁵ *Medicaid Expansion & What It Means for You*, HEALTHCARE.GOV, <https://www.healthcare.gov/medicaid-chip/medicaid-expansion-and-you/> (last visited Mar. 13, 2017).

²⁶ Dan Mangan, *Obamacare Pushes Nation's Health Uninsured Rate to Record low 8.6 percent*, CNBC (Sept. 7, 2016), <https://www.cnbc.com/2016/09/07/obamacare-pushes-nations-health-uninsured-rate-to-record-low.html>.

²⁷ Richard Wolf, *Number of Uninsured Americans Rises to 50.7 million*, USA TODAY (Sept. 17, 2010), http://usatoday30.usatoday.com/news/nation/2010-09-17-uninsured17_ST_N.htm.

²⁸ *Id.*

²⁹ Alson Martin, *15 PPACA Provisions that will take effect in 2014*, THINKADVISOR (Jun. 3, 2013), <http://www.thinkadvisor.com/2013/06/03/15-ppaca-provisions-that-will-take-effect-in-2014>.

³⁰ *Key Facts about the Uninsured Population*, KAISER FAM. FOUND. (Sept. 29, 2014), <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

³¹ *History and Timeline of the Affordable Care Act (ACA)*, EHEALTH (Sep. 22, 2016), <https://resources.ehealthinsurance.com/affordable-care-act/history-timeline-affordable-care-act-aca>.

exchanges to enroll in health insurance, obtaining access to basic health benefits they otherwise would never have been able to afford.³²

The social impact of the ACA is a quantifiable, life changing experience for millions of Americans.³³ Health insurance with preventative medical care is paramount to physical wellness and a healthy life style.³⁴ With proper preventive care and early medical diagnosis, lives have been saved and extended.³⁵ Prior to the ACA, many of the citizens who were uninsured did not seek medical assistance until their conditions were so critical they had to rush to the emergency room.³⁶ Thanks to the ACA, low-income Americans are able to receive preventive care and enjoy the same medical privileges as the citizens who can afford private health insurance or are receiving it through their employer. The purpose and intent of the ACA is evident, but opposition to the Act is strong. Therefore, it is imperative that proponents are vigilant in highlighting the benefits of the ACA as a counterforce to the rhetoric exposed by the opposition.

³² *FACT SHEET: Affordable Care Act by the Numbers*, WHITE HOUSE (Apr. 17, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/04/17/fact-sheet-affordable-care-act-numbers>.

³³ See *The Affordable Care Act and the U.S. Economy*, COMMONWEALTH FUND, <http://www.commonwealthfund.org/publications/fund-reports/2016/feb/aca-economy-five-year-perspective> (last visited Jan. 3, 2017).

³⁴ Rahel Gebreyes, *These Are the Lives That Obamacare Helped Save*, HUFFINGTON POST (Jan. 3, 2017), http://www.huffingtonpost.com/entry/obamacare-lives-saved_us_585c1675e4b0eb586485840f.

³⁵ *Id.*

³⁶ See Melanie Evans, *Hospital cost of uninsured: \$900 per patient, per year*, MOD. HEALTHCARE (Jun. 23, 2015), <http://www.modernhealthcare.com/article/20150623/NEWS/150629964>.

A. Repeal and Replace

On Tuesday, November 8, 2016, Donald J. Trump was elected as the 45th president of the United States.³⁷ Since the beginning of his campaign and into his presidency, President Trump continues to pursue his goal to repeal and replace the ACA.³⁸ Since its passage, there have been more than 60 attempts by Congress to repeal Obamacare.³⁹ Although votes to repeal the ACA are numerous, the House and Senate have not agreed on a bill to replace it. Congressional eagerness to actually repeal and replace the ACA is dubious; consensus amongst Republican senators on a bill to replace Obamacare is as fleeting as when former President Obama was in office.⁴⁰ With the election of President Trump, Congress now has the votes to repeal the ACA, but has been unable to develop a bill that both the House and Senate can agree on.⁴¹ Congress has not held a public hearing on the problems with the ACA; perhaps it is because Republican lawmakers would have to explain to the American people how they would solve the

³⁷ Adam Edelman, Cameron Joseph, Jason Silverstein & Larry McShane, *Donald Trump Elected the 45th President of the United States in Explosive Overthrow of Washington Establishment*, DAILY NEWS (Nov. 9, 2016), <http://www.nydailynews.com/news/politics/donald-trump-elected-45th-president-u-s-article-1.2865288>.

³⁸ Benjamin Siegel & Veronica Stracqualursi, *Trump says Obamacare 'dead' after GOP health bill passes House*, ABC NEWS (May 4, 2017, 11:31 PM ET), <http://abcnews.go.com/Politics/house-passes-obamacare-replacement-bill/story?id=47200247>.

³⁹ Zielinski, *supra* note 10.

⁴⁰ John C. Goodman, *Do Republicans Really Want To Appeal Obamacare? Maybe Not*, FORBES (Aug. 4, 2016), <http://www.forbes.com/sites/johngoodman/2016/08/04/do-republicans-really-want-to-repeal-obamacare-maybe-not/#84186506c1ef>.

⁴¹ See Mike DeBonis, *Republicans Have a Plan to Replace Obamacare, and Its Cost are Unclear*, WASH. POST (Jun. 22, 2016), <https://www.washingtonpost.com/news/powerpost/wp/2016/06/22/republicans-have-a-plan-to-replace-obamacare-and-its-costs-are-unclear/>.

problems.⁴² The popularity of the ACA has skyrocketed since the election of Donald Trump, from 42 percent in November 2016, to a high of 55 percent.⁴³

Any reform of the ACA would undoubtedly have to include elements currently contained in the law—specifically, the individual mandate. A central feature of the ACA is the individual mandate, which was “fleshed out more than two decades ago by a number of conservative economists, [and] embraced by scholars at a conservative research group.”⁴⁴ The individual mandate is a directive that requires most citizens to purchase health insurance coverage.⁴⁵ The mandate allows for a large risk pool to be created that include enough healthy people to lower premium for everyone.⁴⁶ If a bill to repeal and replace the ACA is passed by both Houses of Congress and signed into law by the President, the replacement would likely include aspects of the Medicaid expansion program.⁴⁷

Government figures reveal that “provisions of the Affordable Care Act have resulted in an estimated 20 million people gaining health insurance

⁴² Goodman, *supra* note 40.

⁴³ Bob Bryan, *Obamacare’s Popularity Has Gone Through the Roof After Trump’s Election*, BUS. INSIDER (Apr. 4, 2017, 4:33 PM), <http://www.businessinsider.com/poll-obamacare-popularity-favorability-gallup-2017-4>.

⁴⁴ Michael Cooper, *Conservatives Sowed Idea of Health Care Mandate, Only to Spurn It Later*, N.Y. TIMES (Feb. 14, 2012), <http://www.nytimes.com/2012/02/15/health/policy/health-care-mandate-was-first-backed-by-conservatives.html>.

⁴⁵ Sarah Kliff & Ezra Klein, *Individual Mandate 101: What it is, Why it Matters*, WASH. POST (Mar. 27, 2012), https://www.washingtonpost.com/blogs/wonkblog/post/individual-mandate-101-what-it-is-why-it-matters/2011/08/25/gIQAhPzCeS_blog.html?utm_term=.329aaf1fd5a6.

⁴⁶ *What Is the Individual Mandate for Health Care Reform?*, TURBOTAX, <https://turbotax.intuit.com/tax-tips/health-care/what-is-the-individual-mandate-for-health-care-reform/L51gBOz8v> (last visited Nov. 4, 2017).

⁴⁷ Dylan Scott, *The Many Obstacles Awaiting the Republican Health Care Bill in the Senate*, VOX (May 4, 2017, 2:24 PM EDT), <https://www.vox.com/policy-and-politics/2017/5/4/15542792/senate-republicans-health-care-bill>.

coverage between the passage of the law in 2010 and early 2016.”⁴⁸ Approximately 50,000 lives have been saved as a result of adequate healthcare—thanks to access to medications, preventive procedures, and health education.⁴⁹ With so many Americans benefiting from the ACA, it will be difficult for any administration to turn back the progress and retract those benefits. The soaring popularity of the ACA has caused some Republican senators to re-examine their promise of “repeal and replace.”⁵⁰

Following the election of President Trump on Tuesday, November 8, 2016, “[m]ore than 100,000 consumers signed up on Wednesday for Obamacare plans, the most of any day since open enrollment started.”⁵¹ The healthcare benefits the ACA provide to the nation’s most vulnerable citizens is a boost to the entire society. It is a form of social justice to expand Medicaid and provide health care to the nation’s poorest and most vulnerable citizens.⁵² It is imperative that congressional supporters of healthcare fight vigorously to pass a law to ensure medical coverage is extended to uninsured citizens. Every citizen in the United States of America has a right to basic medical coverage.

⁴⁸ Jeffrey Young, *20 Million Gained Health Insurance from Obamacare, President Says*, HUFFINGTON POST (Mar. 3, 2016, 4:56 PM ET), http://www.huffingtonpost.com/entry/health-insurance-obamacare_us_56d8a717e4b0000de403d404.

⁴⁹ Joan McCarter, *Fact check: Has Obamacare Helped Save 50,000 Lives? Why Yes, It Has*, DAILY KOS (Apr. 2, 2015, 7:16 PM PDT), <http://www.dailykos.com/story/2015/4/2/1375090/-Fact-check-Has-Obamacare-helped-save-50-000-lives-Why-yes-it-nbsp-has>.

⁵⁰ Burgess Everett, *Senate Republicans: From ‘hell no’ to ‘not so sure’ on Obamacare*, POLITICO (Mar. 18, 2017, 7:15 AM EDT), <http://www.politico.com/story/2017/03/obamacare-repeal-senate-republicans-236209>.

⁵¹ Jayne O’Donnell, *Trump election helps spur top Obamacare signups this month*, USA TODAY (Nov. 10, 2016), <http://www.usatoday.com/story/news/politics/2016/11/10/trump-election-spurs-record-obamacare-signups-month/93590056/>.

⁵² See *ObamaCare Medicaid Expansion*, *supra* note 9.

Unfortunately, in March 2017, President Trump expressed an opposite view. Instead of embracing the ACA, the president fully supported a Republican-sponsored bill designed to repeal and replace the ACA.⁵³ The bill known as the American Healthcare Act would have cast 24 million people back into the ranks of the uninsured.⁵⁴ A Quinnipiac University poll revealed that only 17 percent of the American people supported the Republican replacement plan for Obamacare.⁵⁵ Republican leadership scheduled a vote for March 23, 2017, to repeal and replace Obamacare, but had to delay the vote due to opposition from rank-and-file Republican lawmakers.⁵⁶ The repeal-and-replace plan was rescheduled for a vote on Friday, March 24, 2017, but was pulled from the House floor because Republican lawmakers could not come to a consensus.⁵⁷ However, ten days

⁵³ Michael A. Memoli & Lisa Mascaró, *Trump warns GOP Vote for Obamacare repeal or lose your seat*, LA TIMES (Mar. 21, 2017), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-trump-warns-gop-vote-for-obamacare-1490110769-htmistory.html>.

⁵⁴ Thomas Kaplin & Robert Pear, *Health Bill Would Add 24 Million Uninsured but Save \$337 Billion, Report Says*, N.Y. TIMES (Mar. 13, 2017), https://www.nytimes.com/2017/03/13/us/politics/affordable-care-act-health-congressional-budget-office.html?_r=0.

⁵⁵ Paulina Firozi, *Poll: Just 17 percent of voters back ObamaCare repeal plan*, THE HILL (Mar. 23, 2017, 12:22 PM EDT), <http://thehill.com/policy/healthcare/325448-poll-majority-of-voters-disapprove-of-gop-obamacare-repeal-plan>.

⁵⁶ Matt Fuller, Machael McAuff & Ryan Grim, *Obamacare Repeal Vote Postponed*, HUFFINGTON POST (Mar. 23, 2017), http://www.huffingtonpost.com/entry/paul-ryan-donald-trump-lose-the-battle-postpone-vote-on-aca-repeal_us_58d42251e4b02d33b749d494?

⁵⁷ Mike DeBonis, Ed O' Keefe & Robert Costa, *GOP health-care bill: House Republican leaders abruptly pull their rewrite of the nation's health-care law*, WASH. POST (Mar. 24, 2017), https://www.washingtonpost.com/powerpost/house-leaders-prepare-to-vote-friday-on-health-care-reform/2017/03/24/736f1cd6-1081-11e7-9d5a-a83e627dc120_story.html?hpid=hp_hp-banner-main_housevote715a-banner%3Ahomepage%2Fstory&utm_term=.31e57f123d80.

later, on May 4, 2017, the House narrowly passed a bill to repeal and replace the ACA.⁵⁸

Moreover, on June 22, 2017 the Senate revealed the updated version of the bill.⁵⁹ A vote was looming and hypothesized to happen before July 4, 2017.⁶⁰ Strategic maneuvering revealed that ten Republicans had doubts on the repeal.⁶¹ Five Republicans voiced opposition to the bill.⁶² The final vote would have had grave implications because

[t]he Senate currently has 52 Republicans and 48 Democrats. That means if all Democrats vote against the bill, only three no votes from Republicans can torpedo it. Even if Republicans are successful in getting it through the upper chamber, they would then still need to reconcile it with version passed by the House in early May, reach a bicameral agreement with House Republicans, and hold votes in the House and Senate on that version again.⁶³

⁵⁸ Daniel Person, *The House Just Passed the Obamacare Repeal Bill. Here's How Washington's Delegation Voted.*, SEATTLE WEEKLY (May 4, 2017, 7:30 AM), <http://www.seattleweekly.com/news/as-health-care-vote-approaches-we-still-dont-know-where-reichert-stands/>.

⁵⁹ Rebecca Shabad, *Senate GOP unveils health care plan after weeks of secrecy*, CBS NEWS (June 22, 2017), <http://www.cbsnews.com/news/gop-senate-health-care-bill-released/>.

⁶⁰ Gisele Grayson, Alyson Hurt, & Alison Kodjak, *Who wins, Who Loses With Senate Health Care Bill*, NPR (June 22, 2017), <http://www.npr.org/sections/health-shots/2017/06/22/533942041/who-wins-who-loses-with-senate-health-care-bill>.

⁶¹ Perry Bacon Jr., *The Senators Who Could Take Down the Health Care Bill*, FIVETHIRTYEIGHT (June 22, 2017, 9:38 AM), <https://fivethirtyeight.com/features/the-senators-who-could-take-down-the-health-care-bill/>.

⁶² Veronica Stracqualursi, Adam Kelsey, & Ali Rogin, *5th Republican senator comes out in opposition to health care bill*, ABC NEWS (June 23, 2017, 3:09 PM ET), <http://abcnews.go.com/Politics/republican-senators-ready-vote-health-care-bill/story?id=48205351>.

⁶³ Shabad, *supra* note 59.

III. ACA: SUCCESS OVER OPPOSITION

A. Medicaid Expansion

Opponents of the ACA have mounted a fierce and consistent battle to overturn the legislation. Since the ACA was upheld by the Supreme Court in June 2012, there have been more than sixty repeal votes in Congress.⁶⁴ As an example, the Washington State congressional legislators are taking the lead in mounting meritless opposition to the ACA.⁶⁵ Members of the Washington State delegation, which includes Representatives David Reichert, Dan Newhouse, Cathy McMorris, and Jaime Herrera, joined with their Republican counterparts in consistently voting to repeal the ACA.⁶⁶ The votes were cast despite the fact that since the passage and implementation of the ACA, Washington State has seen its uninsured rate decline from 16.8 percent in 2013, to 7.3 percent as of February 2016.⁶⁷ The uninsured rate decline represents a drop of 10.4 percent, or 744,640 residents.⁶⁸ According to Mike Kreider, the Washington state insurance commissioner in charge of regulating insurance, the uninsured rate dropped in virtually every county, a testament to the effectiveness of the ACA.⁶⁹

⁶⁴ Zielinski, *supra* note 10

⁶⁵ Zielinski, *supra* note 33; *see also*, *How Washington members of Congress voted on Obamacare, health reform*, HEALTHREFORMVOTES.ORG, <https://www.healthreformvotes.org/washington/> (last visited Oct. 17, 2016).

⁶⁶ *Id.*

⁶⁷ *Uninsured rate in Washington state drops by half to 7.3 percent*, INSURANCE.WA.GOV (Feb. 3, 2018), <https://www.insurance.wa.gov/news/uninsured-rate-washington-state-drops-half-73-percent>.

⁶⁸ Tim Pfarr, *Washington State uninsured rate down 10.4 percent from 2013*, WSHA (Aug. 13, 2015), <http://www.wsha.org/articles/washington-state-uninsured-rate-down-10-4-percent-from-2013/>.

⁶⁹ *Uninsured rate in Washington state drops by half to 7.3 percent*, OFF. INS. COMMISSIONER (Feb. 3, 2016), <https://www.insurance.wa.gov/about-oic/newsroom/news/2016/02-02-2016.html>.

A centerpiece for the effectiveness of the ACA is the Medicaid expansion provision.⁷⁰ Target groups for the expansion include a three person household with an annual income of \$26,347, or an individual making \$15,417, as of 2013.⁷¹ The target groups encompass millions of low-income citizens with chronic illnesses or disabilities, as well as veterans and Native Americans.⁷² Individuals eligible for Medicaid expansion were previously uninsured because they did not qualify under prior Medicaid standards.⁷³ Congress intended for Medicaid expansion to be a mandatory provision of the law, but the 2012 Supreme Court decision in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, provided for states to opt out of the requirement.⁷⁴ The Supreme Court decision led to a “coverage cap” in nineteen states that opted not to expand Medicaid.⁷⁵ Decisions by states not to expand Medicaid has left millions of eligible Americans uninsured.⁷⁶ Washington State opted to implement the Medicaid expansion, resulting in over 600,000 state residents gaining health insurance and a drop in the uninsured rate of over 60

⁷⁰ Sarah Baron, *10 Frequently Asked Questions About Medicaid Expansion*, *CTR. AM. PROGRESS* (Apr. 2, 2013, 4:22 PM), <https://www.americanprogress.org/issues/healthcare/news/2013/04/02/58922/10-frequently-asked-questions-about-medicaid-expansion/>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012).

⁷⁵ Vera Gruessner, *Supreme Court Ruling on Medicaid Expansion Led to Coverage Gap*, *HEALTHPAYER INTELLIGENCE* (Sept. 30, 2016), <https://healthpayerintelligence.com/news/supreme-court-ruling-on-medicaid-expansion-led-to-coverage-gap>.

⁷⁶ Rachel Garfield, *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, *KAISER FAM. FOUND.* (Oct. 19, 2016), <http://kff.org/uninsured/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/>.

percent.⁷⁷ Social justice is well served by the positive effects of the Obamacare in Washington State and throughout the country; lives are being saved and extended, yet opposition persists.

Congressional representatives throughout the country continue to voice strong opposition to the ACA; amongst the persistent national voices are the Washington State congressional representatives.⁷⁸ In a short four-year period, from 2011 to 2014, Washington State congressional legislators along with congressional legislators from other states, cast 54 votes to repeal or defund the ACA.⁷⁹ The votes were cast even though the ACA is providing a tremendous health care benefit to the residents the legislators were elected to serve.⁸⁰ Representatives David Reichert, Dan Newhouse, Cathy McMorris, and Jaime Herrera, along with their counterparts, assert that they have a better system of health care, but the Republican proposal put forth is supported by only 17 percent of the American people.⁸¹

Since the inception of the ACA, the uninsured resident rate in Washington has dropped to its “lowest level in decades.”⁸² The ACA is succeeding in its goal of delivering health care to American citizens at

⁷⁷ Louise Norris, *Washington and the ACA's Medicaid expansion*, HEALTHINSURANCE.ORG (Sept. 26, 2016), <https://www.healthinsurance.org/washington-medicaid/>.

⁷⁸ Person, *supra* note 58.

⁷⁹ Ed O'Keefe, *The house has voted more than 54 times in four years on Obamacare. Here's the full list.*, WASH. POST (Mar. 21, 2014), <https://www.washingtonpost.com/news/the-fix/wp/2014/03/21/the-house-has-voted-54-times-in-four-years-on-obamacare-heres-the-full-list/>.

⁸⁰ See Lester Black, *What an Obamacare repeal would mean for Washington*, CROSSCUT (Dec. 15, 2016), <http://crosscut.com/2016/12/what-an-obamacare-repeal-would-mean-for-washington/>.

⁸¹ Firozi, *supra* note 55.

⁸² Lisa Stiffler, *Obamacare in Washington state: Are the goals being met?*, SEATTLE TIMES (July 5, 2015), <http://www.seattletimes.com/seattle-news/health/obamacare-improves-health-care-in-state-but-could-be-better/>.

affordable rates.⁸³ Over 20 million Americans, including 775,000 Washington residents, are receiving coverage through the ACA.⁸⁴ Social justice via the ACA is being served and administered to people who need it most—those who are least able to secure it for themselves. A tremendous advantage of the ACA is that dependent children can retain benefits up to their 26th birthday.⁸⁵ Despite the benefits afforded to Washington residents, two Washington State congressional legislators voted to repeal and replace the ACA as recently as May 4, 2017.⁸⁶ Eight Washington congressional representatives, including two Republicans, voted against repealing the ACA.⁸⁷ If legislation to repeal the ACA becomes law, tens of thousands of Washington residents, along with millions of their fellow Americans, will lose their health insurance.⁸⁸ Health insurance coverage for eligible low-income citizens is subsidized by the federal government.⁸⁹ In spite of the

⁸³ *See id.*

⁸⁴ *775,000 Washington Residents Would Lose Coverage in 2019 Under ACA Repeal*, CTR. BUDGET & POL. PRIORITIES, <https://www.cbpp.org/sites/default/files/atoms/files/12-7-16health-factsheets-wa.pdf> (last visited May 27, 2017).

⁸⁵ Carmen Heredia Rodriguez, *Popular coverage for children under 26 may be health law's Achilles' heel*, CNN MONEY (Mar. 21, 2017, 2:32 PM ET), <http://money.cnn.com/2017/03/21/news/economy/health-law-coverage-children-26/index.html>.

⁸⁶ *Two Washington state Republicans voted against Obamacare repeal*, PUGET SOUND BUS. J. (May 4, 2017, 2:16 PM PDT), <http://www.bizjournals.com/seattle/news/2017/05/04/washington-state-congress-votes-obamacare-repeal.html>.

⁸⁷ *Id.*

⁸⁸ *See Robert Pear, G.O.P. Health Bill Would Leave 23 Million More Uninsured in a Decade*, C.B.O. SAYS, N.Y. TIMES (May 24, 2017), https://www.nytimes.com/2017/05/24/us/politics/cbo-congressional-budget-office-health-care.html?_r=0.

⁸⁹ Krishnadev Calamur, *Supreme Court Rules Obamacare Subsidies Are Legal*, NPR (Jan. 25, 2015, 10:14 AM ET), <http://www.npr.org/sections/thetwo-way/2015/06/25/417425091/supreme-court-rules-obamacare-subsidies-are-legal>.

great benefits, rising ACA premiums gave opponents of the ACA a fresh battle cry during the 2016 presidential election.

ACA premiums for 2017 have increased by as much as 25 percent.⁹⁰ Republicans from around the country seized on the news of the ACA premium hikes—bolstering their message that Obamacare is a failure.⁹¹ GOP candidates during the 2016 election considered the ACA rate increases a game changer.⁹² The Republican Congressional Committee invested millions in television ads, blaming Democrats for the ACA rate increases.⁹³ While it was true those rates were increasing far faster than prior years, the reason was mainly due to substantial insurer losses and reduction in profits, along with an ACA reinsurance program phase out.⁹⁴ Republican House Speaker Paul Ryan, speaking of the ACA, stated, “[t]his law has failed. We know that things are only getting worse under Obamacare. This is about people paying higher premiums every year and feeling powerless to stop it.”⁹⁵

⁹⁰ Amy Goldstein, *Average premiums for popular ACA plans rising 25 percent*, WASH POST (Oct. 24, 2016), https://www.washingtonpost.com/national/health-science/average-premiums-for-popular-aca-plans-rising-25-percent/2016/10/24/3adbb734-9a12-11e6-b3c9-f662adaa0048_story.html?utm_term=.b18551c1e0ee.

⁹¹ Louise Radnofsky & Reid J. Epstein, *GOP Candidates Seize on Premium Increases in Affordable Care Act*, WALL ST. J. (Oct. 25, 2016), <https://www.wsj.com/articles/gop-candidates-seize-on-premium-increases-in-affordable-care-act-1477426739>.

⁹² Sam Brodey, *Health insurances news is a gift to Republicans candidates*, MINN. POST (Oct. 28, 2016), <https://www.minnpost.com/politics-policy/2016/10/health-insurance-news-gift-republican-candidates>.

⁹³ *Id.*

⁹⁴ Cynthia Coc et al., *2017 Premium Changes and Insurer Participation in the Affordable Care Act's Health Insurance Marketplaces*, KFF (Nov. 24, 2016), <http://kff.org/health-reform/issue-brief/2017-premium-changes-and-insurer-participation-in-the-affordable-care-acts-health-insurance-marketplaces/>.

⁹⁵ Scott Horsley, *Fact Check: Once Again Lawmakers Are Stretching The Facts On Obamacare*, NPR (Jan. 4, 2017), <http://www.npr.org/2017/01/04/508242215/fact-check-once-again-lawmakers-are-stretching-the-facts-of-obamacare>.

However, contrary to the Speaker's statement, a "new report from the nonpartisan Congressional Budget Office (CBO) suggests" actions by the Trump administration are driving premiums higher.⁹⁶ On October 12, 2017, the Trump administration terminated subsidy payments to insurance companies—payments insurance companies were receiving since the inception of the ACA to offset premiums for low-income customers.⁹⁷ The elimination of subsidies will result in higher premiums and an estimated one million additional Americans uninsured.⁹⁸ Some Carriers are spreading the rate hikes across the various plans—resulting in higher premiums for many of the individual insurance buyers. Individuals insured through the Medicaid expansion provision of the ACA will not be affected by the subsidy cuts.⁹⁹

B. *Subsidies and Vouchers*

Prior to the Trump administration ending subsidies to insurance companies, the CBO estimated that ACA would reduce the debt by \$143 billion over the next 10 year period.¹⁰⁰ The projection by the CBO includes the Medicaid expansion provision of the law which is estimated to cost

⁹⁶ Eric Levitz, *CBO: Obamacare Premiums Are Rising - and Trump Is to Blame*, NYMAG (Sept. 14, 2017), <http://nymag.com/daily/intelligencer/2017/09/cbo-obamacare-premiums-are-rising-and-trump-is-to-blame.html>.

⁹⁷ Peter Weber, *The CBO predicts Trump's move to end Obamacare Subsidies will hike Premiums, Uninsured Rate, Deficit*, THEWEEK (Oct. 13, 2017), <http://theweek.com/speedreads/730661/cbo-predicts-trumps-move-end-obamacare-subsidies-hike-premiums-uninsured-rate-deficits>.

⁹⁸ *Id.*

⁹⁹ Jim Rickards, *Medicaid is the biggest winner in Trump's Obamacare subsidy cuts*, CNBC (Oct. 16, 2017), <https://www.cnbc.com/2017/10/16/killing-obamacare-subsidies-will-boost-medicaid-commentary.html>.

¹⁰⁰ Kimberly Amadeo, *How Much Did Obamacare Cost?*, THEBALANCE.COM (Oct. 10, 2017), <https://www.thebalance.com/cost-of-obamacare-3306050>.

\$232 billion over the same period.¹⁰¹ States such as Washington that chose to expand Medicaid received 100 percent subsidy reimbursement from the federal government to cover state expenditures on enrollments.¹⁰² The subsidy progressively decreases beginning in 2017, and levels off to 90 percent in 2020.¹⁰³ As of March 2017, over 600,000 Washington state residents were receiving healthcare through the ACA expansion.¹⁰⁴ The expansion of Medicaid helped cut the uninsured rate in half, down from 14.5 percent in 2012, to 7.3 percent in 2015.¹⁰⁵ The government subsidy was designed to induce states to implement the Medicaid expansion provision of the ACA.¹⁰⁶ The positive effect of the provision is evident, as illustrated by the drastic reduction in the Washington State uninsured rate.

Even with the tremendous success of the Medicaid expansion, the future of the ACA is in great jeopardy. At stake is the health care of millions of citizens who stand to lose their healthcare if the ACA is repealed.¹⁰⁷ With Republican control of the House of Representatives and the Oval Office, they have the power to repeal Obamacare.¹⁰⁸ It is important to look at

¹⁰¹ Brian Blase, *ObamaCare Medicaid Expansion: A Lot of Spending Little Value*, FORBES (Sept. 18, 2016), <https://www.forbes.com/sites/theapothecary/2016/09/18/obamacare-medicaid-expansion-a-lot-of-spending-of-little-value/#61b87c887a32>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Bob Young, *What the GOP health-care plan could mean for Washington state*, SEATTLE TIMES (Mar. 11, 2017), <http://www.seattletimes.com/seattle-news/health/what-the-gop-health-care-plan-might-mean-for-washington-state/>.

¹⁰⁵ *Uninsured rate in Washington state drops to 7.3 percent*, INSURANCE.WA.GOV. (Feb. 3, 2016), <https://www.insurance.wa.gov/about-oic/newsroom/news/2016/02-02-2016.html>.

¹⁰⁶ *ObamaCare Subsidies*, OBAMACARE FACTS, <https://obamacarefacts.com/obamacare-subsidies/>.

¹⁰⁷ Pear, *supra* note 88.

¹⁰⁸ Thomas Kaplan & Julie Hirschfeld Davis, *House Passes G.O.P. Bill to Repeal Obamacare*, N.Y. TIMES (May 4, 2017),

creative alternatives that build on the foundation of the ACA, in order to ensure future healthcare for all citizens. One alternative, in a multi-prong approach, would be to use the same funds allocated for state Medicaid reimbursements to establish a voucher system for eligible residents who wish to purchase private insurance. The use of Medicaid vouchers originate from a Republican proposal that can be modified and adopted for limited use, to provide residents with options for accessing care.¹⁰⁹ A central focus of both Republicans and Democrats is healthcare availability.

C. *Health Literacy*

Healthcare availability and coverage provisions are central to the political discussions engulfing the ACA.¹¹⁰ Confusion about the law was widespread amongst citizens who received the greatest benefit.¹¹¹ The expansion of Medicaid provided health insurance to millions of Americans who had never been insured before; the result was a flood of consumers who were unable to understand their coverage.¹¹² The ability to understand prescription instructions, medical pamphlets, and coverage details are all

<https://www.nytimes.com/2017/05/04/us/politics/what-to-watch-for-nail-biter-on-repealing-health-law.html>.

¹⁰⁹ Eric J. Schneidewind, *AARP President: Paul Ryan's Medicare Plan Could Hurt Seniors*, TIME (Jan. 30, 2017), <http://time.com/4653571/aarp-paul-ryan-medicare/>.

¹¹⁰ Glenn Ellis, *Politics, Obamacare, and Health Literacy*, PHILA. TRIB. (Feb. 28, 2017), http://www.phillytrib.com/news/politics-obamacare-and-health-literacy/article_5bc0422a-f772-525c-8d65-aa418bcd4d4b.html.

¹¹¹ Lena H. Sun, *New challenge for Obamacare: Enrollees who don't understand their insurance plans*, WASH. POST (July 16, 2014), https://www.washingtonpost.com/national/health-science/new-challenge-for-obamacare-enrollees-dont-understand-their-insurance-plans/2014/07/16/056d044a-fe33-11e3-932c-0a55b81f48ce_story.html?utm_term=.7c9a0dd0911b.

¹¹² *Id.*

aspects of health literacy.¹¹³ The National Academy of Sciences, Engineering and Medicine define health literacy as “the degree to which individuals have the capacity to obtain, process, and understand basic information and services needed to make appropriate decisions regarding their health.”¹¹⁴ With the expansion of Medicaid, consumers were newly engaged in a healthcare system they knew nothing about, and had never experienced.¹¹⁵

The ACA goal of affordable healthcare is hampered by beneficiaries who are ill-equipped to take full advantage of the law.¹¹⁶ The ACA legislation contains no health literacy guidelines, nor any directives to ensure textual comprehension of coverage provisions for the millions of new low-income Medicaid recipients.¹¹⁷ An effective response to the health literacy needs of low income Medicaid recipients will require comprehensive health literacy legislation that affects all segments of the healthcare system. It is estimated that inappropriate health decisions resulting from health illiteracy have an annual cost of \$106 to \$236 billion dollars.¹¹⁸ The costs are driven by patient visits to the emergency room with chronic diseases or afflictions resulting from poor preventive care.¹¹⁹ An aggressive health literacy campaign can empower all patients with the knowledge and ability to make informed decisions about their health. Informed healthcare decisions also

¹¹³ *Health Literacy: A Prescription to End Confusion*, NAT'L ACAD. SCI. & ENG'G (Apr. 8, 2004), <http://www.nationalacademies.org/hmd/Reports/2004/Health-Literacy-A-Prescription-to-End-Confusion.aspx>.

¹¹⁴ *Id.*

¹¹⁵ Sun, *supra* note 111.

¹¹⁶ Ellis, *supra* note 110.

¹¹⁷ *Id.*

¹¹⁸ Johanna Goldberg, *What is Health Literacy*, N.Y. ACAD. MED. (Oct. 17, 2012), <https://nyamcenterforhistory.org/2012/10/17/what-is-health-literacy/>.

¹¹⁹ *Id.*

involve choosing a primary care doctor; however, the next section will demonstrate that many urban and low-income areas are experiencing a decline in the number of physicians.

D. Medical Access Points

Studies refer to the lack of physicians as “Health Care Deserts,” where physicians, hospitals, and healthcare facilities are rare.¹²⁰ The doctor and facility shortage is especially acute in predominately Black and Hispanic low-income areas.¹²¹ The problem is exacerbated by the success of the ACA, with millions more people seeking healthcare with insurance through the expansion of Medicaid.¹²² With a high demand for doctors, physicians are choosing to move their practice and facilities to more affluent areas.¹²³ Even with insurance, some residents are finding it difficult to access their healthcare due to physician and facility shortages.¹²⁴ Obamacare is working for millions of Americans, “[b]ut access to coverage is not the same as access to care.”¹²⁵ The implementation of a federally funded program to establish Medical Clinic Access Points (MCAP) in underserved low income areas would relieve the shortage and guarantee access for Medicaid recipients. The MCAP would be staffed with doctors

¹²⁰ Randy Dotinga, ‘Health Care Desert’ More Common in Black Neighborhoods, CR. FOR ADVANCED HEALTH (Apr. 25, 2012), <http://www.cfah.org/hbns/2012/health-care-deserts-more-common-in-black-neighborhoods>.

¹²¹ *Id.*

¹²² Jade Scipioni, *Why the U.S. Doctor Shortage is Getting Worse*, FOX BUS. (Apr. 20, 2016), <http://www.foxbusiness.com/features/2016/04/20/why-u-s-doctor-shortage-is-getting-worse.html>.

¹²³ Dotinga, *supra* note 120.

¹²⁴ Sally C. Pipes, *Obamacare Will Make U.S. Doctor Shortage Worse*, PAC. RES. INST. (May 7, 2015), <https://www.pacificresearch.org/obamacare-will-make-u-s-doctor-shortage-worse/>.

¹²⁵ *Id.*

and nurses and provide preventive services to eligible Medicaid clients. MCAPs could fill any medical access need that Sally Pipes identified in her article.¹²⁶ Ms. Pipes is "president, CEO, and Thomas W. Smith Fellow in Health Studies at the Pacific Research Institute, a San Francisco-based think tank."¹²⁷ She has been interviewed on prominent media outlets and published five books on healthcare issues.¹²⁸ The pitfalls of the ACA leave many people still struggling to get healthcare.¹²⁹ The battle over the fate of the American healthcare system continues within the halls of Congress. After seven years of congressional votes to repeal Obamacare, with no proposed replacement, the House of Representatives finally presented a bill to replace the ACA.¹³⁰

On Monday, March 6, 2017, House Republicans revealed their long-awaited ACA replacement bill called the American Health Care Act (AHCA).¹³¹ The proposed legislation did not bring about the repeal of the ACA as promised by its opponents.¹³² Congress planned to repeal the ACA and replace it with the AHCA. However, something happened on the road to repeal: the initial Republican replacement plan morphed into an

¹²⁶ Sally Pipes, *Thanks To Obamacare, A 20,000 Doctor Shortage Is Set to Quintuple*, FORBES (June 10, 2013), <https://www.forbes.com/sites/sallypipes/2013/06/10/thanks-to-obamacare-a-20000-doctor-shortage-is-set-to-quintuple/#322ea613322e>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Kimberly Leonard, *Study: Obamacare Hasn't Solved Health Care Disparities*, US NEWS (Apr. 9, 2015), <https://www.usnews.com/news/blogs/data-mine/2015/04/09/study-obamacare-hasnt-solved-health-care-disparities>.

¹³⁰ Russell Berman, *The House votes to Repeal Obamacare*, THE ATLANTIC (May 4, 2017), <https://www.theatlantic.com/politics/archive/2017/05/the-house-repeals-obamacare/525414/>.

¹³¹ Sarah Kliff, *The American Health Care Act: The Republicans' bill to replace Obamacare, explained*, VOX (Mar. 6, 2017, 10:25 EST), <http://www.vox.com/2017/3/6/14829526/american-health-care-act-gop-replacement>.

¹³² *Id.*

Obamacare look-alike.¹³³ The AHCA would retain key features of the ACA.¹³⁴ Key elements of the ACA incorporated in the initial version of the AHCA included the Medicaid expansion provision allowing dependents to remain on their parents' insurance policy through age 26, and the prohibition against insurers discriminating against people because of preexisting conditions.¹³⁵ The AHCA initially provided that Medicaid expansion provision would be phased out on January 1, 2020.¹³⁶ The bill would allow coverage through age 26 to continue, but new enrollment would be frozen.¹³⁷

The greatest difference between the ACA and the initial version of the AHCA was the removal of taxes and penalties included in the current law.¹³⁸ The Congressional Budget Office estimates the AHCA will drop 23 million people from the insurance roles.¹³⁹ The low-income and elderly will be hardest hit by the cuts.¹⁴⁰ Medicaid spending under the AHCA will be reduced by an estimated \$834 million.¹⁴¹ Four Republican senators from

¹³³ Noam N. Lavey & Kyle Kim, *A side-by-side comparison of Obamacare and the GOP's replacement plan*, L.A. TIMES (Mar. 8, 2017), <http://www.latimes.com/projects/la-na-pol-obamacare-repeal/>.

¹³⁴ Kliff, *supra* note 131.

¹³⁵ Kliff, *supra* note 131.

¹³⁶ Tami Luhby, *What's inside the Senate Republican health care bill*, CNNMONEY (Jul. 14, 2017), <http://money.cnn.com/2017/07/14/news/economy/obamacare-repeal-senate-health-care-bill/index.html>.

¹³⁷ *Id.*

¹³⁸ *House Republicans release long-awaited Obamacare replacement bill*, FOX NEWS (Mar. 6, 2017), <http://www.foxnews.com/politics/2017/03/06/house-republicans-release-long-awaited-obamacare-replacement-bill.html>.

¹³⁹ Lavey & Kim, *supra* note 133.

¹⁴⁰ Lavey & Kim, *supra* note 133.

¹⁴¹ Lavey & Kim, *supra* note 133.

states that implemented the Medicaid expansion immediately voiced opposition to the House Republican proposal.¹⁴²

On Thursday, May 4, 2017, after modifying its original bill, Republicans in the House of Representatives passed legislation to repeal and replace the ACA.¹⁴³ The bill was passed on a party line vote with a margin of 217 to 213.¹⁴⁴ Twenty Republicans joined with Democrats in opposing the legislation.¹⁴⁵ Republicans pushed the bill through the House, despite it not having been scored by the Congressional Budget Office (CBO).¹⁴⁶ As the repeal legislation moved on to the Senate, Republican Senators immediately labeled the House legislation as “unattainable.”¹⁴⁷ The prospect of the Senate adapting the House bill became even more bleak on Wednesday, March 24, 2017, when the CBO released its score.¹⁴⁸ The CBO report

¹⁴² Patrick Caldwell, *4 Republican Senators Just Rebelled Against the House Plan to Repeal Obamacare*, MOTHER JONES (Mar. 6, 2017), <http://www.motherjones.com/politics/2017/03/republican-senators-obamacare-medicaid-expansion-portman-capito-gardner-murkowski>.

¹⁴³ Christina Gregg, *House Republicans pass legislation to repeal and replace Obamacare, send bill to Senate*, AOL (May 4, 2017), <https://www.aol.com/article/news/2017/05/04/house-republicans-pass-legislation-to-repeal-and-replace-obamacare/22069525>.

¹⁴⁴ *Id.*

¹⁴⁵ Cristina Marcos, *Here are the 20 Republicans who rejected Obamacare repeal*, THEHILL (May 4, 2017), <http://thehill.com/blogs/floor-action/house/331985-a-look-at-the-20-republicans-who-voted-against-obamacare-repeal>.

¹⁴⁶ Mark Hensch, *Ex-CBO head: Voting with no ObamaCare repeal score ‘terrible mistake’*, THE HILL (May 4, 2017), <http://thehill.com/policy/healthcare/health-reform-implementation/331954-ex-cbo-head-voting-with-no-repeal-score>.

¹⁴⁷ Ali Rogin, *The trouble with House health care bill for Senate Republicans*, ABC NEWS (May 5, 2017), <http://abcnews.go.com/Politics/trouble-house-health-care-bill-senate-republicans/story?id=47228994>.

¹⁴⁸ Phillip Klein, Robert King & Kimberly Leonard, *Daily on Healthcare: Where does the Senate go after the CBO score?*, WASH. EXAMINER (May 25, 2017), <http://www.washingtonexaminer.com/where-does-the-senate-go-after-the-cbo-score/article/2176645>.

revealed that over a ten-year period, 23 million people would lose their health insurance, and \$834 billion would be cut from Medicaid.¹⁴⁹

Medical insurance is not a privilege. It is a right that every American citizen is fully entitled; to deny citizens that right is a social injustice. My prescription addresses the healthcare crisis by implementing universal healthcare, which is composed of four specific elements.

IV. PRESCRIPTIVE ELEMENTS

The ACA authorizes states to expand Medicaid coverage to residents with earnings up to 133 percent of the poverty line, yet only 31 states chose to expand coverage, leaving millions of Americans still uninsured.¹⁵⁰ The remainder of this article will provide four distinct solutions to the issue. The prescriptive elements are designed to address a broken health care system and to ensure coverage for the millions of Americans who are uninsured. Four separate elements are identified that offer a comprehensive solution to the healthcare crisis. The elements must be implemented simultaneously in order to maximize the benefits of the proposed solutions. My plan includes: new legislation, a health literacy campaign, medical access points, and federal subsidy vouchers. The details of each of the four prongs are explained below. The four-part proposal will work because it provides all citizens with access to affordable health care, options for accessing individual care, and education on the benefits and treatments available to individuals and families.

In order for the legislation to pass and become law, we will need the support of the general public, votes of congressional legislators, and

¹⁴⁹ *Id.*

¹⁵⁰ *ObamaCare Medicaid Expansion, supra* note 9.

signature of the President. Angry constituents made their voices heard, by speaking out at town halls across the country, where they are blasting Republicans who supported the AHCA.¹⁵¹ The Senate announced it would not vote on the healthcare bill passed by the House, but would seek consensus on a totally new bill.¹⁵² Four of the fifty-two Republicans in the Senate openly announced their opposition to the AHCA, which assured the legislation would not reach the President's desk.¹⁵³ The prescriptive elements proposed are a prime alternative to a healthcare bill passed by the Republican-controlled House; a bill that garnered only 17 percent support of the American people.¹⁵⁴

In the first of the four-part solution, I propose new legislation aimed at expanding Medicaid to ensure American citizens on every socio-economic level have healthcare insurance. Second, I propose health literacy legislation to educate all Americans about their health options and benefits. Third, I propose legislation requiring states to establish medical access points for free eligible outpatient care for the uninsured. Fourth, I propose new legislation to implement federal subsidy vouchers for individuals to purchase insurance. The proposals are not mutually exclusive, and must work together in order to accomplish the desired results. Working in

¹⁵¹ Blair Guild, *House Republican on recess face angry constituents at local town halls*, CBS NEWS (Apr. 13, 2017), <http://www.cbsnews.com/news/house-republicans-on-recess-face-angry-constituents-at-local-town-halls/>.

¹⁵² Susan Ferrechio, *Senate won't vote on House-passed healthcare bill*, WASH. EXAMINER (May 4, 2017), <http://www.washingtonexaminer.com/senate-wont-vote-on-house-passed-healthcare-bill/article/2622152>.

¹⁵³ Scott, *supra* note 47.

¹⁵⁴ Paulina Firozi, *Pool: Just 17 percent of voters back Obamacare repeal plan*, THE HILL (Mar. 23, 2017), <http://thehill.com/policy/healthcare/325448-poll-majority-of-voters-disapprove-of-gop-obamacare-repeal-plan>.

harmony, the proposals will afford all American citizen their right to healthcare coverage.

A. New Legislation

Congressional legislators should vote to pass a new law requiring all states to expand Medicaid through the implementation of state health care exchanges. Medicaid expansion will provide coverage to over six million eligible recipients who are currently uninsured.¹⁵⁵ The proposed legislation will require that healthcare exchanges be established at the state and federal levels. Funding for establishment of exchanges will be provided by the federal government. Residents will sign up for health care through the exchange programs. The new law will expand Medicaid coverage to all eligible uninsured and underinsured recipients with earnings of no more than 133 percent of the poverty level.¹⁵⁶ Eligible recipients will be able to sign up for Medicaid at their local Department of Social and Health Services office (DSHS).

The new law will be implemented through expansion of the current Medicaid system. The goal is to provide health care coverage to the millions of citizens who cannot afford it. Upon passage of the new law, the funding levels would increase to cover the additional cost to states for implementing the new Medicaid expansion provision. States will have seven months after passage of the law to enact the online exchange and began signing up residents for healthcare. Since there will be no opt out provision, States that do not establish an online exchange as prescribed by law will not receive Medicaid funds. Upon passage of the legislation, individuals eligible for

¹⁵⁵ *A 50-State Look at Medicaid Expansion*, *supra* note 2.

¹⁵⁶ *ObamaCare Medicaid Expansion*, OBAMACARE FACTS, <http://obamacarefacts.com/obamacares-medicaid-expansion/> (last visited Mar 30, 2017).

insurance under the Medicaid expansion program can immediately apply for coverage at their local DSHS offices. As the system is rolled out over the seven-month period, residents will be able to sign up for healthcare via the federal exchange.

Under my proposed legislation, individuals would be screened for eligibility through the local social services office. Once eligibility is determined, residents would receive the appropriate care from doctors and facilities that accept Medicaid. Regardless of the medical condition, all individuals will be able to get health care coverage. Currently, thirty-two governors have implemented the Medicaid expansion program within their states.¹⁵⁷ However, in states that did not expand Medicaid, millions of Americans remain uninsured and left without adequate health care options. My plan requires each state to implement the Medicaid expansion program and establish an online exchange for its residents. The exchange requirement could potentially spur Tenth Amendment challenges. However, the fate of such challenges was settled by the U.S. Supreme Court in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, finding that the Medicaid expansion provision was constitutional, absent any coercion from the federal government.¹⁵⁸

My proposal differs from the current law because all states will be required to expand Medicaid and establish online exchanges. Under the current law, states appealed to the U.S. Supreme Court and took advantage of vague language that allowed them to opt out of expanding Medicaid and enacting the online healthcare exchanges. As a result of states choosing not to participate in the ACA Medicaid expansion program, millions of

¹⁵⁷ *A 50-State Look at Medicaid Expansion*, *supra* note 2.

¹⁵⁸ *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012), *supra* note 74.

residents are left uninsured.¹⁵⁹ The millions of uninsured residents are low-income; thus, my plan requiring all states to expand Medicaid will fill the eligible uninsured “coverage gap.”¹⁶⁰ The average uninsured rate for states that chose not to implement the Medicaid expansion is 10.89 percent, while the average rate for states that chose to expand Medicaid is 7.43 percent, as of October 2016.¹⁶¹ Over 25 percent of the uninsured reside in Texas, where the uninsured rate is 20.5 percent.¹⁶² Texas exercised its option and chose not to expand Medicaid under the ACA.¹⁶³ In 2013, prior to activation of the exchanges and expansion of Medicaid by participating states, the national average uninsured rate was 17.3 percent.¹⁶⁴ Under my proposal, the health gap between the affluent and low income will narrow because the poor will have the same access to health care as their well-off counterparts. Mandated Medicaid expansion, along with a coordinated health literacy campaign, will ensure all citizens the opportunity to take full advantage of their insurance policies.

The proposal may confront stiff opposition from congressional Republicans who oppose expansion of Medicaid. In addition, Republican governors in states that did not expand Medicaid will likely oppose the proposal. Medicaid expansion will have virtually no effect on state budgets.

¹⁵⁹ Racheal Garfield & Anthony Damico, *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, HENRY J. KAISER FAM. FOUND. (Oct. 19, 2016), <http://kff.org/uninsured/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/>.

¹⁶⁰ *Id.*

¹⁶¹ John S. Kiernan, *2016’s State Uninsured Rates*, WALLET HUB (Oct. 4, 2016), <https://wallethub.com/edu/uninsured-rates-by-state/4800/>.

¹⁶² Morgan Haefner, *Gallup-Healthways: 2016 uninsured rates by state*, BECKERS HOSP. REV. (Feb. 8, 2017), <http://www.beckershospitalreview.com/payer-issues/gallup-state-uninsured-rates-for-2016.html>.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

Nearly 100 percent of Medicaid costs are reimbursed by the federal government.¹⁶⁵ The result of implementing the proposal will be a drastically improved system that covers all Americans. The proposed legislation will provide a tremendous public benefit. The greatest benefit is lower healthcare costs for all Americans and a reduction in the national debt.¹⁶⁶ The social policy concern relates to people who are denied their right to health care. The proposed legislation addresses the social policy concern by providing health care to all American citizens.

B. Health literacy

Health literacy legislation is important because access to information and proper use of services could result in billions of dollars in healthcare savings.¹⁶⁷ Health literacy coupled with Medicaid expansion is essential for solving the healthcare crisis and reducing the uninsured rate. One of the larger issues surrounding healthcare is a lack of knowledge. More specifically, some of the confusion stems from American citizens' illiteracy regarding their insurance policies. The ability to make educated healthcare decisions based on informative literature is referred to as *health literacy*.¹⁶⁸ Only 50 percent of adults are able to read at or above the eighth grade

¹⁶⁵ *Financing & Reimbursement*, MEDICAID.GOV; <https://www.medicaid.gov/medicaid/financing-and-reimbursement/> (last visited June 16, 2017).

¹⁶⁶ Kimberly Amadeo, *CBO Report on Obamacare Costs, Savings and Impact on Economy*, THEBALANCE.COM (Aug. 17, 2016), <https://www.thebalance.com/cbo-report-obamacare-3305627>.

¹⁶⁷ Scott C. Ratzan, *The Importance of Improving Health Literacy*, JNJ (June 15, 2010), <https://www.jnj.com/health-and-wellness/the-importance-of-improving-health-literacy>.

¹⁶⁸ *Quick Guide to Health Literacy*, HEALTH.GOV, <https://health.gov/communication/literacy/quickguide/factsliteracy.htm> (last visited Feb. 9, 2017).

level.¹⁶⁹ However, 80 percent of adults are able to read at or above the fifth grade level.¹⁷⁰ Over 90 million adults in the United States have low health literacy.¹⁷¹ Of the 90 million, 32 million are lower-income adults.¹⁷² This situation is unacceptable because tax payers must pay a higher premium to cover people who are uninsured. While no realistic solution exists in which 100 percent of adults could read the material, my solution strives to encompass as many people as possible.

Accordingly, as part of my comprehensive solution, I propose Congress pass a law that mandates maximum sensitivity to the literary needs of the recipients of health care, focusing on eliminating communication barriers. Congress must take literacy into consideration when implementing strategies for enrolling and delivering health care to all segments of the population.¹⁷³ My proposed solution will ensure that easy-to-read healthcare information is provided to the public. To maximize its effectiveness, the proposed legislation must include a budget line item for a health education campaign through all media outlets.

The new legislation must be written and implemented to ensure maximum understanding and health care accessibility. As proposed, I am specifically calling for a massive health literacy campaign via electronic media and educational institutions. Other possible avenues for receiving

¹⁶⁹ *Staggering Illiteracy Statistics*, LITERACY PROJECT FOUND., <http://literacyprojectfoundation.org/community/statistics/> (last visited Feb. 9, 2017).

¹⁷⁰ *The U.S. Illiteracy Rate Hasn't Changed In 10 Years*, HUFFINGTON POST (Oct. 6, 2013), http://www.huffingtonpost.com/2013/09/06/illiteracy-rate_n_3880355.html.

¹⁷¹ *Health Literacy*, MEDLINEPLUS, <https://medlineplus.gov/healthliteracy.html> (last visited Feb. 21, 2017).

¹⁷² Stephen A. Somers & Roopa Mahadevan, *Health Literacy Implications of the Affordable Care Act*, CTR. FOR HEALTHCARE STRATEGIES (Nov. 2010), http://www.chcs.org/media/Health_Literacy_Implications_of_the_Affordable_Care_Act.pdf.

¹⁷³ *Id.*

health education could be through churches and local community organizations; however, this would be on a volunteer basis. It is unjust that the poor and economically disadvantaged populations are medically affected by health literature they cannot access. Studies suggest that low health literacy among the public is a significant issue that undermines health care access, resulting in increased costs to patients, providers, and taxpayers.¹⁷⁴

My proposed legislation will educate the public using features consisting of three key parts. The key parts will require that: (1) insurance companies modify educational material to the eighth grade reading level; (2) the federal, state, and local government agencies implement and facilitate educational campaigns; and (3) appropriate federal government agencies implement and facilitate comprehensive social media health education campaigns. Federal, state, and local educational campaigns must be initiated at all levels in order to achieve the maximum degree of health literacy. Prescribed state literacy campaigns will be funded by the federal government. Insurance companies would be required to immediately modify prescription labeling, marketing, and educational materials, targeting all materials at the eighth grade reading level. The education material would be in the form of pamphlets, videos, and internet advertisements. Literacy presents a major barrier to health care access.

Millions of Americans do not have the skills to read standard labels on prescriptions. More than 46 million high school graduates cannot read.¹⁷⁵ People must be able to access, digest, and understand the health literature,

¹⁷⁴ Christopher R. Trudeau, *Plain Language in Healthcare What Lawyers Need to Know About Health Literacy*, MICH. BAR J. (Oct. 2016), <http://www.michbar.org/file/barjournal/article/documents/pdf4article2968.pdf>.

¹⁷⁵ *The U.S. Illiteracy Rate Hasn't Changed In 10 Years*, *supra* note 153.

so they can make informed healthcare decisions. Good health is dependent upon literacy. Statistically, individuals with lower rates of literacy are less likely to meet adequate health standards because of their socioeconomic situation.¹⁷⁶ Poor health literacy is associated with chronic medical conditions and increased medical costs.¹⁷⁷ People should be given medical information accessible at their literacy comprehension level.

A comprehensive health literacy campaign will involve voluntary activity throughout the educational system. In the schools, for example, all students in the seventh grade need a class on how to live a healthy lifestyle; eighth graders should be taught the significance of health insurance; and in high school, students need a curriculum on the different types of insurance policies and medical procedures. The health literacy measures in the school system are voluntary parts of the proposal, but that should be adopted independently of the legislation. Further, in state-funded college, students should be required to take an online health education course. At the state level, governors must be held accountable for the health literacy of their residents. Accountability will be determined through review of brochures, pamphlets, and media campaigns to determine the effectiveness of the literacy education program. A random sample of Medicaid participants will be interviewed to confirm the usefulness and clarity of information they receive from medical practitioners, insurers, and through the media campaign. The ultimate success of the health literacy campaign is determined by its positive benefit to the Medicaid recipient. The governors will be responsible for ensuring regulatory compliance of insurance

¹⁷⁶ *Health Literacy Definition*, NAT'L NETWORK LIBR. MED., <https://nmlm.gov/professional-development/topics/health-literacy> (last visited Mar. 23, 2017).

¹⁷⁷ *Id.*

companies that operate within their jurisdiction. Every state would be required to sponsor a media campaign promoting health literacy within the requirements of the new law.

The effectiveness of the healthcare system is largely dependent on the health literacy of the serviced population. If people cannot read, nor understand their health insurance policy, then they cannot utilize their health insurance to receive adequate healthcare. Therefore, it is imperative that Congress take legislative action to ensure the health education of all Americans.¹⁷⁸ Education efforts at service points, specifically in local schools, communities, and social media, can teach residents how to exercise their health literacy voice.

As previously stated, the new legislation will mandate a comprehensive public campaign of health literacy on social media platforms. The best way to reach individuals in our modern age is through online social media applications. Marketing is revolutionized by applications such as Snapchat, Facebook, Digg, YouTube, Twitter, and a host of other social media platforms. The Internet is not merely a mode of information; in recent years, it has become a powerful avenue of influence. Targeting individuals to receive healthcare information via the Internet will be successful because millions of users visit social media sites on a daily basis, and primarily read news and other information from social media.¹⁷⁹ The goal is to make health care information easy to access, easy to memorize, and easy to

¹⁷⁸ *Quick Guide to Health Literacy*, HEALTH.GOV, <https://health.gov/communication/literacy/quickguide/factsliteracy.htm> (last visited Feb. 9, 2017).

¹⁷⁹ *Internet Usage in the United States - Statistics & Facts*, STATISTA, <https://www.statista.com/topics/2237/internet-usage-in-the-united-states/> (last visited Nov. 4, 2015).

understand. Accordingly, it is imperative to use social media in a targeted awareness campaign to educate citizens about their healthcare.¹⁸⁰

The new law will require governors to implement the health literacy guidelines for their states. With the proper health education, residents can strive for a healthy life style and take full advantage of healthcare benefits. The uninsured rate of states that implemented the Medicaid expansion provision of the ACA average 7.43 percent, while the rate for states that did not implement Medicaid expansion, was on average 10.89 percent.¹⁸¹ The campaign will focus on the population at all socioeconomic levels, but specifically target Medicaid recipients. The campaign must be deliberate and proactive, conducted via public service ads, mailers, online, and with community groups. Funds for the pamphlets, flyers, and online media would be handled by the Department of Health and Human Services (DHHS). Materials will be standardized by DHHS. States will receive funds to order pamphlets and flyers.

This proposal is a win-win for everyone; however, it is sure to face opposition. Implementation of this proposal will require coordinated efforts with state agencies and service providers; the likely opponents will be Republican legislators opposed to a government education program.

C. Medical Access Points

Despite the proliferation of volunteer medical organizations, there are inadequate Medical Client Access Points (MCAPS) for uninsured

¹⁸⁰ Shannon Dosemagen & Lee Aase, *How Social Media Is Shaking Up Public Health and Healthcare*, HUFFINGTON POST (Jan. 27, 2017), http://www.huffingtonpost.com/shannon-dosemagen-/how-social-media-is-shaki_b_9090102.html.

¹⁸¹ John Klernan, *2016' State Uninsured Rates*, WALLETHUB (Oct. 4, 2015), <https://wallethub.com/edu/uninsured-rates-by-state/4800/>.

individuals. Inadequate medical access is not necessarily defined by the location of the medical facility, but by the high cost of healthcare that prohibits low income individuals from utilizing the facility. Congressional legislators should vote to pass a new law requiring all states to establish points of access healthcare facilities for the uninsured to receive medical care. Under the legislation, states will have seven months after passage to establish MCAP locations. Upon passage of the law, individuals eligible for insurance under the Medicaid expansion program will also be able to use the MCAP. The MCAPs will be set up in urban and rural areas with residents underserved by private healthcare facilities. The population areas that are extremely at risk of inadequate medical access are those made up of low-income and uninsured residents. The risk arises because families cannot afford the high cost of medical insurance. Statistics shows that income is a major factor contributing to personal health; the lower the income, the less healthy the individuals in that income bracket.¹⁸²

The problem of medical access is exacerbated because many hospitals choose to move out of inner-city areas populated by low income families.¹⁸³ As health care providers flee low-income neighborhoods, the health of people most in need of care steadily declines.¹⁸⁴ The goal of MCAPs is to provide families with essential preventive services and diagnosis and decrease the disparity in healthcare facilities between the affluent and poor.

All uninsured legal state residents will have access to the preventive care provided by the medical facilities. States will use the subsidies to establish

¹⁸² *Poor Health: Poverty and scarce resources in U.S. cities*, POST-GAZETTE, <http://newsinteractive.post-gazette.com/longform/stories/poorhealth/1/> (Last visited Feb. 13, 2017).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

state-based clinics in uninsured and under-insured areas of the state. The clinics will provide the uninsured and under-insured clients with preventive services such as annual health screening and preventative dental care. Clients will have medical ID cards, and could use them at approved state health care locations. This process would provide universal access to health care, and provide a degree of universal coverage to all citizens. My proposal differs from the current law because the ACA does not have MCAPs and does nothing to address the shortage of doctors and care facilities. The new law will provide eligible residences with greater access to healthcare facilities.

Funds for the program will be distributed through the Department of Health and Human Services. The DHHS will use demographic census data in conjunction with state records to determine the areas where clinics should be located, and the number of clinics within each state. The federal government will establish guidelines for vetting users of the Medical Access Points, in the same manner as is currently done with Medicaid.

Counterarguments or opposition to my proposal might come from Democratic legislators who are against supporting any options to the standard Medicaid program. Congressional Republicans will likely oppose the program, arguing for nothing less than a full appeal of the ACA. The counterarguments to my proposal fall short, considering the benefits to the public. The economic benefits of my proposal, as occurred with the ACA, will include further reductions in unemployment, reduced healthcare cost,

long term deficit reduction, a healthier work force, increased job mobility, and protection from the cost of catastrophic illnesses.¹⁸⁵

D. Federal Subsidy Voucher

A major issue surrounding healthcare is a lack of options—specifically, the inability to work with any service provider across state lines.¹⁸⁶ The choice of service providers should not be limited to those listed on a government website. Accordingly, Congress should pass new legislation that would fund the distribution of federal subsidy vouchers directly to eligible individuals. Funds for the program will be distributed through DHHS. Vouchers will be immediately available upon passage of the law. State residents can use the vouchers to purchase individual or family insurance plans. Eligible individuals will be able to sign up for vouchers at their local DHHS office. The vouchers would be based on the amount of property taxes for the residential location. DHHS will use public tax records for each county within a state to determine the voucher allocations. Individuals could then use the vouchers solely for the purpose of purchasing health insurance.

The DHHS will provide the vouchers to eligible residents within the cities, using the above process to determine the voucher amount. Allocated funds would be based on a calculated formula that would give a funding amount for each county in the state; the amounts would be totaled and

¹⁸⁵ *Six Economic Benefits of the Affordable Care Act*, WHITE HOUSE (Feb. 6, 2014) <https://obamawhitehouse.archives.gov/blog/2014/02/06/six-economic-benefits-affordable-care-act>.

¹⁸⁶ Margot Sanger-Katz, *The Problem with G.O.P. Plans to Sell Health Insurance Across State Lines*, N.Y. TIMES (Aug. 31, 2015), <https://www.nytimes.com/2015/09/01/upshot/the-problem-with-gop-plans-to-sell-health-insurance-across-state-lines.html>.

forwarded to the states' social services departments. Residents would be allowed to use the vouchers to purchase private individual health insurance. Other than for the purchase of health insurance, the vouchers will have zero value. My proposal differs from the current law because the ACA does not have a voucher system. However, the proposal is in line with the position of Tom Price, former head of the DHHS, who favored a Medicaid voucher system.¹⁸⁷ The new law will provide eligible residents with the option of receiving healthcare through the Medicaid expansion program, or by using the vouchers to purchase private insurance. The voucher program will be client centered—allowing residents to purchase insurance across state lines to fit their individual needs.

Opposition to this proposal will come from congressional Democrats who are steadfastly against attempts to voucherize any aspect of Medicaid.¹⁸⁸ Opposition will also come from senior citizen organizations, such as the American Association of Retired Persons, who fear vouchers will lead to costs being shifted to seniors.¹⁸⁹ Opposition will also come from governors who might be against the federal spending for the vouchers, feeling they may be tasked to expend state funds to help support the program. The benefit of the proposal is that citizens are given a voucher to shop around to the various providers and to find the insurance policy that best serves their needs. Insurance vouchers will give citizens better control over their healthcare. In addition, the voucher proposal gives citizens an added option

¹⁸⁷ Andrew Taylor, *HHS nominee Price opposes Obamacare, backs Medicare vouchers*, U.S. NEWS (Nov. 29, 2016), <https://www.usnews.com/news/politics/articles/2016-11-29/hhs-nominee-price-opposes-obamacare-backs-medicare-vouchers>.

¹⁸⁸ *Democratic View on Health Care*, REPUBLICAN VIEW (Oct. 20, 2014), <http://www.republicanviews.org/democratic-view-on-health-care/>.

¹⁸⁹ *AARP Opposes Health Care Bill*, AARP (Mar. 7, 2017), <http://www.aarp.org/politics-society/advocacy/info-2017/aarp-opposes-healthcare-bill.html>.

for their choice in accessing healthcare. There is no increase or decrease in cost associated with the subsidy. Working in unison, these prescriptive elements will address a social injustice in the medical system that favors the affluent over the poor.

If Congress and the president fail to act on the proposals, then a failsafe measure would be the filing of a class action lawsuit. The class action lawsuit is a guaranteed action if all else fails, but it is not the desired option, which is the reason it is located at this point in the article. The argument and basis for the lawsuit are addressed in detail below.

E. Class Action Law Suit

Proponents of the ACA should file a class action law suit under Article VI of the Constitution against the states that are denying health care coverage to their uninsured residents. Article VI, Clause 2, the Supremacy Clause, establish the constitution as the supreme law of the land.¹⁹⁰ States do not have the legal right to disregard a federal law.¹⁹¹ Governors should not have the option to opt out of extending Medicaid to the working poor; such an option should require a ballot referendum. Rights granted by the federal government should not be determined by the state in which you live. Federal rights, privileges, and benefits extended to the residents of one state should be freely available to the residents of every state. Residents adversely affected by their state's refusal to implement the ACA should file a class action suit under the Supremacy Clause and Doctrine of Preemption. Article VI of the U.S. Constitution specifically states that the "Laws of the

¹⁹⁰ U.S. Const. art. VI, § 2.

¹⁹¹ *Id.*

United States” are the “supreme law of the land.”¹⁹² It is explicit from Article VI that state elected officials and judges are bound by the constitution to comply with federal law.¹⁹³ Opponents of a class action lawsuit may argue that the premise of such a grievance is in opposition to the system of American federalism. Opponents may refer to the Tenth Amendment to the Constitution which states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹⁹⁴ The legal definition of federalism is defined by Black's Law dictionary as the “The legal relationship and distribution of power between the national and regional governments within a federal system of government, and in the United States particularly, between the federal government and the state governments.”¹⁹⁵ Speaking for the 6-3 majority in *King v. Burwell*, Supreme Court Chief Justice John Roberts wrote, “We cannot interpret federal statutes to negate their own stated purpose.”¹⁹⁶ The purpose of the ACA “is to give more Americans access to affordable, quality health insurance and to reduce the growth in U.S. healthcare spending.”¹⁹⁷ The wording of Chief Justice Roberts’s opinion confirms federal law to be elevated above that of the states.¹⁹⁸

There is no ambiguity in the wording of Article VI; federal law clearly usurps state law. Federal statutes and federal judges prevail over any

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ U.S. Const. amend. X.

¹⁹⁵ *Federalism*, BLACK’S LAW DICTIONARY, (10th edition 2014).

¹⁹⁶ *King v. Burwell*, 135 S.Ct. 2480, 2492, (2015) (citing *N.Y. State Dept. of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20).

¹⁹⁷ *ObamaCare Facts: Facts on the Affordable Care Act*, OBAMACARE FACTS, (last visited Nov. 6, 2016), <http://obamacarefacts.com/obamacare-facts/>.

¹⁹⁸ U.S. Const. art. VI., § 2.

conflicts involving the states.¹⁹⁹ The only exception that may apply would be a case where the Supreme Court determines that a federal statute is unconstitutional.²⁰⁰ On June 12, 2012, the Supreme Court upheld the ACA.²⁰¹ In a 5 to 4 split decision, the Court ruled that states could abdicate from increasing Medicaid access, a central ingredient of the statute.²⁰² In writing the 6-4 majority opinion for *King v. Burwell*, Chief Justice Roberts took the exact approach he outlined during his confirmation hearings, stating that “reliance on context and structure in statutory interpretation” is “appropriate in this case.”²⁰³ Justice Scalia, in his dissenting opinion, expressed an opposite judicial interpretation in viewing the case, stating that, “[t]he Court’s insistence in making a choice that should be made by Congress both aggrandizes judicial power and encourages congressional lassitude.”²⁰⁴

Even though states have the option not to expand Medicaid, residents of those states still have the right to the benefits of the federal statute enjoyed by residents of states that implemented the Medicaid expansion. Residents of states that chose not to expand Medicaid should still be able to receive the Medicaid funds that would otherwise have been funneled through the states, via federal exchanges. Allowing qualified residents of states with elected officials that oppose the ACA, to receive the benefit of the Medicaid expansion through the federal exchanges, would remedy the discriminatory application of the ACA. The 6-3 Opinion of the Court, written by Chief

¹⁹⁹ *Id.*

²⁰⁰ *The Supremacy Clause and Doctrine of Preemption*, FINDLAW, <http://litigation.findlaw.com/legal-system/the-supremacy-clause-and-the-doctrine-of-preemption.html> (last visited Oct. 18, 2016).

²⁰¹ Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012).

²⁰² *Id.*

²⁰³ *Id.* at 2496.

²⁰⁴ *Id.* at 2506 (Scalia, J., dissenting).

Justice John Roberts, Chief Justice of the Supreme Court states, “Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them.”²⁰⁵ Only three years prior to this decision, the Supreme Court in a 5-4 vote held that the provisions of ACA were constitutional.²⁰⁶ The Chief Justice understood that the law had to be interpreted according to the intended outcome of the legislation, and no decision should be rendered that would alter that outcome.²⁰⁷ In a strongly worded dissenting opinion, Justice Scalia took a different view of this legislation, and indeed his role on the Supreme Court.²⁰⁸ He wrote that although context matters, “understanding the terms of the law is not a reason for rewriting them.”²⁰⁹

V. CONCLUSION

The health care system is working well for the affluent and middle class, but it is an elusive dream for millions of the neediest and most vulnerable citizens. All Americans have a right to affordable health care; it is a form of social justice to ensure that the right becomes a reality. Unfortunately, the politically-charged ACA has generated a web of controversy around a healthcare system that for too long has bypassed poor and low-income Americans.

President Trump indicated he favors insuring patients with pre-existing conditions, along with a provision that extend coverage for children on their

²⁰⁵ *Id.* at 2496 (majority opinion).

²⁰⁶ *Id.* at 2566

²⁰⁷ *Id.* at 2496 (majority opinion).

²⁰⁸ *King v. Burwell*, 135 S. Ct. 2480, 2496 (2015)

²⁰⁹ *Id.*

parent's insurance policy.²¹⁰ The ACA addresses a social need of many low income Americans; it serves to balance a social injustice where the health needs of low income Americans are locked out of the health care system.²¹¹ The social justice of the ACA embodied by the decrease in the uninsured rate is a national benefit that cannot be easily undone; it is one thing to need something and not have it, but it is something altogether different to get what you need, and then have someone attempt to take it away from you. The aforementioned is the very dilemma facing the new Trump administration. President Trump is an unconventional politician. Although his support of the AHCA appears firm, passage of the legislation through the Senate seems unlikely. The President may yet have an opportunity to embrace my proposal.

The right to healthcare for every American citizen can become a reality with the simultaneous implementation of the four elements I have proposed. Working in unison, the prescriptive elements will provide a cure for the ailment in the healthcare system that disenfranchises the poor and low income. What I recommend is a comprehensive approach to how citizens access their healthcare, and how states choose to implement the program. Providing healthcare choices at all levels for state implementation and client initiation engenders ownership in the execution and activation of healthcare choices.

²¹⁰ Anita Balakrishnan, *Trump will consider keeping parts of Obamacare, report says*, CNBC (Nov. 11, 2016), <http://www.cnbc.com/2016/11/11/trump-will-consider-keeping-parts-of-obamacare-report-says.html>.

²¹¹ Jeanne Merkle Sorrell, *Ethics: The Patient and Affordable Care Act: Ethical Perspectives in 21st Century Health Care*, NURSE WORLD (Nov. 9, 2012), <http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/Columns/Ethics/Patient-Protection-and-Affordable-Care-Act-Ethical-Perspectives.html>.

Choice in healthcare will begin with congressional passage of a new law mandating expansion of Medicaid, and the opening of healthcare exchanges in each state. Medicaid expansion would provide a safety net to more than six million Americans who are suffering without healthcare insurance. The cost of the expansion would be subsidized by the federal government, and it would have little effect on the states' budgets. The second leg of the proposals to fix the healthcare system involves the passage of legislation to provide health literacy education to all healthcare recipients. A keystone of the legislation requires insurance companies to modify educational material down to the eighth grade reading level. Government agencies would be mandated to provide residents with appropriate health education materials. In addition, the agencies would be required to promote and advertise the health education information through all available media. Reducing the reading level of healthcare materials to the eighth grade will allow the largest number of adults to benefit from the health literacy campaign.²¹² In addition to proposing legislation to expand Medicaid and create health literacy programs, my plan also includes proposed legislation to create Medical Access Points within the states. The access points would be targeted for locations with high levels of uninsured and underinsured individuals, providing residents with essential access to preventive medical care facilities.

Opposition to the proposal will originate from both Democratic and Republican lawmakers. The fourth proposal is for Congress to pass new legislation that would fund the distribution of federal subsidy vouchers

²¹² See Richard S. Safer & Jann Keenan, *Health Literacy: The Gap Between Physicians and Patients*, 72 AM. FAM. PHYSICIAN 463 (Aug. 1, 2005), <http://www.aafp.org/afp/2005/0801/p463.html>.

directly to eligible individuals. The vouchers would give individuals the option to purchase health insurance from any insurer in the country.

Despite potential opposition, congressional passage of my four-part plan will provide a remedy to the healthcare crisis. Healthcare will no longer be distributed based on socioeconomic status, but will become a bedrock right for every American. My proposals go to the heart of the healthcare crisis; medical coverage is a lifesaving service for Americans. My plan builds on the ACA with new laws to ensure universal healthcare coverage that includes every American citizen.

In years to come, historians will possibly say of Obamacare that the country stepped forward and did for the least of us, what the least of us could not do for ourselves. President Trump now has the opportunity to write his own legacy, by first abandoning the AHCA, which has only 17 percent support from the American people, and then embracing my plan to expand and improve the current healthcare system. He can rise to the challenge with Democratic support, and support from Republican representatives who are listening to their constituency, and embrace my proposals. If he ascends to the challenge, it is foreseeable that historians will one day write about how Hillarycare formed the basis of Obamacare, which propelled the way for what could become known as Trumpcare.