



Jonathan Gruber Re-Emerges to Shake Hands With His Nemesis

By David Weigel

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The last time the world saw Jonathan Gruber, the "architect of Obamacare" (actually an MIT academic whose health care models were brought into many health care reform negotiations) was glumly refusing to talk to reporters. It was December 2014, and Gruber had suffered through a four-hour grilling from the House Oversight committee. Some questions focused on why he'd credited the passage of the ACA to "the stupidity of the American voters." Some focused on the larger problem he'd accidentally created by positing, in several taped speeches, that states which did not set up health care exchanges would find themselves without taxpayer subsidies. Gruber apologized, said nothing else newsworthy, and slunk away as TV reporters jabbed microphones at him.

Since then, Gruber had seen his contract with the state of Massachusetts terminated. He'd seen watchdogs probe his old contract with the state of Vermont. He'd watched the Cato Institute's Michael Cannon, who'd personally advised state legislators not to create exchanges, cite his gaffes in arguments for *King v. Burwell*, the case against the ACA's subsidies. Today, Gruber returned and talked to Cannon at, of all places, the SunLife Financial Wake Up Summit at Bloomberg's New York offices. (Via e-mail, Gruber confirmed that the two of them had known each other "for a while.")

They spoke separately, with Gruber going first. Bloomberg's Sally Prettypiece wasted no time in asking Gruber about the Obamacare speeches that became grist for a lawsuit that could destroy the law.

"How do you feel about that?" she asked.

"There's a quote I should have brought up with me, from a great *Fortune* magazine article, where they said: Never has a statutory interpretation case fell so strongly on the casual, disavowed, uninformed comments of someone who wasn't even a legislator," said Gruber. "I mean, basically, look I gave a speech in 2012 where I was talking about the fact that it wasn't clear the federal exchanges would be stood up in time."

Gruber calmly reminded his audience that, whatever he might have said, the legislators who passed the ACA never intended states to be denied subsidies if their exchanges crashed. "Jon Stewart sort of had this right," he said. "It's not like asking the framers of the Constitution what they meant. All the framers of this law are alive. Everyone has asked them. And no one who's looked at this law says it means what the plaintiffs think it means."

Yet Gruber refused to speculate on how Congress would act if the subsidies were struck. "I'm not a political scientist, and I've gotten in trouble when I act like one," he said. "Having worked on a state exchange and known how hard it is to set one up, politically, financially, IT-wise, it's hard to imagine the states are going to stand up and set these up."

Gruber left his chair, and Cannon sat right down. He did not rub in Gruber's role in making the case against the ACA. He just remarked on how good the legal case for destroying it had become.

"It's almost an ironclad law of policy that once you distribute subsidies, they never go away," said Cannon. "What's so remarkable about the ACA is that here we are, more than a year into full implementation. Lots of people are receiving these subsidies—I think the majority [of them] unlawfully. But we're still talking about subsidies away from people, and we have one political party that's committed to repealing this law."

For Cannon, that was a reason to be cheerful. It did not matter, as Gruber said, that the money spent on health care was decreasing, and that blowing up the ACA could halt that.

"I don't think the whole ballgame is spending," said Cannon. "I don't care how much the United States is spending on health care. If people are making decisions based on their income, about their money, that they want to spend 20, 30 percent on health care, that's fine. What bothers me is that they're not the ones deciding how they spend their money."

Less than an hour later, the panel was over, and the two men shook hands. Nobody's mind was changed, but Gruber had survived a trip in front of the camera, and that was something.