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An Obamacare gotcha moment

By Paige Winfield Cunningham
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One of Obamacare's chief architects, MIT professor Jonathan Gruber, just handed conservatives a gotcha moment.

Health law opponents and conservative academics are highlighting a two-year-old video of Gruber — who has advised both the Obama administration and then-Gov. Mitt Romney's Massachusetts health reform effort — in which he seems to agree that the law's health insurance subsidies can't be awarded through federal-run exchanges, only through the state-run markets.

That's the hot legal and political question in health care this week, after one federal appeals court ruled that the subsidies shouldn't run through federal exchanges, and another appeals court said they could less than three hours later. The Obama administration and most backers of the health law say the subsidies should go to eligible people in either settings.

The question, which threatens the heart of the Affordable Care Act coverage expansion and could directly affect millions of Americans receiving financial help, may well eventually end up in the Supreme Court.

"I couldn't have said it better myself," the Cato Institute's Michael Cannon, who has pushed the state-exchange only argument, said of the Gruber clip.

Tea Party Patriots co-founder Jenny Beth Martin called the Gruber tape a "shocking revelation." "The administration ... knew exactly what they were doing and they knew exactly why they were doing it — Gruber himself described it as blatant, ugly politics," she said.

The January 2012 video — uncovered and posted online late Thursday by the Competitive Enterprise Institute and quickly hitting blogs and social media — features Gruber telling an audience at a Noblis meeting that if states don't set up their own exchanges, their citizens can't get the subsidies, which are delivered as tax credits.

"I hope that's a blatant enough political reality that states will get their act together and realize there are billions of dollars at stake here in setting up these exchanges, and that they'll do it," he said.

Gruber said Friday he misspoke, but his comments at the time are the opposite of what he and other liberals are arguing now: that Congress wrote the law to provide the subsidies for low- and middle-income Americans through all the state exchanges, regardless of who runs them. Last year, he told Mother Jones that cases challenging that interpretation are “nutty.”

Gruber referred callers Friday morning to the response he gave The New Republic, where he called his own 2012 comments “just a ‘speak-o’—you know, like a typo.”

“I honestly don’t remember why I said that. I was speaking off-the-cuff. It was just a mistake. People make mistakes. Congress made a mistake drafting the law and I made a mistake talking about it,” Gruber told the magazine.

Whether Congress intended to withhold the subsidies unless states run exchanges themselves is a crucial question in the legal battles. But Gruber insisted Friday that was not the intent and said his 2012 remark may have stemmed from questions of whether the federal website would be ready in time.

“At this time, there was also substantial uncertainty about whether the federal backstop would be ready on time for 2014,” he said. “I might have been thinking that if the federal backstop wasn’t ready by 2014, and states hadn’t set up their own exchange, there was a risk that citizens couldn’t get the tax credits right away.”

As a consistent cheerleader for the health law, Gruber is often at odds with its critics. American Enterprise Institute’s Tom Miller was dismissive of his comments.

“I am willing to compromise and stipulate that most, if not all, of what Jon has said about the ACA — before, during and well after its passage — was and remains a mistake,” Miller emailed.