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## **Opinion: Reasons why Congress must revisit preexisting conditions**

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According to conventional wisdom, the recent congressional elections demonstrate that the Affordable Care Act's rules requiring insurers to cover people with preexisting conditions are politically untouchable. Democrats made preserving those rules their number-one campaign issue. Voters responded by handing Democrats control of the House of Representatives.

This assessment might be correct—if the election had clearly presented voters both the costs and benefits of those rules. Unfortunately, that did not occur. Democrats touted a fantasy where those rules produce benefits but carry no costs, and Republicans let this fantasy go completely unchallenged. Since neither side bothered to educate voters about the costs of the ACA's preexisting-conditions provisions, the election says nothing about whether voters support them.

The reality is that ACA's preexisting-conditions provisions make tradeoffs that were deeply unpopular with voters in 2010 and remain so today. The ACA has survived solely because its architects carefully crafted the law in a manner that hides those tradeoffs from voters. Political support for the ACA's preexisting-conditions provisions can and will fall, but only if opponents make those tradeoffs clear.

The largest and most unpopular tradeoffs the ACA strikes surround its centerpiece: the supposedly popular requirement that insurers cover all applicants, and charge everyone of a given age the same premium, regardless of preexisting conditions.

Those rules are merely government price controls, which have a terrible reputation among economists. As former Clinton and Obama economic adviser Larry Summers explains, "Price and exchange controls inevitably create harmful economic distortions. Both the distortions and the economic damage get worse with time[, while] attempts to preserve price controls induce otherwise avoidable rationing schemes and goods shortages."

These price controls are no exception. For starters, they increase insurance premiums for the healthy. This in turn necessitates both the premium subsidies for lower-income enrollees—and the higher taxes that fund those subsidies.

The ACA's preexisting-conditions provisions then ration care to the sick in ways that cause informed voters to turn against them. Economic theory predicts, and economic research confirms, that these rules punish high-quality coverage and reward lousy coverage. They have

forced ACA plans to exclude top hospitals and limit physician choice. They are increasingly forcing insurers to limit coverage for multiple sclerosis, rheumatoid arthritis, and other expensive conditions. They prohibit consumers from purchasing coverage for nine months out of every year—a nine-month-long rationing period that inevitably denies care to patients who otherwise could have purchased coverage before falling ill.

Voters rejected these tradeoffs when Congress was debating the ACA, and reject them today. Architects of the ACA have known this from the beginning, so they deliberately crafted the law to hide these tradeoffs from voters.

The ACA's architects knew, for example, that if the law's new taxes and new government spending were transparent, voter outcry would have been so severe that Congress never would have approved the bill. They therefore hid those taxes in the form of...those very price controls we call the ACA's preexisting-conditions provisions. Requiring insurers to cover healthy and sick patients for the same price imposes a hidden tax on the healthy, in the form of higher premiums, to finance hidden subsidies for the sick, in the form of lower premiums.

When ACA architect Jonathan Gruber quipped that the ACA passed due to “the stupidity of the American voter,” he was admitting that voters oppose the tradeoffs the ACA forces on them, and boasting that voters never caught on to the ruse.

Polling shows voters oppose the tradeoffs those rules strike with regard to the quality even more. When polls ask voters solely about the benefits of the ACA's preexisting-conditions provisions—i.e., sick people getting coverage at lower premiums—voters support them 65 percent to 32 percent. But when polls ask whether those benefits are worth the reductions in quality that economists confirm are happening right now—i.e., when polls tie the benefits of those provisions to their unavoidable costs—support flips to opposition. Informed voters oppose the ACA's preexisting-conditions provisions by 51 percent to 44 percent. Nearly 30 percent of Democrats to drop their support.

Those numbers come from a poll conducted just days before this year's mid-term elections. But there is nothing new about this finding. Polls conducted in 1994, 2013, and 2017 consistently find voters want to make health care more widely available to the sick—but not at the expense of quality.

You would never know any of this from listening to the ACA's Republican opponents. In the recent election, Republicans said not a peep about how the ACA's preexisting-conditions provisions are the main driver behind soaring Exchange-plan premiums. Nor did Republicans educate voters about how these rules are making health insurance worse for many sick patients. I have yet to see an attack ad stating, “Congressman X denied treatments to MS patients. He voted to penalize insurers that cover the expensive drugs MS patients need,” even though Congressmen X did exactly that. Instead, Republicans generally embraced Democrats' rhetoric and, in some cases endorsed the ACA's preexisting-conditions rules.

The mid-term elections thus had almost nothing to do with the ACA. Democrats campaigned, and Republicans allowed them to campaign, not on the ACA as it exists in the real world, but on a mythical law whose core provisions are a warm, fuzzy, compassionate, progressive free lunch.

Republicans even failed to defend their own health-reform gains. In August, the Trump administration issued new rules allowing consumers to purchase so-called “short-term” plans

that cover consumers throughout the ACA's closed-enrollment (read: rationing) period. Short-term plans are statutorily exempt from the ACA's preexisting-conditions provisions. As a result, they often cost 50 percent less and offer broader choice of doctors and hospitals than ACA plans can. The new rules will bring health insurance to an estimated 2 million previously uninsured Americans.

When voters learn only about the benefits of the new rules governing short-term plans, they support them 77 percent to 18 percent. But even after they learn about the costs of those new rules—i.e., that consumers might purchase less coverage than ACA plans require, and that the rules could cause ACA premiums to rise—voters still support them by nearly two-to-one (59 percent to 35 percent).

In the recent election, Republicans could have taken credit for free-market health care reforms whose benefits are so popular, voters would have continued to support them even amid a Democratic counterattack. They could have undermined Democrats' main campaign theme and turned the public against the ACA's harmful preexisting-conditions rules. Instead, they let Democrats continue to deceive the public about those rules. Some Republicans even apologized for not supporting Democratic policies that voters hate.

Republicans have even been silent when Democrats actively deny care to the sick. Shortly before the election, the U.S. Senate voted on legislation introduced by Sen. Tammy Baldwin (D) that would have thrown patients with preexisting conditions out of their health plans and left them with nothing.

Baldwin's legislation sought to rescind the new short-term-plans rule, and revert to the old rules that set the maximum duration of such plans at three months. If a short-term plan enrollee received a cancer diagnosis in January, Baldwin's legislation would have thrown her out of her health plan no later than April, and would have left her with no insurance to cover months and months of expensive cancer care. Those rules threw 61-year-old Jeanne Balvin out of her health plan and left her to pay \$95,000 in medical bills with no health coverage.

Democrats framed this legislation as protecting patients with preexisting conditions by eliminating "junk" insurance plans. Yet it is undeniable that this legislation would have thrown patients like Jeanne Balvin out of their health plans and left them with no coverage for up to nine months.

Every single Senate Democrat voted for Baldwin's legislation. Democrats in California, Delaware, and other states have recently enacted similar legislation that either curtails or completely outlaws short-term plans. Those laws undeniably will ration care to the sick.

Where are the Republicans? I have yet to find a single Republican who called Democrats to account for actively trying to throw patients with preexisting conditions out of their health plans and leave them with nothing.

Contrary to conventional wisdom, the ACA remains politically vulnerable. Whether it remains the law or not depends on whether its opponents learn the real lesson of this election: You can't win if you don't fight.

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