

From: [Jost, Timothy](#)
To: [Kreidler, MB \(OIC\)](#)
Subject: op ed
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Attachments: [kreidlerpeda.docx](#)

Dear Commissioner Kreidler,

It was great to see you again in San Diego.

I attach a draft saying what I would say if I were you writing an op ed on House v. Burwell.

Obviously, these are not your words, and feel free to rewrite. I think it makes the essential points, however, and includes the essential information.

I am sure you have a lot to do to catch up, but really hope you can get to this soon. The hope is to have an authoritative sources to cite in amicus briefs, which we will need to file soon.

Let me know where and when it gets published,

Thanks

Tim Jost

Timothy Stoltzfus Jost

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Op ed must probably be in 700 to 800 word range

As the state insurance commissioner for the state of Washington, I am responsible for reviewing health insurer's requests for premium increases. Insurers across the country have requested significant premium increases in the individual market for 2017. In Washington insurers in the individual market have asked for increases averaging 13.5 percent.ⁱ

But Washington residents, indeed all Americans, could soon face much greater premium increases because of a lawsuit brought by the House of Representatives against the Obama administration. If the House lawsuit succeeds, not only will premiums increase dramatically for the individual insurance market—the individual market may collapse in many states as insurers abandon the marketplaces.

Here is the problem. It is widely known that many of the policies sold under the Affordable Care Act come with high deductibles. It is less well known that the law guarantees Americans with incomes below 250 percent of the federal poverty level—over 6 million current enrollees nationwideⁱⁱ—cost sharing reductions that reduce their deductibles, out-of-pocket limits, and other forms of cost sharing dramatically. Many have deductibles of \$0.ⁱⁱⁱ Not only can these low-income Americans afford health insurance coverage because of the premium tax credits the ACA also provides, they can also actually get access to health care when they need it because their cost sharing is affordable.

Here's how it works. The ACA requires insurers to reduce cost-sharing for eligible lower-income Americans who enroll in a silver level plan. It also gives insurers a legal right to be reimbursed by the government for offering cost sharing reductions.

The Republican House of Representatives lawsuit claims that Congress has not appropriated money to fund the cost sharing reductions. A lower court in Washington, D.C. has ruled in their favor. But the ACA established an entitlement for eligible enrollees for both premium tax credits and cost-sharing reductions. Congress quite clearly meant the permanent appropriation that covers the premium tax credits to also cover the cost sharing reduction payments. Moreover, under basic principles of constitutional law governing the separation of powers and who can sue in the federal courts one house of Congress cannot sue the administration, and this case should have been dismissed long ago. The federal government has appealed the lower court's ruling to the D.C. Court of Appeals.

As the insurance commissioner responsible for protecting the individual insurance market for Washington consumers, I am very concerned about the outcome of this case. If the courts ultimately rule for the House, insurers will still be responsible by law to reduce cost sharing, but will not be reimbursed for doing so. This will put insurers in the individual market, some of whom are already losing money, under further financial strain.

Over seventy thousand Washington residents receive cost-sharing reductions through the insurance they have enrolled in through the Washington Healthbenefitexchange at a cost of over \$5 million a month.^{iv} Some insurers offering this coverage may become insolvent if the federal reimbursement stops. More may leave the individual market. But all that remain in the market will have to raise

premiums dramatically, over \$1000 per person on average,^v making insurance even less affordable, particularly for higher-income individuals who do not qualify for premium tax credit assistance.

Even if Congress subsequently appropriated money to cover the cost sharing reductions, it would be unlikely to do so until late in a year. But insurers must set their premiums in the spring, months before they could know whether they would be reimbursed. Insurance markets cannot function with this kind of uncertainty.

In a recent Supreme Court decision that rejected another political challenge to the ACA, Chief Justice Roberts concluded: “Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter.” To avoid destroying the individual insurance market in Washington and in the other 49 states, the D.C. Circuit should find that the House does not have the right to bring this case, and if the court gets to the merits, find that Congress has already adopted a permanent appropriation for the cost sharing reductions along with the premium tax credits. If it fails to do so, the entire individual market in Washington, and throughout the country, is at risk.

ⁱ <http://acassignups.net/16/08/26/avg-indy-mkt-rate-hikes-241-requested-all-states-296-requested-11-states-300-approved-11>

ⁱⁱ <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-06-30.html>

ⁱⁱⁱ <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-07-12.html>

^{iv} http://www.wahbexchange.org/wp-content/uploads/2015/12/HBE_EN_160607_March_Enrollment_Report.pdf

^v <http://www.urban.org/research/publication/implications-finding-plaintiffs-house-v-burwell>