Introduction
Revisiting the Affordable Care Act

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Guest Editor

Given the ongoing and sometimes raging battles over the Affordable Care Act (ACA), one can forget that the law was enacted almost six years ago, in March 2010. The continuous drumbeat of attacks on the ACA and the lingering uncertainties about key provisions and benefits years after passage are striking, even considering that the law took effect over time. Following approval of health care reform in Massachusetts, participants observed that enacting the measure was only 10 percent of the accomplishment—effective implementation was 90 percent of it.[1] With the ACA as well, bitter fights have erupted and tremendous hurdles have emerged in the post-enactment phase. Beyond the expected unintended consequences and implementation difficulties of any major new law, the vitriolic partisanship and permanent campaign mentality that characterized the congressional health care reform debate have remained, if not periodically even intensified.

Assaults on the ACA persist on multiple fronts. In October 2015, the House of Representatives voted for the 61st time to repeal all or part of the ACA.[2] And in early December 2015, for the first time the Senate also passed legislation to undo large portions of the law.[3] Although these votes have no practical effect, they do highlight Republicans' real disdain for the ACA. This disdain has thwarted the critical and normal process of employing "fix-it" legislation to remedy a law's inevitable, unintended effects through civil deliberation. At the national level, Republican candidates seeking the GOP nomination for president further poison the atmosphere surrounding the law with their inflammatory rhetoric. Whether it is Ben Carson lambasting the ACA as "the worst thing to happen in America since slavery"[4] or Jeb Bush deriding "Obamacare" as a "monstrosity,"[5] the condemnation endures.

Republican candidates, moreover, are not alone in criticizing the law. On the Democratic side, the top presidential candidates, Hillary Clinton and Bernie Sanders, both support dismantling the "Cadillac tax" on generous employer-sponsored health coverage before it takes effect in 2018. Expected to be one of the ACA's most effective tools for addressing rising health care costs, eliminating the Cadillac tax would dramatically diminish the law's impact at a price tag of approximately $91 billion through fiscal year 2025.[6] In addition, Sanders' ideal policy solution would be to junk the ACA (like his Republican counterparts), and to replace it with a more sweeping single-payer system to achieve universal coverage. At the state level, even ACA success stories neither signify the law's sustainability in that state nor insulate it from contentious partisan politics. In Kentucky, where the ACA boasted an overall 11 percent drop in the state's uninsured rate (the largest decrease nationwide), the new Republican governor elected in November 2015, Matt Bevin, promised to gut Kentucky's health insurance exchange and largely rescind its Medicaid expansion.[7]

Since the ACA's enactment, legal challenges have been recurring too. In 2016 the Supreme Court is set, for the fourth time, to hear a case regarding the law. In *Zubik vs. Burwell*, the Court will consider whether religiously affiliated, non-profit organizations—including universities, hospitals, and charities—are entitled to prevent the government from arranging for third party contraceptive coverage for affected women.[8] House and Senate Republicans also joined friend-of-the-court briefs in early December 2015, requesting that the Supreme Court strike down the ACA because of a technicality regarding the Constitution's origination clause, a provision that the Court has never found a law to violate.[9] Repeated judicial challenges, at a minimum, impede the ACA's entrenchment or embedding in our health care system; prior rulings, particularly the Supreme Court's 2012 decision that removed the penalty for states not expanding Medicaid, have severely weakened and chipped away at the law, as well.

Indeed, perpetual political and legal battles, along with partisan sniping, still dominate the ACA landscape. But behind this exterior, how is the ACA actually faring

doi: 10.1017/pls.2015.18
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in terms of achieving its major objectives, particularly increasing insurance coverage and decreasing health care costs? On the one hand, encouraging markers exist. Over 17 million uninsured individuals have acquired insurance since the ACA's enactment.[10] The share of Americans without coverage fell from 13.3 percent in 2013 to 10.4 percent in 2014, the largest single-year drop since 1987.[11] Minorities and young adults have experienced the greatest rise in insurance coverage.[12] Additionally, more states are considering expanding Medicaid coverage under the ACA[13]—Medicaid had been intended to cover approximately half of newly-insured individuals under the law, but failed to do so after the Supreme Court's 2012 Medicaid ruling enabled states to opt out of the expansion. More people also remain insured through work than the Congressional Budget Office (CBO) predicted when the ACA was enacted.[14] Other positive ledger entries, such as the following, abound: the ACA has contributed to the slowest increase in health spending in five decades;[15] the law has helped to curb health care costs;[16] and the ACA's price tag is about 20 percent less than the CBO expected.[17]

On the other hand, dark clouds pervade the law's enactment as well. The ACA's success appears to be a "state-specific story," primarily due to the Court's 2012 Medicaid decision referenced above.[18] With 19 states not having enlarged their Medicaid programs as of November 2015,[19] millions of people are caught in a "Medicaid gap," too poor to receive ACA exchange subsidies but unable to qualify for Medicaid.[20] And many individuals who purchased insurance through the law's exchanges are finding their high-deductible plans too expensive to use, thus leaving them as vulnerable *with* insurance as they felt *without* it.[21] In terms of health spending, after five years of "exceptionally slow growth" and an increase of just 2.9 percent in 2013, in 2014 spending rose 5.3 percent, the largest jump since 2007.[22] Although this 2014 spending increase corresponds to millions of Americans gaining health care coverage and was in line with government projections,[23] the ACA's opponents can seize on the figure to fuel their efforts to dismantle or weaken the law. Moreover, insurance exchanges are experiencing challenges: approximately half of the non-profit insurance cooperatives formed with federal loans have collapsed; and many states' insurance markets are unstable.[24] The ACA also is not capturing Americans' hearts and minds. The Kaiser Family Foundation's November 2015 poll found that 38 percent of Americans favor the law and 45 percent oppose it.[25] Perhaps more importantly, according to another recent poll, of the 58 percent of individuals who know someone impacted by the ACA, twice as many believe the impact has been more negative than positive.[26]

The articles in this special issue shed light on both the unrelenting ACA fights and the current landscape surrounding health care reform. Contributors submitted manuscripts in response to a call for papers on the ACA, circulated in spring 2014. The papers printed here represent those that looked promising and hence were sent out for peer review, survived the peer-review process, underwent revision, and were accepted for publication based on their contribution to the scholarship on the ACA. As a group, the articles critically examine and illuminate what is behind the ACA's struggles, protracted controversies, complexity, persisting uncertainties, limitations, and successes. Scrutinizing the past, assessing the present, and exploring future possibilities, the authors provide enlightening micro- and macro-level analyses and perspectives.

Media framing of a policy's beneficiaries, research has shown, may affect the policy's implementation and durability (i.e., its avoidance of retrenchment and fidelity to its intent), and thus warrants examination. Jacqueline Chattopadhyay does just that in her lead article, "Are press depictions of Affordable Care Act beneficiaries favorable to policy durability?" Her in-depth, meticulously documented research fills a significant gap—no study to date has systematically investigated how the media portrays two key ACA "target populations," namely, individuals newly eligible for Medicaid under state expansions, and individuals eligible for ACA subsidies to purchase insurance on an exchange. More specifically, Chattopadhyay analyzes newspaper text from August 2013 through January 2014, the key period before and during the law's first open-enrollment period. With a keen appreciation for the fact that a legislative triumph is only one component of any battle for reform,[27] Chattopadhyay concludes that press depictions of ACA beneficiaries may both bolster and hinder the ACA's sustainability. Helpful for the law's durability, newspapers utilize terms associated with "deservingness" to describe ACA beneficiaries, casting them as "workers" and "insiders." Yet Chattopadhyay cautions that news portrayals depict individuals who lost their insurance coverage due to the ACA to be deserving too, hence eroding the ACA's durability. Furthermore, given what she discovers, Chattopadhyay questions whether

https://doi.org/10.1017/pls.2015.18 Published online by Cambridge University Press

the ACA can achieve lasting reductions in insurance disparities by age, health status, and most especially race and ethnicity. Finally, in terms of politically mobilizing ACA beneficiaries, Chattopadhyay recognizes that portraying these individuals as workers (with minimal attention to their economic heterogeneity and status as young adults), may encourage political dormancy and consequently make the ACA more vulnerable to policy retrenchment.

Similar to Chattopadhyay's research, the article on state decisions during the ACA's roll-out by Martin Mayer, Robert Kenter, and John Morris employs a broad analytical framework that sheds light on the ACA's successes and challenges, as well as its continuing controversy. Reflecting the ACA's devolution of policy responsibilities, Mayer, Kenter, and Morris focus on state policy determinations. In "Partisan politics or public-health need? An empirical analysis of state choice during initial implementation of the Affordable Care Act," the authors reveal the relative significance of health politics over actual health needs. This research differs from earlier works that have highlighted the partisan nature of state ACA-related decisions; Mayer and colleagues use a more nuanced dependent variable of five additive measures of ACA support, weighing the effect of both political and socioeconomic factors. Notably, the impact of this initial phenomenon of partisan politics trumping public-health need in states' policy choices appears today. Recently published data illuminate that while the ACA has had a substantial effect in decreasing the number of uninsured individuals, the remaining uninsured "tend to live in Republican-leaning states" and are typically "poor."[28] And the disconnect between health politics and public-health need in state decision making persists, as we witnessed with Matt Bevin in Kentucky pledging to dismantle the former Democratic governor's ACA programs, notwithstanding the programs' success in addressing the state's dire health care situation.

The general topics of the next two research articles—the first by Deborah McFarlane, and the second one co-authored by Patricia Stapleton and Daniel Skinner—are complementary. These pieces remind us that ACA-related questions linger for women in particular, namely, with issues of contraception, pregnancy, fertility, and abortion. Underscoring the uncertainties surrounding these subjects are the recent Supreme Court decisions to hear two separate cases on women's reproductive health. In *Zubik vs. Burwell*, the Court will consider whether under the ACA, religiously affiliated, non-profit organizations may prevent third party contraceptive coverage for their employees. And in *Whole Woman's Health vs. Cole*, deemed the Supreme Court's "most consequential" abortion case in about 25 years, the Court will examine the constitutionality of a Texas law that radically increases the difficulty of obtaining an abortion in the state.[29] Although not an ACA case *per se*, the *Whole Woman's Health vs. Cole* ruling will impact the abortion coverage women receive under the ACA.

Turning to the articles, McFarlane's work studies abortion from a comparative angle. Her analysis in "The Affordable Care Act and abortion: Comparing the U.S. and Western Europe," offers a unique view of the ACA's abortion restrictions by juxtaposing them with analogous constraints in 17 Western European nations. Unlike these European countries where abortion policy has been stable and where abortion limitations concentrate on length of gestation and the pregnant woman's health, in the U.S. there is no stable compromise on abortion and abortion restrictions center on funding. Regarding the ACA, McFarlane's findings further illustrate the law's complexity, weaknesses, and uncertainties. The ACA's abortion strictures surface in multiple ACA provisions, including state Medicaid expansions, essential health benefits (EHBs), and health insurance exchanges. And while the law seeks to expand insurance coverage and provide subsidies to extend coverage, it singles out abortion for special treatment. For example, the ACA precludes public funding for abortion, except in the rare cases the Hyde Amendment allows (i.e., when the pregnancy results from rape or incest, or when the pregnant woman's life is endangered). Moreover, the law identifies abortion as the one health service that insurance policies may omit. Adding another layer of complexity, because the ACA abortion provisions operate within the context of state laws, abortion restrictions vary considerably across states. The absence of clear ACA national guidelines consequently furnishes openings for states to construct impediments for women seeking abortions, as seen in *Whole Woman's Health vs. Cole*.

In their article—"How will the Affordable Care Act impact assisted reproductive technology use?"—Stapleton and Skinner help us understand the mind-boggling, complicated ACA provisions surrounding the use of assisted reproductive technology (ART). They reveal the law's intricacies regarding reproductive medicine regulation and the fuzziness in the ACA's effect on treatments whereby eggs and sperm are both handled. Somewhat analogous to the situation regarding

https://doi.org/10.1017/pls.2015.18 Published online by Cambridge University Press

abortion, Stapleton and Skinner posit that to comprehend the ACA's possible impact in the ART arena, one must appreciate divergent and complex state-level fertility politics. Further uncertainties for ART emerge, for instance, in the ACA's EHB requirements and federally subsidized insurance markets, leaving the determination of actual benefits in the EHB categories to the states. Stapleton and Skinner conclude that despite windows of opportunity for increased ART benefits nationally under the ACA, the law may in fact set in motion dynamics whereby restrictive practices evolve. In other words, almost six years after the ACA's enactment, the law's effect in the fertility policy domain remains unclear.

Next, this issue presents a special Perspective section, Hollie Tripp's "The voyage of a navigator: An aspiring scholar's inside observations on the Affordable Care Act's rocky roll-out in North Carolina." Navigators, whose role is to facilitate health insurance enrollment by aiding consumers for free, provide a service integral to the ACA's successful implementation. If navigators fail to ensure that new enrollees choose adequate plans for their needs, health care access and health outcomes may not improve. And use of navigators is widespread—during the ACA's first enrollment period, navigators helped approximately 10.6 million individuals. In her informative analysis, Tripp reflects on her experiences as a volunteer navigator and furnishes suggestions for improving navigator programs. She stresses deficiencies in navigator training and therefore in navigator assistance, resulting, for instance, in unique barriers for immigrants and considerable navigator discretion in serving consumers. Additionally, Tripp considers the potentially adverse consequences of navigator programs emphasizing maximizing *enrollment* rather than consumers' *satisfaction* with their health plans. Tripp's narrative illuminates how the ACA's complexity also complicated the navigator role and hampered consumers' decisions. Throughout her discussion, Tripp indirectly touches on why (as mentioned above), many consumers are finding their insurance plans purchased on the exchanges to be unsatisfactory. One may thus wonder how the current landscape would differ if navigators had received better training and adequate resources to perform their duties.

Shifting from research articles with focused analyses, the final piece in this issue is my review essay, "Perspectives on health care reform and the Affordable Care Act." The essay offers readers a broader perspective and general reflections on our health care system (including its development), health care reform, the ACA's creation and passage, and future challenges for the ACA and health care in America; hence, the piece rounds out the specificity of the research articles. More concretely, I explore health care reform and the ACA through a critique of four recent, notable contributions to the literature in this field—Paul Starr's *Remedy and Reaction* (2013);[30] Steven Brill's *America's Bitter Pill* (2015);[31] Ezekiel Emanuel's *Reinventing American Health Care* (2014);[32] and Stephen Davidson's *A New Era in U.S. Health Care*.[33] These books furnish telling contrasts due to the authors' varying objectives and areas of expertise. Notwithstanding the writers' distinct backgrounds, orientations, and biases, several similarities are evident in their arguments too. For example, the authors promote the notion, either explicitly or implicitly, that enacting a law is not tantamount to achieving and sustaining the law's goal. They also contend that while the ACA falls short in significant ways, its unintended negative consequences do not outweigh its intended and real benefits. What percolates up from the essay are the ACA's challenges, persistent controversies, obvious limitations, lingering implementation uncertainties, and triumphs. Finally, the discussion highlights—yet again—the law's complexity. The ACA is, undeniably, a multifaceted conglomeration of innumerable and entangled programs, policies, regulations, mandates, and subsidies. And its story continues.

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