The politics of health insurance exchanges: Battles over the Implementation of the Affordable Care Act in Michigan

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Abstract

The Patient Protection and Affordable Care Act of 2010 (PPACA or ACA) is arguably the most significant health reform enacted in generations. Yet what the law actually will accomplish is largely being shaped by political battles over its implementation at the state level. Health insurance exchanges were an element of the ACA expected to elude partisan controversy; yet, the issue became a primary front in the political battles over the ACA. Every state had the option of creating their own exchange; though those choosing not to would cede control to the federal government who would do it for them. The law uses both carrots and sticks to encourage states to create an exchange. States choosing to do so were eligible for multi-million dollar federal grants, whereas states choosing not to create their own exchange were threatened with loss of control to the federal government. The Obama administration repeatedly bent to state-level resistance, extending deadlines and offering additional flexibility. Even still, only 17 states chose to run their own exchange and six agreed to an official partnership.

Why did so many states reject control of a policy that was to a large extent designed with state flexibility in mind? What effect will this have on the law's success? What are the implications for American federalism? To shed light on these questions, I use an in-depth case study to examine the process by which one state decided not to create an exchange. This approach is a complement to the 50-state quantitative studies being done by others. Understanding Michigan's decision requires exploring related questions, such as what effect did the Obama administration's strategic choices have on encouraging state actors to build an exchange? What more, if anything, could the Obama administration have done to increase the number of states that ultimately created an exchange? What were the partisan dynamics within states and how did they evolve over time? What role did interest groups play in this process?

Michigan very nearly became the first state led entirely by Republicans to create a state-based exchange under the ACA. After legislation to create an exchange failed, Governor Snyder attempted to partner with the federal government to maintain control over some elements of the state's exchange. Although legislative approval was not needed, Senate Republicans used a budgetary procedure to block the state from receiving the necessary federal grants, thereby ensuring Michigan would have a fully federally run exchange. A state-run exchange was supported by an unprecedented coalition of stakeholders, including insurers, small businesses, hospitals, providers, and consumer advocates. The chief opponents were Tea Party activists, with support from conservative organizations such as the Mackinac Center for Public Policy and the Michigan chapter of Americans for Prosperity. Institutional factors such as term limits, the legislative calendar, and legislative oversight of executive agency grants also played an important role in shaping the decision-making process.

Introduction

The Patient Protection and Affordable Care Act of 2010 (PPACA or ACA) is arguably the most significant health reform enacted in generations. Its passage was a major policy and political achievement for President Barack Obama and his congressional allies, something that nearly a century's worth of leaders had failed to accomplish (Starr 2011). It is widely seen as one of the cornerstones of President Obama's presidential legacy (Shear 2013). Yet what the law actually will accomplish is largely being shaped by political battles over its implementation (Jones 2012).

Complicating the law's implementation is the important role given to states (Greer 2011). The ACA fundamentally alters the intergovernmental balance over health policy and has far-reaching implications for American federalism broadly. As Gluck (2011) puts it, the ACA is "a virtual tapestry of federalism in federal statutory design." There are at least five distinct intergovernmental approaches contained in the law: 1) some parts are implemented directly by the federal government, 2) others are implemented entirely by the states, 3) in some cases states have the option of taking the lead but with the threat of federal preemption, 4) the federal government is stepping into some areas historically governed by the states, and 5) some elements are implemented through a federal-state partnership (Conlan and Posner 2011, Gluck 2011, Morgan and Campbell 2011, Rabe 2011, Haeder and Weimer 2013, Rigby and Haselwerdt 2013).

Jacobs and Skocpol correctly argue that "what seemed like an obscure decision during the debate in Congress to assign extensive responsibility to states may turn out to be one of the most consequential in the future," (2010). Weissert and Weissert (2012) write that the pivotal role of states in implementing health reform "would no doubt determine its success or failure."

Devolving power to the states greatly increased both the number of veto players empowered to block or delay implementation and the number of policymakers with a stake in the reform's success (Thompson 1981; Greer 2011; Gluck 2011).

Every state has its own separation of powers between branches of its government, two legislative chambers (except Nebraska which has a non-partisan unicameral legislature), multiple relevant committees per chamber, multiple relevant agencies in the executive branch, and many stakeholders who operate differently in state capitals than they would in D.C. (Jacobson and Wasserman 1999; McDonough and McGrath 2001). Because each of these actors will be driven by their own set of goals and incentives, it is possible for states to move in two directions at once, with some state actors implementing elements of the reform at the same time that others are attempting to block the same or other parts of the law. Tim Jost (2010) presciently warned that adopting the Senate's version of reform (which included a greater role for states than did the bill passed by the U.S. House) would require state legislatures to enact key elements of the law on their own, leading to "50 state reenactments of the battle witnessed" in Congress.

Health insurance exchanges were an element of the ACA expected to elude partisan controversy, particularly given the important role given to states over their creation. Jones *et al.* (2013) describe exchanges as "a conservative means to a liberal ends," and drawing "political strength from a flexible identity" given that an expansion of insurance coverage would occur through a market-based mechanism in which individuals and small businesses would obtain private health insurance. Yet, the issue became a primary front in the political battle over the ACA.

Every state had the option of creating their own exchange; though those choosing not to would cede control to the federal government who would do it for them. The law uses both

carrots and sticks to encourage states to create an exchange. States choosing to do so were eligible for multi-million dollar federal grants, whereas states choosing not to create their own exchange were threatened with loss of control to the federal government.

Conlan and Posner (2011) describe the ACA's approach to creating exchanges as a "hybrid model of federal policy innovation and leadership which mixes money, mandates, and flexibility in new and distinctive ways." Rigby and Haselswerdt (2013) further elaborate that whereas this blending of cooperative and coercive federalism allows liberal states to adopt more progressive policies, it may heighten conflict between the federal government and conservative states. The dilemma for Republicans is that by supporting a state-base exchange they risk being seen as supporting a law they campaigned against and that is deeply opposed by conservative activists. On the other hand, by blocking creation of a state-based exchange they ironically pave the way for greater federal control and potentially undermine their judicial and legislative challenges (Jones *et al.*, 2013).

Democrats in Republican-led states also faced a dilemma of whether to advocate for their state to run the exchange and accept that it may be a less regulated clearinghouse type marketplace, or prefer defaulting to a federally facilitated exchange likely to be a more-regulated active purchaser model. Finally, interest groups that had opposed the ACA now had to decide whether to advocate against the creation of an insurance exchange or to push for state, rather than federal control.

The Obama administration initially expected most states to opt for maintaining control of their exchange (Interviews 2011-2013). When state leaders began resisting, the administration made a series of strategic choices with the goal of convincing more states to participate. This included developing the option of a partnership in which the federal government would do much

of the work to build an exchange with states taking initiative over issues they care about. The federal government also repeatedly extended deadlines by which states would have to apply for federal grants or submit applications to run their exchange. Despite these efforts, only 17 states chose to run their own exchange and six agreed to an official partnership.

Why did so many states reject control of a policy that was to a large extent designed with state flexibility in mind? What effect will this have on the law's success? What are the implications for American federalism? To shed light on these questions, I use an in-depth case study to examine the process by which one state decided not to create an exchange. This approach is a complement to the 50-state quantitative studies being done by others. Understanding Michigan's decision requires exploring related questions, such as what effect did the Obama administration's strategic choices have on encouraging states to build an exchange? What more, if anything, could the Obama administration have done to increase the number of states that ultimately created an exchange? What were the partisan dynamics and how did they evolve over time? What role did interest groups play in this process?

No state is representative of the diversity of decisions made by states around the country, though Michigan is a particularly interesting case to examine given that it very nearly decided to run its exchange. In fact, Michigan appeared poised to be the first state led entirely by Republicans to create its own health insurance exchange as part of the Affordable Care Act (ACA). By the end of 2012, legislation to create an exchange had passed the Michigan Senate and was supported by Governor Snyder and the Speaker of the House. A broad coalition of interest groups lobbied in favor of a state-based exchange, including insurers, businesses, providers, hospitals, and consumer advocates. Even still, the House Health Policy Committee voted down authorizing legislation. The governor quickly shifted to pursuing a partnership

exchange, receiving conditional approval for this approach from Secretary Sebelius in March 2013. Within weeks the legislature blocked the Snyder administration from spending federal grants, making it impossible to create a partnership exchange. Ironically, this time it was the House that sided with the Governor and the Senate that stood in the way. Michigan had gone from nearly creating its own exchange to entirely defaulting to the federally facilitated exchange. This paper examines why.

Methods

This paper is part of a larger project which includes a 50-state comparison and in-depth analysis of three other states (Idaho, Mississippi, and New Mexico). The goal of this broader project is to make comparisons across states to shed light on the unique characteristics of each state. The purpose of this paper is narrower, with the goal of developing a complete understanding one state's experience.

The advantage of a qualitative approach is that it allows me to integrate a wide variety of types of data. In particular, I draw from more than 130 semi-structured interviews completed between July 2011 and October 2013 in 24 states and at the federal level. Thirty-seven of these interviews were with leaders in Michigan, including advisors in the governor's office, officials in other parts of the executive branch, legislators and staff members in each chamber, and high-level officials of key interest groups. At the federal level I spoke with officials in the Department of Health and Human Services, the White House, and former congressional staffers of the Senate Finance Committee; the Senate Committee on Health, Education, Labor, and Pensions; and the House Energy and Commerce Committee.

Most interviews lasted 30-60 minutes and dealt with a variety of issues relevant to that person's role in the ACA's implementation. In exchange for their candor, I do not include any identity-revealing information without an interviewee's explicit permission. A quarter of the interviews took place over the phone. The rest were conducted in person, either in the participant's office or at a policy conference including those run by AcademyHealth, the National Academy for State Health Policy (NASHP), the National Committee for Quality Assurance (NCQA), and the National Association of Insurance Commissioners (NAIC). I also approached those meetings as an ethnographer, taking extensive notes on the presentations, comments, and interactions among state and federal leaders. This is also true of the many legislative meetings and think tank webinars I observed in person or online.

I also rely on a variety of secondary sources, such as a detailed analysis of media coverage, as well as statistics and polling information from organizations such as the Commonwealth Fund, the Kaiser Family Foundation, and the National Conference of State Legislatures.

Background

Michigan's role in national politics might have suggested a political environment open to implementing the ACA. Every Democratic presidential nominee since Bill Clinton in 1992 has won Michigan, including Barack Obama with 57% of the vote in 2008. Since 2001, both of Michigan's U.S. Senators have been Democrats. In 2012, President Obama and Senator Stabenow won re-election in Michigan with 54% and 59% of the vote (MI Dept of State 2013), respectively, despite severe attacks from opponents about their roles in passing health reform.

Michigan's congressional delegation played a particularly prominent role in the congressional debate over health reform. For example, Rep. John Dingell (D) of Dearborn, who in June 2013 became the longest serving member in Congressional history (Spangler 2013), has introduced the National Health Insurance Act at the start of every session since 1957. He is also the author of the bill that passed the U.S. House in November 2009 (Dingell 2013). Rep. Dingell was in the chair presiding over the passage of Medicare in 1965 and lent the gavel he used on that occasion to Speaker Nancy Pelosi (D-CA) to use when presiding over the passage of the ACA in March 2010 (Brusk 2010).

Similarly, Rep. John Conyers (D) of Detroit has introduced The Expanded and Improved Medicare for All Act in every session since 2003, including twice since the passage of the ACA (Conyers 2013). Sander Levin (D) of Detroit, was a prominent member of the House Ways and Means Committee during the congressional debate over the ACA, including serving as chair from March 2010 until Republicans took control of the House in 2011. He and John Dingell were among the dozen or so people standing on the stage with President Obama at the bill signing ceremony in the East Room of the White House on Mach 23, 2010.

Despite this generally favorable political context for Democrats and the role of Michiganders in shaping the health reform law, there were reasons to be skeptical about how Michigan would respond to the reform. Most importantly, the 2010 election gave Republicans unified control of the executive and legislative branches for the first time since 2003. Although incoming governor Rick Snyder was arguably the most moderate candidate in that year's Republican primary, he would have to work with a strongly conservative legislature. Underlying this new dynamic was a feeling of uncertainty bordering on anxiety over what role the burgeoning Tea Party movement would play in the upcoming session (Interviews 2011-2013).

Interest groups throughout Michigan were divided over the ACA. Blue Cross Blue Shield of Michigan (BCBSM) and the Michigan Health and Hospital Association (MHA) had supported elements of the law, though business groups such as the National Federal of Independent Businesses (NFIB), the Small Business Association of Michigan (SBAM), and the Michigan Chamber of Commerce had opposed it (Greene 2010). It was unclear at the time the ACA was enacted whether their opposition would extend to elements of the law to be implemented by the state, including the creation of a health insurance exchange.

Similarly, not all members of the Michigan congressional delegation were as supportive of the ACA as were Dingell, Conyers, and Levin, indicating that pockets of the state would likely not be supportive of its implementation. Bart Stupak (D) from Menominee County in Michigan's Upper Peninsula, was called "the most important rank and file House member" during the ACA's passage because of the concessions he won before committing his support (Carney 2011). His amendment to prevent use of federal funds to pay for abortion was adopted by the House but not included in the Senate version eventually signed into law. Rep. Stupak led a group of anti-abortion Democrats who refused to vote for the final bill until President Obama promised to sign an executive order upholding existing prohibitions on federal funding for abortion services. He was resented by the left for limiting access to abortions and resented by the right for not going far enough (Fabian 2010). A month after the ACA was enacted, Rep. Stupak announced he was retiring from Congress. He cited as his reason the desire to spend more time with his family, though many count him as the ACA's first political casualty (Carney 2011).

Rep. Dave Camp (R) of Midland was a prominent critic of the ACA. He had been the ranking Republican on the House Ways and Means Committee throughout the legislative debate

over the ACA and took over as Chair when Republicans took control of the House in 2011. Rep. Camp authored the Common Sense Healthcare Reform and Affordability Act, which he describes as "the only alternative [to the ACA] analyzed by the non-partisan Congressional Budget Office," (Camp 2013).

Officials interviewed at HHS believed that states like Michigan would opt to create their own exchange, even though many of their leaders had opposed passage of the ACA (Interviews 2011-2013). They expected leaders to want to take advantage of the ability to use federal grants to maintain state control over an idea which at its core is reinforces market principles and the purchase of private insurance. How was it that rather than choose this path and become one of the first Republican-led states to create an exchange, Michigan defaulted entirely to the federal government? Jones *et al.* (2013) trace the evolution of the Republican response to the idea of an exchange through four time periods: 1) March 2010 – December 2010, 2) January 2011 – November 2011, 3) November 2011 – November 2012, and 4) November 2012 – March 2013. I use the same framework to discuss the process by which Michigan decided not to create an exchange.

1) March 2010 – December 2010

The reaction in Michigan to the passage of the Affordable Care Act was sharply divided. Actions taken by either side the week the law passed epitomize this tension. Within 10 minutes of President Obama's signing ceremony, Michigan's Attorney General Mike Cox (R) joined 13 other states in a lawsuit challenging the ACA's constitutionality, focusing particular attention on the individual mandate (Keyes 2010). On the same day, Governor Jennifer Granholm (D)

released a statement saying that "The passage of health reform is historic for Michigan," and that "No state has needed reform more," (Granholm 2010).

Granholm and Cox disagreed over whether the attorney general has the legal authority to join such a lawsuit without her approval. At a speech in Traverse City, she said that "His primary client as the attorney general is the executive branch of government, and no one in the executive branch has authorized him to take this position." She wrote a letter asking him to withdraw from the lawsuit. A Facebook campaign was created called "Mike Cox Doesn't Speak for Me" (2010). Cox replied that he is independently elected and acting in the best interest of the citizens of the state. Each accused the other of posturing, with Granholm saying that Cox was doing this as a ploy for the upcoming Republican primary for governor, and Cox saying Granholm was angling for a position in the Obama cabinet (AP 2010).

Cox won this argument with Granholm as Michigan stayed on the lawsuit, though battles over what the ACA would mean for Michigan were just beginning. State leaders began going down two parallel paths during these first few months after the ACA's enactment. This section discusses both sets of activity, including discussing the work done by the Granholm administration to lay a foundation for the ACA's implementation and the opposition to health reform coinciding with the growth of the Tea Party. Which side would have the upper hand over the next three time periods would largely be determined by the results of the state's elections in November 2010.

Granholm Prepares for Implementation

Although the major elements of the law requiring state action would not be fully implemented until 2014, and although Jennifer Granholm would not be the governor beyond December 2010, she took a number of steps to begin preparing for implementation. On March 31st she signed an executive order creating The Health Insurance Reform Coordinating Council to oversee the ACA's implementation (MI Executive Order No. 2010 – 4). Speaking the next day at Sparrow Hospital in Lansing, she said that the health reform law will benefit Michigan, and that critics were spreading misinformation for political gain (Gaddis 2010).

The Coordinating Council was led Janet Olszewski, Director of the Department of Community Health, and consisted of leaders from the Department of Human Services; the Department of Technology, Management and Budget; the State Budget Office; the State Personnel Director; the Office of the State Employer; the Commissioner of Financial and Insurance Regulation; as well as the Director of the Medical Services Administration and the Medicaid Director. The Council was charged with "conducting a comprehensive evaluation" of the ACA, as well as identifying "crucial decision points or state action items necessary to comply with the act or further enhance access to health care, reduce costs, and improve the quality of care." Olszewski was also tasked with facilitating coordination between agencies and identifying federal grants to assist with implementation of the Act.

The Coordinating Council solicited input from two stakeholder groups: 1) The Medical Care Advisory Council (MCAC) comprised of people representing the Michigan League for Human Services, the Michigan Health and Hospital Association, the Michigan State Medical Society, and others. and 2) The Michigan Health Insurance Access Advisory Council (MHIAC), a non-profit organization representing the Small Business Association of Michigan, the Economic Alliance for Michigan, the Michigan Chamber of Commerce, Blue Cross Blue Shield

of Michigan, the Michigan AFL-CIO, the Michigan Association of Health Plans, MichUCHCAN, and others.

Meanwhile, the Department of Community Health applied for a Planning Grant from the federal government. The state was awarded $999,772 on Sept 30, 2010, along with 47 other states that received exchange planning grants that day of approximately $1 million dollars. The award was given to accomplish eight objectives: 1) conduct research to determine who is potentially eligible for the exchange and how the exchange will impact Medicaid, other state programs, and other state health plans; 2) determine how to best establish the individual and small business exchanges; 3) implement a plan for stakeholder involvement; 4) develop an initial plan for integrating the applications for state and federal programs; 5) develop a plan for determining the exchange's structure and governance; 6) develop an initial plan for reporting, accounting, and auditing; 7) review technical components and plan for the introduction of possible new systems; and 8) review and determine the necessary state statutory and regulatory changes needed to establish the Exchange options.

On December 2, 2010, Secretary Olszewski submitted to Governor Granholm the Council's report entitled "The Patient Protection and Affordable Care Act: Michigan's Strategic Plan," (Olszewski 2010). The report articulated decision points and made recommendations. It identifies which sections of the ACA are relevant for states, and lays out a specific timeline of events that will need to take place for the reform to be fully implemented by 2014. With respect to the exchanges, it identified eight issues that would need to be addressed:

1. Whether to operate the exchange, participate in a regional exchange, or opt for a federally created and operated exchange. Whether to run separate exchanges for individuals and small businesses, or operate them separately.

2. Governance and organizational structure, ie whether in or out of government. Each approach has its risks and rewards, and so more analysis is required.

3. Whether the exchange would be funded by fees charged to insurance carriers, through state administered funds (ie, the general fund, Medicaid, or a combination), or a combination of sources.

4. An evaluation of the impact of funding options on premiums.

5. Coordination between Medicaid and the exchange. Michigan must consider the interface between existing eligibility systems and the new eligibility systems created by the exchange. Also need to determine whether eligibility for premium subsidies will be integrated with the existing Medicaid eligibility systems or separately by the exchange.

6. Whether to create a basic health plan for uninsured individuals with incomes between 133-200% FPL.

7. The rest of state law will need to be adapted to be consistent with whatever changes are made to have an exchange.

The report suggested decisions "should be made with attention paid to state costs as well as the benefits that attend the state." The report recommended that administering its own exchange would put Michigan in a better position to coordinate eligibility with Medicaid and MIChild, "in addition to using the exchange as a tool for achieving its consumer and regulatory objectives." Having the federal government administer the exchange would mean that "Michigan could lose control of its ability to determine its policy priorities." The challenge is that "there is insufficient information to be able to describe how the federal government would operate an exchange for Michigan." The report further notes that "the federal government is encouraging states to operate state exchanges or join together to form regional exchanges," (Olszewski 2010).

The Council recommended that a decision would need to be reached by February 2011 over whether the state will choose to operate its own exchange(s) and that if the exchange is to

be implemented by January 2014, authorizing legislation should be passed by December 2011 with the financing structures developed by February 2013. It also identifies that funds for exchange planning and implementation need to be appropriated each October between 2011 and 2013, and that by January 2015 the exchange must have a self-sustaining financing structure since no additional federal funds will be available. As will be shown later in the chapter, the state fell well short of these deadlines.

Growth of the Tea Party

As Governor Granholm's administration laid the foundation for the ACA's implementation in Michigan, political battles over its passage continued in full force. Opposition to the law coincided with the nascent Tea Party movement which had been growing nationally with opposition to the American Recovery and Reinvestment Act of 2009 (ARRA) stimulus bill signed by President Obama on February 17, 2009. Two days after the ARRA was signed, Rick Santelli "ranted" on CNBC from the floor of the Chicago Stock Exchange in a video that quickly went viral on social media (Santelli 2009). Among other things, he called for a Chicago tea party to "dump useless derivatives" into the Chicago River. The next day, a group called the Nationwide Tea Party Coalition was formed to mobilize around his call to action. A conference call was held in which conservative activists were challenged to hold protests across the country one week later. Conference calls for activists across the country were held each day that week. According to the Coalition, there were tea party events in 51 cities on February 27th, attracting more than 30,000 people (NTPC 2009).

A small group of Michiganders wrote on Facebook and Twitter that that they wanted to hold an event in Lansing (Kremer 2009). They organized conference calls and four days later had as many as 300 people show up on the steps of the Capitol building (Interview May 2013). A similar effort took place on April 15th, tax day, with more than 750 events held nationally, including multiple in Michigan (Robbins 2009). A crowd as big as 5,000 in Lansing heard Joe the Plumber – an Ohio native who became famous after challenging candidate Barack Obama in 2008 – and waved signs saying things like "Spread my work ethic, not my wealth" and "Hitler gave good speeches too," (Demas 2009). More events were held on July 4th.

As health reform was making progress in Congress, Tea Party groups began transitioning their focus from the stimulus to opposing what they labeled "Obamacare." Joan Fabiano became one of the state's leading Tea Party activists on health reform. Fabiano said she devotes her attention to Obamacare "because it is the antithesis of our form of government and freedom. I look at it as the nail in the coffin for our Republic," (Interview May 2013). Congress' inability to complete a bill by the August 2009 recess meant that conservative activists had a month to mobilize constituents to vent their opposition personally to their Representative. John Dingell's town hall meeting in Romulus, MI was a dramatic example of the level of animosity over health reform in the state. The meeting opened with a speech by a disabled woman describing her struggles obtaining health care because of pre-existing conditions. Audience members yelled back interruptions such as "I shouldn't have to pay for your health care." When Rep. Dingell arrived at the podium, a man immediately walked up to him while pushing his son in a wheelchair, saying "your health care plan is going to take healthcare away from my son and kill him!" Anything Rep. Dingell said in response was met with audience members yelling "liar!" The man would not relent until he was eventually escorted away by police officers. Others asked

questions about whether illegal immigrants would be receive government insurance, whether abortions would be covered, and whether elderly people will be euthanized (Dingell 2009). This month of direct confrontation ultimately did not derail national attempts at reform, though it gave the growing Tea Party movement an increased sense of purpose and confidence.

When the ACA passed the following March, Tea Party leaders began a petition drive to put the issue on the November 2010 ballot. Staffed by 300 volunteers, the organization officially became "Michigan Citizens for Health Care Freedom," (Bouffard and Kozlowski 2010). Jack McHugh, the senior legislative analyst at the Mackinac Center for Public Policy, was at the kick-off in March and described the effort as "a scream of pain from a general public that had just witnessed the political class trample 200 years of limited government principles using a "whatever it takes" process that violated all our democratic traditions of deliberative policy making." The initiative collected around 150,000 signatures by July, falling 200,000 signatures short of the state's requirement to put an initiative on the ballot. McHugh responded that "Politicians who read this as public acceptance of the new law do so at their peril," (Gantert 2010).

Tea Party groups continued to hold rallies throughout the state in the spring of 2010, with much of the focus being on the ACA. The Tea Party Express arrived in Ironwood, Michigan (400) on April 8th and made stops in seven cities with crowds reported ranging from 300 in Cheboygan (Pond 2010) to 1,800 in Lansing (Gantert 2010). On tax day, April 15, 2010, there were at least nine rallies across the state, with groups reported to range in size from 30 in Caro (Barber 2010) to more than a thousand in Lansing (Kim 2010). Opposing the ACA was a common theme at each one.

With the Republican primaries on the horizon in August, Tea Party groups formed the "Mobile Action Patriot Strikeforce," or MAPS. Their goal was for "constitutional conservative grassroots activists to come together, as folks did to elect Scott Brown, to provide a manpower boost when and where it is most needed," (Interview May 2013). Joan Fabiano was among the founding members of MAPS and challenged her allies to "to put down the Tea Party signs and pick up tools necessary to help your constitutional conservative candidates win," (Gantert 2010). This was an important transition for the Tea Party in Michigan, shifting from opposing specific policies to trying to influence elections and policymaking.

2010 Elections

The 2010 elections half-way through President Obama's first term were more than a referendum on his agenda and accomplishments – they would determine who would be in power at the state-level during the crucial implementation years of 2011 and 2012. Granholm was term-limited from running again, meaning that in addition to every seat in both the state Senate and House, Michiganders would be choosing a new governor. Health reform was a major issue in these races.

Among the candidates for governor was Attorney General Mike Cox, one of five plaintiffs on the ACA lawsuit running for governor of their state. He accused others in the race such as U.S. Representative Peter Hoekstra of "failing to stand up against Obamacare," (Cox 2010). Cox lost the primary on August 3, becoming the third Republican attorney general plaintiff to lose his state's gubernatorial primary. Bill McCollum became the fourth a few weeks later, with Pennsylvania AG Tom Corbett being the only successful of the five AG plaintiffs

(Keyes 2010). While Cox and Hoeksra were trying to one-up each other, Rick Snyder emerged as an outsider, branding himself during a commercial on Super Bowl Sunday as "one tough nerd" and labeling everyone else in the field as career politicians (Cranson 2010). Snyder won the primary with 36% of the vote.

Snyder's victory as a moderate outsider is not entirely inconsistent with the Tea Party sentiment growing in the state. Although less ideologically driven than the rest of the Republican field on issues such as health reform, Snyder was a former corporate executive who had never held elective office. Democrats nominated Lansing Mayor Virg Bernero, though he trailed badly the entire race. As Democratic consultant Robert Kolt put it, Bernero was "the sacrificial lamb for the party this year," (Ball 2010). Snyder won the general election with 58% of the vote, becoming the state's first Certified Public Accountant to be elected governor (NGA 2011).

Control over the Senate was never in question. Republicans held so many safe seats that they were unlikely to lose control, particularly in such a favorable election cycle. In fact, they strengthened control of the chamber, increasing their margin to 24 seats. Days after the election, Randy Richardville was elected as the next Senate Majority Leader. He interpreted the election results as a mandate to "deliver on our promises of less government, relief for businesses and more economic development and jobs without raising taxes," (Gautz 2010).

The switch of party control in the other chamber was dramatic and without recent precedent. Democrats went from controlling the Michigan House 65 to 42 to being the minority by a margin of 47 to 63 (MI Dept. of State 2013). This gave Republicans their largest majority in the Michigan House since the early 1950s (MI Legislative Directory 2011). The caucus chose 39

year old Jase Bolger as the new Speaker, making him the third straight person to begin their tenure as Michigan's Speaker with only two years of legislative experience (Christoff 2010).

This rightward shift in the legislature would have enormous implications for the debate over health insurance exchanges during the next session. Not only would both chambers be more conservative than in recent years, but term limits also meant that an even larger percentage of members would be new to the issue of health policy. For example, the membership of each chamber's health policy committee would experience nearly 100% turnover. The only exceptions were two Democrats who stayed on the House Health Policy Committee and Jim Marleau who moved from being the Minority Vice-Chair (i.e., ranking member of the minority party) on the House Health Policy Committee to Chair of the Senate Health Policy Committee.

Incoming members described it as a big challenge to come into this role at such an important time for state health policymaking. They lacked the institutional knowledge of how to move legislation, substantive knowledge on the issues before them, and relationships to build consensus and compromise. Others described the difficulty of having unknown quantities in these roles. For example, an advisor to Governor Snyder said that before term limits "I would have known what the health chair was likely to do and what they are concerned about. Here I have no idea about any of those. It's a little bit foggier. And they probably don't either." He added further that this environment gives interest groups greater leverage because "nobody knows enough to push back," (Interview June 2011).

Such high turnover also created uncertainty for interest groups. Without a voting record and history of prior positions, it was difficult for stakeholders to know how the new legislators would respond to policy questions such as whether to create a state-run health insurance

exchange. In fact, it would not be clear until a few months after the election who would serve on each committee and therefore who to focus on supporting and opposing during the election cycle. Even then, it would be nearly a year before they knew whether an exchange bill would be brought before the Health Policy Committees or to another committee such as Insurance. As a result, interest groups gave moderate amounts of money to a large number of candidates rather than large amounts to a few candidates in targeted races. For example, incoming members of each health policy committee received an average of 6% of their campaign financing from health organizations and 3% from insurance companies. This was still more than the 1.4% they received from business associations on average, but in many cases was significantly less than they received from their party or financed on their own.[1] In other words, it would not be easy to predict the outcome of the next session's big health policy questions based on campaign donations.

As the new session was set to begin in January 2011, the foundation for political battles over a health insurance exchange was set. At the same time that Governor Granholm prepared the way for the incoming administration to continue with the ACA's implementation, opponents were gaining strength in their efforts to derail its implementation in Michigan. Yet to this point, the debate over the ACA was still focused mostly on the mandates on not on the exchange. Most policymakers were not talking about an exchange and those who were would soon be out of power.

2) January 2011 – October 2011

[1] Derived from calculations using campaign finance data available at http://www.followthemoney.org

The first post-enactment period was characterized by supporters and opponents of the ACA working in parallel to lay the foundation for either implementation or obstruction. Both sets of actors continued down these paths, though the second period is characterized by a developing consensus among a wide variety of policymakers and stakeholders that Michigan should take the initiative to create and run its own health insurance exchange.

Until January 2011, the debate over the ACA and an exchange was largely theoretical as the people who would be empowered to make key decisions had not yet assumed office. As the legislative session began, it was unclear which path Governor Snyder and legislative leaders would choose. By October 2011, Governor Snyder had taken a strong stance in favor of creating a state-run exchange and enabling legislation he had helped craft was introduced in the Senate. The Governor took two particular steps to prepare the way for this bill: 1) holding stakeholder work groups throughout the first half of 2011, and 2) issuing a "special message" focused on health issued in September. In this section I discuss both of these steps, as well as the growing attention to blocking an insurance exchange among opponents of the ACA.

Stakeholder Work Groups

At his inauguration on January 1, 2011, Governor Rick Snyder challenged state leaders "to stop being divisive and start being inclusive." He further added that "we have spent too much time fighting among ourselves and have become our own worst enemy," (Snyder 2011a). He spoke of expanding Michigan's economy and creating jobs, but did not once refer to the ACA or health reform. Behind the scenes, he was studying his options and developing a plan. Chris Priest, who had been the Director of Governor Granholm's D.C. office, was asked to stay on in

his administration and work in the Department of Community Health (MDCH) as one of the point person on the ACA's implementation. Steven Hilfinger, Director of the Department of Licensing and Regulatory Affairs (LARA) became another point person on the issue.

Within weeks, a call was put out that Lansing-based firm Public Sector Consultants (PSC) would facilitate a set of work groups tasked with forging consensus among a wide range of stakeholder groups in developing recommendations specific to the health insurance exchange. An advisor to Governor Snyder described this process as a way of finding out where everyone stood, "It is always better to bring people in, interest groups in from the beginning of the process, rather than impose something them, because no matter you do they're not going to like it. The more buy-in you can get in the beginning of the process the better off you're going to be," (Interview June 2011).

A kick-off meeting was held on February 1, 2011 attended by 146 people. Another 75 indicated they would like to participate. From this list, five work groups were selected with 30 members each to focus on: 1) governance; 2) finance, reporting and evaluation; 3) technology; 4) business operations; and 5) regulatory and policy action. According to PSC's president Peter Pratt (2011), participants to each group were selected in order to achieve a balance of the following stakeholders:

- Business/employers
- Consumer advocates
- Health plans
- Health professionals
- Hospitals/health systems
- Information technology firms
- Insurance brokers/agents
- Labor
- Local government
- Long-term care

- Mental health
- Non-hospital safety net providers (FQHCs, etc.)
- Pharmaceutical manufacturers
- Public health
- Research/university
- Vendors/information technology

Using a particular process to facilitate dialogue and vote on policy issues, these work groups developed more than 50 recommendations with unanimous or "near-unanimous" support. A final report was issued on June 17, 2011 detailing these recommendations. On the most important questions, the work groups recommended that Michigan develop its own exchange; that it should begin as an independent public authority (i.e., quasi-governmental organization), with the option of seeking non-profit status at a later date; the exchange should be a clearinghouse instead of an active purchaser, meaning that it would not be the exclusive distributor in either the individual or group market; and the exchange should be funded through fees charged to carriers. A handful of participants opposed specific elements of these recommendations, though not a single person was opposed to Michigan taking control of its exchange (PSC 2011).

Peter Pratt was subsequently invited to present the work group recommendations to committees in each chamber. The July meeting of the Senate Health Policy Committee was a particularly significant moment, as it was the first opportunity for groups to go on record either supporting or opposing the exchange. These groups had been part of the work group process, but the report did not list the positions organizations took on individual issues. The coalition of stakeholders testifying on behalf of the exchange was an unusual combination of groups typically aligned with Democrats such as the Michigan Consumers for Healthcare Advancement

and the Michigan League for Human Services, alongside groups typically aligned with Republicans such as the Small Business Association of Michigan (SBAM) and the Michigan Chamber of Commerce (MI Senate Health Policy Committee, hereafter SHEAL, 2011). Supporting a state-based exchange was a bold step for many of these business organizations given that they had staunchly opposed the ACA during the 2009-2010 congressional debate. One small business leader described his support as a matter of pragmatism:

> At what point are we standing on principle fighting against national health care and at what point are we being pragmatic about the issues that are truly before us? I truly feel we have to be principled and we have to be pragmatic. Our job is to know which is which. Is this a stand on principle issue or this is not? Medicaid expansion and this are two examples of two very specific decisions that are before us. We weren't fighting about the whole law. We only had the decision about the type of exchange. Those who stood against it did so in a belief that they would be doing damage to Obamacare. We just didn't take that bet. We weren't willing to take that risk (Interview April 2013).

Insurers also emphasized the role that states have traditionally played in regulating insurance markets. The government affairs representative of a Michigan insurance company described it this way:

> Once it became clear that this law would pass and things shifted to the state-level, we knew we wanted the state to run the exchange. We testified to that very early on. Each state is different. They have a different makeup. The population is different. Our insurance regulations are inherently different – most states are. We operate in a specific kind of way. Even though there were general guidelines that states would have to follow, we wanted as much control as possible to do it the way Michigan should be doing it. We were one of many groups who felt the same way (Interview May 2013).

In early September, Peter Pratt gave the same presentation to the House Health Policy Committee, with many of the same organizations re-iterating their support for a state-based exchange (MI House Health Policy Committee, hereafter HHEAL, 2011a). Supporters of a

state-based exchange had hoped that support from such a wide range of organizations would give political cover to conservative members uncomfortable with supporting a component of Obamacare. This would ultimately prove to not be the case for enough Republicans. At this point there was still hope. All eyes were on the governor to see what he would do with the work group recommendations.

Snyder's Special Message

By June 2011, the Snyder administration decided to produce a "special message" on health and wellness. The message was released September 14, 2011 and included the governor's position on the health insurance exchange, as well as recommendations on how to address obesity, tobacco, food safety, and a wide variety of other issues. This would be the third such special message of his term, following one in March on local government reforms and one in April on education. Governor Milliken (1969-1983) used a similar approach as a way to set the legislative agenda for the following months. An advisor to Governor Snyder described three components to these messages: 1) what I'm going to do as governor, 2) what I'm asking the legislature to do, and 3) what I'm asking the people of Michigan to do (Interview June 2011). A Democratic Michigan Senator said that "when they put a special message together, the full resources of the governor's office go behind those goals. They view these special messages as a checklist and focus on getting these things done," (Interview September 2011).

Three aspects of the health and welfare special message are particularly noteworthy: 1) the specific proposals, 2) the framing, and 3) its roll-out. First, Governor Snyder came out as strongly in favor of a state-based exchange, saying "I do not support a 'one size fits all' federal

approach to health reform, which is where we would be if we were to allow the federal government to run a health insurance exchange." He went as far as saying that even if the ACA had not mandated the creation of an exchange, he would "still be in favor of utilizing technology to create a better customer service experience for Michiganders." In addition, Snyder advocated for the exchange to be established as a non-profit entity, stating that "the legislature should not create a duplicative regulatory structure for health insurance in Michigan" and "should encourage healthy competition rather than simply add new transaction costs to the expenses that individuals and small businesses already face." He further added that the exchange should not be the only available option for customers to purchase to insurance (Snyder 2011b).

The debate over the content of health and wellness special message took place mostly behind closed doors, with significant input from committee leaders from each chamber. An advisor to Governor Snyder described this process as trying to facilitate many of the big compromises before legislation is even introduced. "The more you can work out up front, the better off you'll be when you engage in the legislative process. That's what we're trying to do," (Interview June 2011). Participants of the work group process later expressed frustration over not knowing how their recommendations were incorporated, particularly given that Snyder called for the exchange to be a non-profit entity after they had recommended it be a quasi-governmental organization (Interviews 2011-2013). Those involved in crafting the special message say that the work group recommendations were given serious weight, but that the governor knew from the beginning that he wanted a non-profit entity. As one legislative staffer put it, "A quasi-governmental organization wasn't really discussed too closely. The goal is to remove it further from government," (Interview September 2011). Another of leader in the governor's office described that "Governor Snyder's focus is on being consumer friendly and valuing customer

service. We felt that [a non-profit entity] would be the best way to do this. We wanted to set up a structure that would be flexible and as much outside of government as possible, something that would be forced naturally to keep its costs low" (Interview May 2013). There was also a political motivation to this approach, with the expectation being that a clearinghouse exchange run as a non-profit housed outside of government would be the most likely to win support from Republicans in the legislature.

The second notable aspect of the special message is that it was framed to appeal directly to conservatives by emphasizing markets and competition. In other words, not only were the proposals tailored to appeal to the right, but so were the words to describe and sell the proposals. In the weeks leading up to its release, a legislative staffer said they would be surprised if the message even used the words "Affordable Care Act" or "insurance exchange," (Interview September 2011). Those words were used sparingly, but mostly as context for introducing the governor's proposal for an exchange called "The MI Health Marketplace," (pronounced My Health Marketplace). Much of the language used to sell the MI Health Marketplace reflects Snyder's background as a corporate executive. For example, he calls for it to be "customer-service oriented, accountable, reliable, transparent, and expedient," (Snyder 2011b).

Finally, the roll out of the message was designed to give momentum to the governor's proposals. A press conference was held at the Heart of the City Health Center in Grand Rapids, with the governor also announcing a goal to lose 10 pounds over the next year.[2] The next day, Steven Hilfinger and Shelly Edgerton from LARA and Chris Priest from MDCH testified on the MI Health Marketplace before a special joint session of Senate Health Policy and Insurance

[2] He announced on October 24th that he had so far lost 6 pounds (AP 2011a), though when pushed the following year whether he had met the goal, he said "I've lost some, but not enough," (Brush 2012).

Committees. They were immediately followed by Olga Dazzo, Director of MDCH, and two of her deputies presenting on other elements of the special message (MI SHEAL 2011). Similar presentations were subsequently made in the House (MI HHEAL 2011b).

The timing of the special message coincided with efforts by the Snyder administration to apply for a federal level 1 establishment grant. The state was asking for nearly $10 million from the federal government in order to conduct studies and plan for the creation of an exchange. The receipt of this grant would ultimately be a source of controversy, but it was not when the application was submitted in the fall of 2011.

Snyder's message held to the recommendations made by the Granholm administration, challenging the legislature to have a bill on his desk by Thanksgiving. Committee leadership in both chambers seemed supportive, or at least open, to this timing. A key staff person for the House Health Policy Committee described that "Our goal is to have our legislation on the governor's desk by Thanksgiving. That is the Senate's goal as well. That gives us two, two and a half months. That is our goal. We do want to meet the deadlines for meeting the qualifications and criteria to receive grants. We would like to receive all the federal money we can," (Interview September 2011). A Democratic Senator on the Senate Health Policy Committee said they would be surprised if legislation creating a state-based exchange was not enacted by the end 2011 (Interview September 2011).

The special message's roll-out was not entirely smooth, though not because of the governor's position on health insurance exchanges. In fact, the most controversial elements of the message had little to with the ACA. The media focused most of its attention on proposed requirements to mandate insurance coverage for treatments related to autism in children and for

each child's BMI to be reported to the state annually (Thoms 2011). Organizations such as the Chamber of Commerce quickly responded to these proposals, saying that "Across the state, employers and individuals were angry at the passage of Obamacare and its focus on more governmental control and top-down mandates. Make no mistake: Support for more health care mandates is tantamount to adopting the same government control and cost-shifting at the heart of Obamacare," (Michigan Chamber of Commerce 2011).

This was an auspicious beginning to the debate that was about to take place in the legislature over MI Health Marketplace. The Chamber of Commerce and other business groups would advocate on behalf of a state-based exchange, but this message was often confused or drowned out by their strong opposition to the ACA as a whole and to Snyder's other health policy proposals. It also became increasingly difficult to convince legislators who were now hearing more from groups opposed to creating an exchange.

Opposition Continues to Grow

As described in chapter two, conservatives around the country were torn over how to handle the dilemma of whether or not to support creating an insurance exchange. Initially it seemed that Republicans could oppose the ACA in general but support maintaining state control of an exchange. By August 2011, the American Legislative Exchange Council (ALEC 2011) had published "A State Legislators Guide to Repealing Obamacare" and conservative groups like the Heritage Foundation and the Cato Institute were speaking out strongly against insurance exchanges. In this environment, Republicans were very cautious about supporting any element of the ACA. The effects of this growing animosity towards the exchanges were felt in Michigan,

with opposition coming most strongly from three sources: 1) national organizations, 2) the Mackinac Center for Public Policy, and 3) grassroots organizations.

First, Governor Snyder resisted pressure from national organizations to return money or resist implementation. Most notably, he was the only Republican governor not to sign a letter calling for the ACA's repeal and greater flexibility on Medicaid (RGA 2011). When this letter was sent in June 2011, Governor Fallin had already returned Oklahoma's $54.5 million exchange grant and Governor Brownback was on the verge of returning Kansas' $32 million grant. Governors Jindal (R-LA) and Scott (R-FL) were among the Republican governors who made it clear they would not create an exchange. Advisers to Governor Snyder described the decision to not return grant money and not sign the letter by saying "It's a simple decision. That's the way the governor looked at it. We're not going to get in a state's rights debate. There is no sense in doing that stuff. First, the odds of this being entirely repealed are slim to none, so you do a reality check. Second, it is federal law. Third, he's more interested in Michigan than he is in the national debates," (Interviews 2011-2013).

The state chapter of the National Federal of Independent Businesses (NFIB) was one of the only, if not the only, business organizations in Michigan speaking out against a state-based exchange. Given that the national organization was a plaintiff on one of the primary ACA-related lawsuits making its way through the courts, it would have been very difficult for the state chapter to support Snyder's proposal for a state-based exchange. NFIB's opposition weakened the otherwise strong coalition of supporters. The division between the state's major small business groups - SBAM and the Chamber on one side, NFIB on the other - meant that both supporters and opponents had political cover for their position.

NFIB's state director did say that he might support an exchange bill if it included a sunset clause that would eliminate the state exchange if the federal law is found unconstitutional by the Supreme Court or repealed by Congress. Even still, any action to support an exchange might be seen as legitimizing the reform and undermining the lawsuit. Instead, the organization focused on winning in court and making the whole debate moot. State director Charlie Owens testified before the legislature to this effect, saying "We did not support the passage of this Act and, in addition to our efforts in Court, we have been, and are still, actively pursuing the repeal of the Act. If we are successful, then any state-created exchange would be unnecessary and should cease to exist (NFIB-MI 2011)."

Opposition at the state level was most prominently driven by the Mackinac Center for Public Policy. Based in Midland, MI, the Mackinac Center has been called the "the largest right-wing state-level policy think tank in the nation," (Steimel 2013). The Center is itself part of a broader organization called the State Policy Network which describes itself as "made up of free-market think tanks fighting to limit government and advance market-friendly public policy at the state and local levels," (SPN 2013). Mackinac has a reputation as a particularly influential member of this network, having trained many of the leaders running sister organizations around the country and participating in ALEC task forces focused on health reform (Sourcewatch 2013).

The Center takes a multi-pronged approach to attempting to influence public policy in Lansing. In addition to issuing reports based on independent research, it publishes blog posts, runs a news service called Michigan Capitol Confidential (CAPCON), and runs a legislative tracking service called Michiganvotes.org. During the summer and early fall of 2011, Mackinac used each of these outlets to publish arguments against the creation of an insurance exchange. Senior Legislative Analyst Jack McHugh wrote most these pieces, in many cases disseminating

information from national organizations. For example, on June 17, 2011 the site published an article called "Should Michigan Create a Health Insurance Exchange?" which was a full reprint of the testimony given by Michael Cannon, Director of Health Policy Studies at the Cato Institute, before a legislative committee in Virginia (Cannon 2011b). Similarly, much of the testimony given by Cannon before a committee in Missouri was published by Mackinac on September 24, 2011 (McHugh 2011a).

Mackinac articulated four main arguments to oppose the creation of an exchange. First, the future of the law is in doubt due to its low poll numbers and questions over its constitutionality. Moving forward with an exchange in spite of this uncertainty would be irresponsible (Cannon 2011b). Second, creating an exchange "entrenches Obamacare" and "lends the appearance of legitimacy to the law," thus undermining efforts to repeal or overturn the ACA (McHugh 2011a). Third, there is "no such thing as a state-run exchange" since everything needs to be approved by the federal government. Fourth, the language of the ACA does not provide funding for a federal exchange or authorize the federal government to provide subsidies directly to consumers (McHugh 2011b). The implication is that a federal exchange might not be possible and that if enough states resist an exchange outright, they may be able to undo this element of the law. He also argued that interest groups, such as those participating in the work groups were not to be trusted, since they stand to gain financially from the ACA's implementation (McHugh 2011c).

These articles published by the Mackinac Center became the basis of the arguments used by those opposing an insurance exchange, particularly members of the Tea Party. One reason the Center was so influential with this group is because it had previously worked to help cultivate the Tea Party movement in Michigan. For example, in 2009 Jack McHugh co-authored "The Tea

Party Activist Toolbox" instructing activists on how to influence the legislative and electoral processes. The tool kit called for an aggressive style. Under the heading "Tea Party Activists Have Attitude," the paper said that "Tea Party activists aren't impressed that their politician is a nice guy" and that "They're all nice guys, so get over it and ignore it. Hold them accountable for their deeds rather than their smile." It further encouraged activists to ignore party label by holding Republicans accountable as well as Democrats, and that "Tea Party activists don't repress their feelings regarding fiscal malpractice." It stated as its target "A self-serving, self-perpetuating, inbred and bipartisan class of political careerists who have taken control of the government and do not represent the will of the people," (Braun and McHugh 2010). Although the Mackinac Center was not the only voice influencing the Tea Party, it played an important role in setting the tone and providing the talking points which would be used by Tea Partiers to oppose exchange legislation in the coming months.

At the same time that a major piece of his agenda was being challenged from the right, the Governor was facing a recall challenge from the left. The Committee to Recall Rick Snyder worked throughout the summer of 2011 to try and collect the 800,000 signatures needed to put a recall of Governor Snyder before voters (UPI 2011). Much of this group's anger was directed at a law signed by Governor Snyder in March which gives broad powers to emergency financial appointed by the state, including the ability to supersede elected officials and terminate union contracts. The day Snyder signed the bill into law an estimated 3,000 people filled the Capitol Building protesting the law (Mudgett 2011). The issue attracted national attention, with Jesse Jackson visiting the state calling for civil disobedience (Bein 2011) and Rachel Maddow criticizing the law on her MSNBC show (Maddow 2011). The campaign to recall Rick Snyder ultimately fell short, collecting 500,000 by the deadline at the end of September 2011 (Bowers

2011), however enough signatures were ultimately collected to put a referendum of the new emergency manager law on the November 2012 ballot (Hoffman 2012).

It was against this backdrop of a divided right and an angry left that legislation to create MI Health Marketplace was introduced in the Senate on September 22, 2011 by Senator Jim Marleau of Oakland County.

3) Nov 2011 – June 2012

Michigan legislators joke about there being a special Lansing zip code of 56-20-1, since this is the number of votes needed to pass legislation through the House and Senate, and to be signed by the governor. Republicans held enough seats in both chambers that they could pass legislation without needing a single Democratic vote. However, given the divisions among Republicans, the most likely path in each chamber would be to secure support from as many Democrats as possible and then as many Republicans as necessary to make up the difference. In 2011 there were 46 Democrats in the House, meaning that if they all supported an exchange, only 10 House Republicans would need to vote in favor. The math was similar in the Senate, with only eight Republicans needed to join the 12 Democrats.

November 2011 was an important turning point in the debate over whether to build an insurance exchange. SB 693 to create MI Health Marketplace passed the Senate on November 10th. Days later on November 14th, the U.S. Supreme Court announced it would hear the cases challenging the constitutionality of the ACA. This decision was not a surprise, but cast a shadow over deliberations in the Michigan House that was difficult for supporters to overcome. This section examines why exchange legislation succeeded in the Senate but stalled in the House.

SB 693 in the Senate

Jim Marleau, Chair of the Senate Health Policy Committee, took the lead in pushing SB 693 through the Senate. As the bill made its way from the Senate Health Policy Committee to the Senate floor, supporters had three advantages in their favor. First, they had the support of Governor Snyder who had come out strongly in favor of a state-based exchange and had devoted his administration's resources at LARA and MDCH to planning activities. However, it was not immediately apparent whether his support would be an asset. Legislative staff members in both chambers describe a strained relationship with the governor during the early months of his administration. Snyder had campaigned on changing the way business is conducted in Lansing and one Republican Senate staff member describes "an expectation that once he arrived they would teach him what is going on how things really work. He would be put in his place and it would be an adversarial relationship," (Interview September 2011). Instead, this person described Snyder as "an out of the box thinker who is pro-active in working with legislators and in seeking them out. It hasn't been adversarial. I have become a fan."

A staff member to a House Republican in leadership echoed these sentiments about the governor's relationship with legislators in early 2011, particularly as Snyder took a strong stand on the exchange. "Keep in mind that the Republican that was elected governor was not the establishment candidate everyone thought was going to win. He was not active in Republican politics; he had a business background. This attracted Michigan voters. Now he is in office and to his credit looks at issues not first from a political bent, but from a CEO perspective. When he looked at the exchange, he thought it made sense." This person went on to add that "most

Republicans in the House and Senate thought he lost his marbles" by supporting an exchange. "Does he understand politics? This is perhaps a cornerstone issue in the upcoming election and at the very least we should wait to see how this plays out. To his credit, he didn't wait," (Interview May 2013).

Instead of waiting, the Governor's administration engaged in an aggressive legislative strategy. Chris Priest and Steven Hilfinger from LARA took the lead in testifying before multiple committee hearings, holding numerous meetings with groups of legislators and their staff, and meeting one on one with each Senator on the Health Policy Committee, as well as many of both the Republican and Democratic caucuses.

Complicating the dynamic between branches of government was that the legislature had already taken a number of tough votes by this point in the session. For example, in addition to the emergency manager bill already discussed, he signed a bill which paid for the elimination of a business tax in part by increasing personal income taxes, including pensions and other retirement income (Luke 2011). He was also trying to enact education reforms and win approval for a new bridge between Detroit and Canada.

The second potential advantage for supporters of an exchange was the broad alliance of interest groups in their corner. This was not a coalition in the sense that groups coordinated every activity, though their efforts were complimentary. The Small Business Association of Michigan (SBAM), which some have called one of the most influential groups in Lansing (Haines 2013), aggressively worked the phones and attended meetings with legislators. Other groups such as Blue Cross Blue Shield of Michigan were similarly engaged in lobbying Senators.

The third advantage was that Senators would not be up for re-election again until 2014. Unlike Idaho where all Senators are up for re-election every two years and Texas where Senators serve four years but elections are staggered so that half the body is on the ballot every two years, all of Michigan's 38 Senators serve four year terms on the same electoral cycle. Legislative insiders feel that this gave Senators a little more room in 2011 to examine the policy merits of SB 693 compared to the House where members were already anticipating their primary challenger in the upcoming election (Interviews 2011-2013).

In early September 2011 Senator Marleau spoke to the Republican caucus about the exchange, trying to convince them this is not the equivalent of implementing Obamacare in Michigan. He did not bring up access, but tried to sell it as a way to control costs. Marleau was quoted as saying something along the lines of "This is not Obama-style reform. This is a Republican idea. This is the Michigan solution," (Interview September 2011). Interest group leaders were frustrated that despite all the policy reasons they felt Michigan should run its own exchange, they "had to frame it as being about state's rights. You had to find a way for people to support this without saying they support Obamacare," (Interview May 2013).

At the same time, supporters faced the challenge of finding a way to convince enough Republicans to sign on without alienating too many Democrats and liberal groups. The Snyder administration expected legislators "to be all over the map in terms of how they react to an exchange. Most Republicans are saying we should do it like Utah. Most Democrats are saying we should do it like Massachusetts. We're trying to find the middle ground – the Michigan way. At the end of the day all that matters is 56-20-1. Our job is to get the 56, 20, and 1. Well, to get the 56 and 20, we have the 1!" (Interview June 2011). Governor Snyder and Senator Marleau reached out to Democrats for their support. Democratic Senators expected this, with one saying

that "Sometimes you have to be bi-partisan when your caucus won't be with you. On this issue in particular, the likelihood is that they will need Democratic votes to get it done," (Interview September 2011). Senate Democrats supported an exchange, though there were some feelings of discontent under the surface. As the leader of a liberal organization described, many supported SB 693 even though they felt it did not go far enough. They hoped the Michigan exchange "would evolve from a clearinghouse exchange to an active purchaser where the choices are a little more selective…The Marleau bill wasn't perfect, but it was reasonable. We could have worked with it and improved it over time," (Interview May 2013).

After clearing the Senate Health Policy Committee, SB 693 was approved on the floor by a vote of 25-12 on November 10, 2011. All 12 Democrats voted in favor and were joined by 13 Republicans, exactly half the Senate Republican caucus (MI Senate Roll Call #663 2011). It was not an easy vote for Republicans, with Senators such as Rick Jones of Grand Ledge saying he had to "hold his nose" while voting for the bill (AP 2011b). Senator Patrick Colbeck (R) of Canton used a floor speech to remove his name as a co-sponsor of the bill. He said

> I rise in strong opposition to SB 693. My original co-sponsorship commitment was predicated on the understanding that this bill would provide a free market alternative to the Federal 'Affordable Care Act.' As a co-sponsor, I had worked hard to ensure that the bill would live up to this promise. My concerns have not been addressed in this version of the bill and I have read it thoroughly. Rather than serving as a free market alternative, I have come to the conclusion that this bill would simply further enable the implementation of the Affordable Care Act, commonly known as Obama-care.

Senator Colbeck asked for time to submit "a vetted alternative" which would narrow the scope of the MI Health Marketplace from performing "all exchange duties" to focus on determining eligibility for government assistance to citizens," (Colbeck 2011). His name was removed from the bill, but the vote carried on without him.

The Tea Party was engaged in the Senate debate but did not fully mobilize its resources. On her blog the day after the bill passed, Tea Party activist Joan Fabiano said this was because the Senate pushed the bill through without normal debate. She and other activists reacted strongly to the bill's passage, issuing a call to arms for the Tea Party to act aggressively as the bill moved to the House. Republicans who supported the bill were accused of "putting their career over principals," (Fabiano 2011a). A political action committee run by the RetakeOurGov Tea Party Group used the moment as a fund-raising tool, telling supporters that "The passage of SB 693 was a deliberate poke in the eye to the TEA Party. We cannot just ignore this direct assault on our values. We have worked too hard and too long to fight Obama Care to give up now," (Retakeourgov 2011).

Negative attention from the Tea Party was uncomfortable for Republican Senators. Senator Judy Emmons tried to deflect criticism for voting for SB 693 by introducing a resolution on the same day "to express support for the continued efforts of the Michigan Attorney General to oppose the implementation of Obama Care and to memorialize Congress to repeal it" (MI SR-95 2011). The resolution narrowly passed 20-17 with support from all 13 Republicans who also voted for SB 693 (MI Senate Roll Call #664). The resolution did little to appease activists who called it a "duplicitous move" and wrote "Did they really think we should be fooled by this? What an insult to the people of Michigan!" Fabiano predicted the House would act quickly and she and others vowed that the Tea Party would be ready (Fabiano 2011a). Senator Rick Jones reacted to her post by writing Fabiano directly on Facebook, saying "I hear you are taking head meds. Is that true?" (Jones 2011). She filed an ethics complaint against him for cyber bullying and he subsequently wrote an apology letter. (Fabiano 2011a).

With the Senate having moved quickly to pass SB 693, it was now up to Speaker Jase Bolger and Rep. Gail Haines, Chair of the House Health Policy Committee Meeting, to decide their next move.

SB 693 Stalls in the House

As the debate shifted from the Senate to the House in November 2011, it was clear that SB 693 would not meet Governor Snyder's timeline of being enacted by Thanksgiving. Having a bill passed by the time the legislative session ends at the end of the calendar year became the new goal for supporters of an exchange (Interviews 2011-2013). A Republican House staff member would later admit that they never intended to bring the bill up for a vote once it became clear the Supreme Court would hear the ACA's case (Interview February 2012).

That is not to say that the chamber ignored the exchange. In fact, one senior staff member said in their 15 years in Lansing they had not seen more committee deliberations on an issue than were held about the exchange (Interview May 2013). Between September 8, 2011 and January 19, 2012, the House Health Policy Committee held 10 hearings on the exchanges, including every Thursday morning between October 6th and November 10th. Each meeting included testimony in support an exchange by representatives of state agencies, practitioners, insurers, businesses, and consultants working in other states. The meetings also provided an opportunity for citizens and organizations to offer brief testimony or submit a card in support or opposition of an exchange. Despite having so many hearings, there was never a public discussion of when the committee would vote on SB 693.

Republican leaders had both policy and political reasons for delaying a vote in the House. First, they felt that with so many unknowns about the fate of the law it would not be prudent to proceed with the creation of a state-based exchange. They worried about questions such as what if the Supreme Court struck down the individual mandate but not other elements of the law such as guaranteed issue. Could Michigan's exchange withstand the likely adverse selection problems that would arise in this case? HHS had not yet released final regulations on an exchange and policymakers were frustrated about a lack of clarity over their options and requirements. How could they choose whether they preferred a state or federally exchange if they did not know details about the federal model? Similarly, they worried that once HHS's final regulations were released, the state would be stuck with hidden costs or would have to spend resources revising elements of its exchange. The safer thing, they felt, was to wait and let the judicial process play out.

Richard Murdock, Executive Director of the Michigan Association of Health Plans worried that delaying would be a self-fulfilling prophecy for opponents, leaving the state too little time to establish an exchange after the Supreme Court ruling (Murdock 2012). A spokesperson for House Speaker Bolger responded that "there's plenty of time to get something in place" after the Court rules, adding that "If people are dedicated, this can get done," (AP 2011c). LARA Director Steve Hilfinger responded that "If we wait until June to move forward on that, the odds of us being able to satisfy HHS that we have an exchange in place…would be nonexistent. We certainly don't want to lose six months of planning time and seal our fate with a federal exchange. That would be devastating for Michigan," (AP 2011c).

Michigan was one of the few states that had the option of delaying its decision with the realistic possibility of still taking a vote in 2012. Nearly 75% of states had legislative sessions

lasting less than six months in 2012, more than a dozen of which met for less than three months. Four states were not scheduled to meet at all. Given that only nine states had sessions running into July and that the Supreme Court's ruling was expected at the end of June, very few other states could wait for the ruling and still pass legislation creating an exchange – at least without calling a special session, an unlikely prospect so close to the election (Jones 2012a). Ironically, the ability in Michigan to make decisions later gave opponents an excuse to stall. Without the tight deadline of a session end date, opponents felt little pressure to rush.

Even still, as described in chapter 2, the final deadline for the level 2 establishment grant – the major grant states would use to fund the first years of planning and operation – was June 29th. This was the same week as the Court's term was scheduled to end, meaning that states would likely have very little time to pass legislation between the Court's ruling and the grant deadline. As a result, the decision to delay making a decision would leave the state with three choices should an exchange still be required after the Court's ruling: First, let the federal government create the exchange. Second, create an exchange by executive order in time to apply for the level 2 grant money. Because legislation is needed to create a non-profit or quasi-governmental entity, this exchange would have to be housed in a government agency. Third, pass legislation after the grant deadline but use the state's money instead of receiving federal grants (Jones 2012b).

Republicans did not like any of these scenarios but were hopeful it would reach that point. One interest group leader called this period "the triple dog dare" phase of the exchange debate because Republican lawmakers felt HHS was bluffing on its threats and were willing to call them on it. For example, another interest group leader quoted Chairwoman Haines saying that HHS would never actually come in and set up an exchange (Interview April 2013). A House

Republican staff member said that the Obama administration wanted red states to do an exchange so badly that they would eventually cave on deadlines and would "let us do whatever we want," (Interview February 2012). A Tea Party leader said that HHS "couldn't and they wouldn't" run exchanges for all the states that chose not to do one on their own (Interview May 2013). Speaker Bolger wrote that delaying action on the exchange was a way to push back against federal mandates and burdens (Bolger 2012a). Many of these leaders felt that even if Michigan created an exchange, most of the control would still lie in Washington D.C. This belief motivated their opposition to an exchange, but also made them feel like they had little to lose by stalling (Interviews 2011-2013).

Republican leaders were also aware that creating an exchange brought little political benefit but potentially significant political risk. 2012 was an election year for every member of the House, with the filing deadline for the primaries right around the corner in May. Groups such as the Tea Party and Americans for Prosperity were becoming increasingly vocal and aggressive on this issue. A senior staff person said they had verbal support from enough people that they were confident SB 693 would pass if it reached the floor (Interview December 2011). However, many Republicans were nervous about the tough votes they had already taken and did not want to take a risky vote on Obamacare if they did not need to. After the December 1st meeting of the House Health Policy Committee, House Republican leaders were saying no vote would be held until after the Supreme Court's ruling (Interviews 2012-2013).

House Blocks Federal Grant

As it turned out, there was an important vote much sooner, though not on the creation of an exchange itself. On November 29th, the federal government awarded the state a $9.8 million level 1 establishment grant. LARA had applied for this grant two months earlier "to conduct additional analysis on the impacts of the Exchange and the Affordable Care Act in Michigan," including market analysis, technology planning, and education and outreach (CMS 2013). This grant was seen as a natural progression from the $1 million planning grant received a year earlier and was not expected to be controversial. Policymakers on both sides of the aisle were asking for more detailed information than the state had available, and the Snyder administration said they wanted to use this grant to develop answers to these questions.

Accepting this grant did not commit the state to create an exchange, though conservative leaders such as Jack McHugh at the Mackinac Center warned that "state cooperation and grant-seeking may further entrench Obamacare, making it harder to eventually invalidate or repeal," (McHugh 2011d). Joan Fabiano similarly called for the state to reject this grant (Fabiano 2011b). Governor Snyder made it clear he would not follow the lead of other Republican governors who rejected their federal grants (Interviews 2012-2013). However, the Michigan Constitution also requires the legislature to approve any executive spending, even of money received by federal grant (MI Const. art. 14. §5).

On the same day in November 2011 that the Senate passed SB 693 to create an exchange and Resolution 95 to express support of Michigan's participation in the lawsuit, the Senate also passed a $366 million supplemental appropriations bill by a vote of 28-8 (MI Senate Roll Call #675 2011). The bill authorized LARA to spend the $9.8 million level 1 grant it had just been awarded. The House had approved a version of the bill a few weeks earlier, though its vote took place before the state had received the grant and thus did not include this money (MI House Roll

Call #422 2011). When the bill came back to the House, leaders removed the $9.8 million federal grant. Rather than block the entire appropriations bill right before the Christmas recess in order to save this $9.8 million, House members approved the $352 supplemental by a vote of 101-7 on December 13th (MI House Roll Call #570 2011). Faced with a similar choice the next day, the Senate voted 20-17 to approve the most recent House version (MI Senate Roll Call #792). The supplemental appropriations bill passed comfortably, but without any money for the state to spend on exchange planning.

The blocking of the level 1 establishment grant by the House gave opponents of an exchange their first major victory on the issue. The Snyder administration was frustrated to lose this money which would have funded planning activities. As one adviser put it, this was a "chicken and the egg sort of problem. If someone asked what our user fee would be in ten years, or something like that, I can't tell them…we needed their approval to get the funding to do this research," (Interview May 2013). Without answers to these questions, House Republicans were wary of voting to create an exchange.

January 19th House Health Policy Committee Hearing

The debate in the House over an insurance exchange – at least until after the Supreme Court ruling and November elections - culminated with a dramatic meeting of the House Health Policy Committee on January 19, 2012. Despite near-blizzard conditions and temperatures below 20°F, more than 120 people attended what was billed by Chairwoman Haines as an opportunity for public testimony on the issue. The meeting had to be moved from the regular committee room in the House Office Building to the ornate House Appropriations Committee

Room on the 3rd floor of the Capitol Building in order to accommodate the crowd. There were no presentations, no questions from committee members, and no scheduled vote. Instead, the committee listened for more than three hours as citizens and groups took turns giving 3-5 minute testimony.

Tea Party activists were aggressive in mobilizing its members to attend (Gavette 2012; Fabiano 2012a). RightMichigan.com said that "a show of force sends the message that we do not want Obama Care (creation of a Health Care Exchange) and your presence also helps to support those in the House who oppose it," (Fabiano 2011b). Members of the Tea Party movement responded. Of the 31 people who testified, 20 were opposed. Of those, 13 either identified themselves as being members of a Tea Party group or have an online presence at a Tea Party web site.[3] Another 21 people emailed the committee clerk their testimony and 44 submitted cards at the meeting but did not testify. Nearly half of the people sending emails sent a message that was exactly the same or a variation of Tea Party form letter saying "Please enter this email into the record. I am against *any* health care exchange in Michigan," (for example, see Iler 2012). A similar proportion of those submitting cards at the meeting identified themselves as being part of the Tea Party. Members of the Lakes Area Tea Party had a table near the room's entrance containing literature against an exchange.

To put these numbers in perspective, a combined total of three people submitted cards during the first four meetings the committee held on an exchange the previous September and October. On October 17th, Fabiano called for the Tea Party movement to engage in "focused activism" directly entirely at stopping SB 693. She wrote that "Attendance at a Committee

[3] To determine this number, I searched on Google the name of each person listed in the committee meeting minutes along with the search terms "Michigan" and "tea party".

Meeting **is more effective than large rallies**. Most groups never achieve a 'tipping point' of attendance to influence Committee voting. Those that do create the buzz that puts the members of the committee, those testifying and the press on notice, that this is no ordinary meeting," (emphasis in the original, Fabiano 2012b). Thirteen people submitted cards opposing 693 at the next meeting, of which 10 have an online presence on Tea Party web sites (MI HHEAL 2011c). Only one person submitted cards at the next three meetings combined. In the first meeting after the Senate passed SB 693 and Tea Party activists issued another call to arms, 13 people submitted cards against an exchange – eight of whom are identified with the Tea Party (MI HHEAL 2011d).

It was not just the number of the Tea Party activists in attendance at the January 19th meeting that was dramatic, but also the content and tone of their arguments. Nearly one-third of the people who testified quoted articles produced by the Mackinac Center, either in part or in their entirety. They testified that creating an exchange was the same as implementing Obamacare. They argued that anyone who said Michigan did not have a choice or than exchange would be happening anyway was either lying or uninformed. Multiple people compared the ACA to socialism. At least three people referenced Adolf Hitler and Nazi death camps in saying that creating an exchange puts us on a dangerous path. One person referred at length to the Alfred Hitchcock movie Psycho. Testimony by Tea Party activists was greeted with loud applause, whereas testimony in support of an exchange was almost always followed by silence (Personal observation).

It is hard to say what impact the Tea Party presence at this meeting had on SB 693's prospects in the House. Republican reactions were mixed, with Tea Party allies feeling emboldened and those outside the movement feeling frustrated. One Republican House staff

member called the Tea Party activists attending this meeting "a fanatic sub-group of a party that has hijacked thinking," (Interview February 2012). The decision to delay a vote until after the Supreme Court's ruling had already been made before the January 19th meeting (Interviews 2012-2013) and House Republicans had already blocked the $9.8 million level 1 establishment grant. Now that the lines were clearly drawn in the sand, it would be very difficult for House Republicans to support an exchange should it come up for a vote.

The House Health Policy Committee continued to hold hearings throughout 2012, though nobody brought up the issue of a health insurance exchange before June 28th when the Supreme Court ruling was announced. With support by Governor Snyder and passage in the Senate, supporters of an exchange now had the 20 and the 1. They would have to wait until the end of November before finding out whether they could also secure 56 votes in the House.

4) July 2012 – March 2013

The debate over a health insurance exchange during the fourth post-enactment period progressed through three stages. First, state policymakers reacted to the Supreme Court's ruling, ultimately deciding to delay making a decision until after the elections on November 6th. Second, when Barack Obama was re-elected and it became clear that his administration would follow through with the law's implementation, Michigan was among the states that scrambled to decide whether to move forward. Within a month of the election, the House Health Policy Committee finally held a vote on the issue, deciding 5-9 not to reject a state-run exchange. Third, as the prospects of a state-run exchange faded, Governor Snyder shifted focus to creating a partnership exchange. In March the legislature blocked the appropriation of another federal

grant, effectively blocking the creation of a partnership. Ironically, this time it was the House that approved and the Senate that blocked the funding. This section focuses on each of these stages.

Reaction to the Supreme Court

For nearly a year, opponents of creating a health insurance exchange in Michigan argued that it would not be prudent to act before the Supreme Court ruled on the constitutionality of the law. If the ACA was upheld, they said there would be plenty of time to move forward with plans to create an exchange. As the ruling grew near, an increasing number of opponents argued that if the law was upheld the state should actually wait until after the November election to decide. If it was not upheld, then the state could move on and would be spared the work of creating an exchange. Supporters warned that the federal deadline by which states would have to declare their intention was November 16th. This would give Michigan just 10 days to pass authorizing legislation and prepare its application.

Reaction in Michigan to the Court's ruling was decidedly mixed, particularly with respect to what it would mean for the debate of an insurance exchange. Governor Snyder released a statement later that day expressing his dislike of the ACA as a law but argued it was time to pass legislation creating the MI Health Marketplace and to unfreeze the federal dollars from the $9.8 million level 1 grant (Snyder 2012a). Speaker Bolger wrote that he "could not be more upset" by the ruling, but that he would "work with Governor Snyder and the state Senate to see that Michiganders have access to health care that is marketplace-driven and provides competition, transparency, and common sense options…A health care exchange is not something we wish to

do, but we cannot stand idly by and hand over citizens' health care to an overreaching federal bureaucracy," (Thoms 2012). At least one Republican member of the House Health Policy Committee became convinced it was now time to act on SB 693. Rep. Mike Callton of Nashville said that although he had favored waiting, he now fears the Republican party is in danger of "focusing too much on ideology," and that he would support an exchange (Skubick 2012a).

Attorney General Bill Schuette emerged as the most prominent Republican calling for the House to wait until after the election before making a decision (White *et al.* 2012). Schuette's position as the state chairman for Republican presidential nominee Mitt Romney put Republicans who wanted to push for an exchange in a difficult position. Romney had a history of creating an exchange as governor of Massachusetts but opposing the creation of such exchanges under the ACA. Republican leaders worried that it would confuse the party's national narrative if a swing-state led by Republicans implemented a key component of Obamacare.

Shortly after Schuette's statement on waiting until the election, Speaker Bolger moderated his initial statement about an exchange, saying that "Having the state establish a healthcare exchange is not something we want to do," (Skubick 2012b). Gail Haines, Chair of the House Health Policy Committee, responded in kind, saying "We have taken a very prudent course up to this point and I see us taking the same course now," (Thoms 2012). Her committee did discuss the issue over the summer, though no vote was taken and no action was recommended (HHEAL 2012a). Tea Party leader Joan Fabiano wrote that she had spoken with Haines who promised to continue "holding the fort" and not allow the appropriation of the $9.8 million federal grant (Fabiano 2012c).

Fabiano also warned that Governor Snyder might "try to be sneaky" and create an exchange by executive order (Fabiano 2012c). Those close to the governor and legislative leadership say that this was never seriously considered since he would need legislation in order to create an exchange as a non-profit entity and that he was not interested in other governance structures (Interviews 2013). In any case, the legislature had demonstrated that it would not appropriate the money to fund an exchange, so creating an exchange by executive order would be futile. Given this set of circumstances, Snyder and other supporters had no choice but to wait until after the election before trying again.

SB 693 Fails in Lame Duck Session

Shortly after President Obama won re-election and it became apparent the ACA would be implemented, Governor Snyder gave a speech to the House Republican Caucus behind closed doors. According to someone in the room, he compared the ACA to a "speeding train coming at you. You can You can either jump off the tracks and just let it go past you and hope it won't destroy everything you built behind you, or you can jump on the train and do your best to have some controls to transform it as best as possible." Not everyone agreed. Some responded that it was not their train and they did not set it in motion. If it crashes, let the federal government be blamed for it, not the states (Interview May 2013). Yet by this point, Speaker Bolger and Chairwoman Haines had evolved and were among those pushing for passage of SB 693.

With the November 16th deadline around the corner, it seemed that there was not enough time to act. When the Obama administration announced that the deadline had been pushed back

and that states would now have until December 14th to declare their intention, Speaker Bolger wrote a letter forcefully calling for a state-based exchange. He wrote:

> The question as to whether there will be an exchange in Michigan is now answered by the courts and the voters: there will be an exchange. The question we need to answer is whether the state will have a seat at that table, or if we will cede state control to the federal government and allow them to establish the exchange with federal priorities rather than Michigan priorities. Michigan can assert its sovereign rights and responsibilities to protect its citizens to minimize federal overreach.

Bolger further argued that an exchange run by Michigan would be open whereas a federal exchange would have limited choice, religious liberties would be protected, and the state could ensure that agents and brokers play a role as navigators. Finally, he also warned that a federally run exchange would be a slippery slope towards a single-payer system (Bolger 2012b).

Within a week of Speaker Bolger's letter, Chairwoman Haines announced that her committee would hold a vote on SB 693 during its meeting on November 29th. Republican staff members give conflicting reports about whether leadership was convinced it had enough votes on the get bill through committee. Some say they had verbal commitments from enough people. Others say that people had been entrenched for so long "that there was no wiggle room," (Interviews 2012-2013). Even if the votes were not secured ahead of the meeting, Snyder and other leaders felt it was time for closure. Agency bureaucrats at the state and federal levels needed to know what the plan would be for preparing for open enrollment beginning on October 1st. As one Republican House staff member put it, "Our thought was to put it up, see what happens. If it passes, then we'll work like the dickens to get the vote on the floor. If not, then we move to plan B," (Interview May 2013).

The tension of the January 29th meeting was still in people's minds as they heard presentations from agency officials, as well as testimony from 10 people from the audience and received cards from 26 people. The public attending the hearing was evenly split, with half of the people voicing an opinion in support SB 693 and half opposing. Most of these people had already expressed their positions at previous meetings. According to a comment made on RightMichigan.com, more than 700 emails opposing SB 693 were sent to legislators leading up to the meeting (Heine 2012).

The bill's defeat on November 29th was described by some participants as a perfect storm of multiple factors (Interviews 2012-2013). Particularly difficult was the extent to which exchange politics became entangled with political battles over other contentious issues. Proposals to enact "Right to Work" legislation in the lame duck session were gaining momentum, with some Republicans nervously remembering the outcry over this issue the year before in Wisconsin. Democrats were threatening to vote against all Republican bills as a way to gain leverage in the Right to Work debate, meaning Democrats might vote against SB 693 after calling for its passage for a year.

According to one staff member, Chairwoman Haines had made a deal with Republican members of the committee that she would tie-bar the exchange to two other bills (HB 4143 and HB 4147) which would prohibit qualified health plans from performing elective abortions. This means that even if the House approved SB 693 and it was signed by the governor, an exchange would not be authorized until these two abortion-related bills were also passed. Apparently not everyone was aware of this deal and the meeting had to be recessed twice as both sides deliberated how to handle these issues. One business leader described this as a "really strange time" in which "things got weird," (Interview May 2013). Democrats had been freed by

leadership to vote for this bill, though some were not sure they still wanted to. Rep. Marcia Hovey-Wright (D), who was the National Organization of Women's Michigan Chapter Legislator of the Year, proposed eliminating the tie-bar. Her motion failed 12 to 4, with Rep. George Darany (D) abstaining (Gautz 2012). The exchange bill the committee had been considering for more than a year was now also a bill about access to abortion, complicating the calculus for Democratic members of the committee.

The final vote was nine opposed and five in favor, with two abstaining, one not registering a vote, and two being absent [see Table 7]. This vote effectively killed SB 693 and Michigan's prospect of running its own exchange. It is quite possible the bill could have passed had it not been connected to abortion. Rep. Mike Callton was the only Republican other than Chairwoman Haines to vote in favor of an exchange. The abortion connection may have made it easier for him to cast this vote, but interest group leaders say he had already expressed support for an exchange and may well have voted for SB 693 in any case (Interviews 2013). Rep. Hovey-Wright and Rep. Segal both had supported an exchange and likely would have voted in favor of SB 693 had it not been tie-barred to abortion.

Table 7 - House Health Policy Committee Roll Call on SB 693, November 29, 2012

Voting Yes (5)
Gail Haines, R - Committee Chair
Mike Callton, R - Majority Vice-Chair
George Darany, D
Tim Greimel, D
Thomas Stallworth, D
Voting No (9)
Joseph Graves, R
Tom Hooker, R
Holly Hughes, R
Matt Huuki, R

Ken Kurtz, R
Paul Muxlow, R
Paul Opsommer, R
Mike Shirkey, R
Ken Yonker, R

Voting "Pass" (3)

Wayne Schmidt, 3
Marcia Hovey-Wright, D
Kate Segal, D

Absent (2)

Lesia Liss, D - Minority Vice-Chair
Jimmy Womack, D

Source: Meeting minutes http://house.michigan.gov/SessionDocs/2011-2012/Minutes/MILI112712.pdf

If these two Democrats had voted in favor, and if the two absent Democrats had shown up for the meeting and voted with the rest of their party, this would have brought the vote to a 9-9 tie. It is not clear why these members were absent – they did not respond to inquiries for a comment. Rep. Jimmy Womack (D) had been robbed at gunpoint near his home in Detroit a few months earlier, but was unharmed in the incident. Instead, Rep. Womack seems to have checked out after losing his primary race in August. Rep. Womack was not a regular attendee of his committee meetings anyway, missing 75% of the hearings on a health insurance exchange.[4] After the electoral loss, he stopped attending hearings altogether, missing every meeting of his three committee assignments between August and December 2012.[5]

[4] Calculated using the minutes of the following meetings of the House Health Policy Committee: 9/8/2011, 9/15/2011, 10/6/2011, 10/13/2011, 10/20/2011, 10/27/2011, 11/3/2011, 11/10/2011, 12/1/2011, 1/19/2011, 7/25/2012, and 11/29/2012, all available at House.Michigan.gov. Rep. Womack missed nine of these twelve meetings.

[5] Determined using the minutes for each of the meetings for his three committees during this period.

Rep. Lesia Liss (D) was the other Democrat not to show, though this was her first time not attending a hearing on the exchange. Republican staff members speculate that she did not want to join Democrats in the blockade they were considering of all Republican bills and expected that SB 693 would be defeated anyway (Interviews 2012-2013). Rep. Liss had a troubled relationship with her caucus, particularly on abortion issues (Baerren 2012), and had just been defeated in the August primaries. But unlike Rep. Womack, she continued to come to Lansing - two days earlier she attended a meeting of the Military and Veterans Affairs and Homeland Security Committee (HMILI 2012). It is interesting to note that the November 29th Health Policy meeting was the first time someone on the committee did not make a motion to excuse the members who were absent. Ironically, almost half the time it had been Rep. Liss who made that motion.

Assuming Rep. Callton would have maintained his support for SB 693, and Reps. Segal and Hovey-Wright would have voting in favor without the tie-bar, and assuming the two absent Democrats showed up and voted with their caucus, Rep. Wayne Schmidt would be the deciding vote. The exchange was not an easy issue for him. During the Republican primary a few months earlier, Americans for Prosperity sent out a flyer with Schmidt's face alongside pictures of Democratic leaders Nancy Pelosi, Barack Obama, and Harry Reid. Surrounding these pictures were the words "Will your representative Wayne Schmidt be an Obamacare collaborator…or will he oppose building its infrastructure in Michigan?" (Gillman 2012) At a primary debate in Traverse City, he refused to sign a pledge against creating an exchange, saying "I've opposed instituting Obamacare, and I'm still not in favor of it…but the Supreme Court has ruled. It's my job and my fellow legislators' job to do what is best for the people of the state of Michigan,"

(McGillivary 2012). If he would have followed through with this tepid support of an exchange, than the committee would actually have approved the bill 10-9.

Had SB 693 reached the floor, House leadership was confident it would pass. As one senior staff member described, "Normally we don't try to ignore the Republican majority and try to pass things with the Democrats, but on an issue like this we would have. We would have lost some Republicans, but kept enough to add to the Democrats," (Interview May 2013). This person expected that such a roll call would have been very similar to votes eventually taken in the House to approve the $31 million level 1 grant and to expand the state's Medicaid program. In both cases, enough Republicans voted with the Democrats to narrowly pass.

Opponents of an exchange reacted with excitement to SB 693's defeat in committee. Jason Gillman wrote on RightMichigan.com "Thanks, again conservative warriors. You are the modern day Minutemen!" (Gillman 2012) Tea Party activist Joan Fabiano wrote that "The Michigan Health Care Exchange bill was defeated in Committee! This is a victory for the grassroots, it's your victory," (Fabiano 2012d).

Technically, the bill was not actually dead. After the 5-9 vote, Rep. Callton moved to reconsider the vote at a later date. The motion passed without objection. This gave the committee the option of revisiting the bill before the end of the year and taking another vote. This motion gave supporters of an exchange a sliver of hope, though Speaker Bolger quickly announced that although he would have preferred a state-based exchange, the issue would not be brought up again during this session (Gautz 2012). With that statement from the Speaker, it was official that after more than two years of debate, Michigan would not be creating its own exchange. The Snyder administration said they would work to take over control of the state's

exchange in its second or third year. In the meantime, their focus shifted to establishing a partnership exchange (Snyder 2012b).

Partnership funds approved by House, blocked by Senate

The Department of Licensing and Regulatory Affairs (LARA) submitted its second level 1 establishment grant application by November 15th, two weeks before the House Health Policy Committee voted to block a state-run exchange. At least one staff member felt it sent a mixed message to House Republicans that the governor was working so hard on plans for a partnership at the same that he was asking them to vote on a state-based exchange (Interview December 2012). An adviser to Governor Snyder responded that it was their responsibility to do everything possible to be prepared in either case (Interview May 2013). The new grant was broad so that it could be used if the state moved forward with its own exchange, but also specifically addressed the planning activities of greatest importance to the Snyder administration such as plan management and consumer assistance (CMS 2013). When SB 693 died in committee, this grant became the basis for the state's application to run a partnership exchange with CMS.

The federal government awarded Michigan it's $30.7 million level 1 grant on January 17, 2013 (CMS 2013), giving the state a month before the new February 15th deadline to submit a letter of intent and partnership blueprint. Within a week, Governor Snyder sent a letter to Secretary Sebelius declaring his intent to create a partnership exchange (Snyder 2013). A blueprint was submitted shortly after that, with conditional approval given by HHS on March 5th. To receive full approval, Michigan would have to: 1) demonstrate the ability to perform the exchange functions, 2) comply with regulations and expected progress milestones, 3) sign a

memorandum of understanding between LARA and the Medicaid agency defining the roles, responsibilities, and coordinated work by each agency, and 4) demonstrate legal and spending authority for exchange activities (Sebelius 2013). The first three points were within reach, though this fourth point proved to be the undoing of the partnership.

The legislature did not need to approve the governor's plan for a partnership exchange, but it did need to authorize any money that would be spent to create and execute such an exchange. The interest groups supporting an exchange were optimistic the legislature might approve the funds for four reasons. First, they noted that the House was more moderate in 2013 than in the previous two years, with the Republican majority having been reduced in half (Interviews 2013). As a result, interest groups felt Republican lawmakers responded to lobbying with a greater comfort level to the idea of an exchange, perhaps even supporting a transition to state control in future years. As one person put it, "part of this came from a feeling that the deadlines were real this time and that the federal government was not going to blink anymore," (Interview May 2013). Second, this time Speaker Bolger was pushing for passage with rank and file members saying things like "I don't support Obamacare, but I don't have Obamacare phobia – whereby I think that it's just going to go away if we do nothing," (Eggert 2013). Third, some of the opposition to an exchange was softening. On November 27th, the NFIB released the results of a poll which found that although only 46% of its members supported creating a state-based exchange prior to the November election, it was now preferred by 73% (NFIB 2012).

The House Appropriations Committee approved the supplemental funding bill (MI HB 4111, 2013) on February 27th by a vote of 24-3. The next day, nearly half (29/59) of the Republican House caucus voted with all but one Demcorat to pass the bill on the floor 78-31.

Over the course of the two and a half year debate, the Senate had already voted to create a state-based exchange and to appropriate the original $9.8 million level 1 grant, leading stakeholders to assume they would do the same with latest grant. As a result, they did not lobby the Senate as aggressively as they otherwise might have (Interviews 2013). On the other hand, Republican staffers describe this period as another awakening for conservative groups, particularly Americans for Prosperity, the Mackinac Center, and the Tea Party. As one House staff member put it, "I never saw the likes of the conservative groups come out until we passed the partnership money. It's like their heads came out of the sand when the issue came to us, but it was an all-out war in the Senate once we passed it." Enough Senators were sympathetic to their arguments and were responsive when these groups pointed out that each Senator would be up for re-election for the first time since 2010 and that their support was not guaranteed.

In some ways opposing the partnership money was not a tough sell. Senators felt burned by the House from the previous session's debate over SB 693 when they had stuck their neck on a controversial vote only to have it ignored by the other chamber. They described their initial votes as being for state control, not to work side by side with President Obama as his partner. Not only did they find this nuance difficult to explain to their constituents, they did not believe it would be a true partnership since the federal government would dictate the terms. They feared this would make Michigan the complaint office for a federally run exchange (Interviews 2013).

The Senate never took a vote on HB 4111 to appropriate this $31 million level 1 grant. By letting federal deadlines pass without authorizing the state to spend this money on planning activities, the Senate effectively killed the possibility of a partnership exchange. House leaders expected Governor Snyder might push for approval of this funding during the annual budget

negotiations, later that spring, but he did not (Interview May 2013). When the Michigan exchange begins operating on January 1, 2014, it will be run by the federal government.

Conclusion

Michigan very nearly became the first state led entirely by Republicans to create a state-based exchange under the ACA. Had SB 693 not been tie-barred to the abortion bills, and had every Democrat shown up for the November 29, 2012 committee hearing, the committee may well have passed the bill. From there, it may well have passed on the floor of the House for Governor Snyder to sign, meaning Michigan would be creating its own exchange. Similarly, both the Senate and the House approved federal funding for exchange planning, though not during the same legislative session. When the Senate approved the first level 1 grant, the House was committed to supporting national efforts to repeal the entire ACA. By the time the House approved the second level 1 grant, the Senate was in an election cycle and unwilling to vote to partner with the Obama administration. If the chambers had been able to agree at the same time, Michigan would be creating a partnership exchange. Instead, it is one of the 34 states ceding full control to the federal government. The above analysis makes it clear that there is not one single explanation for this decision. To understand this process, it is helpful to focus on the partisan and electoral dynamics, the role of interest groups, the institutional context in Michigan, and the inter-governmental dynamic.

Partisan and Electoral Dynamics

The first factor was the dramatic swing to the right in the 2010 elections and the resulting partisan dynamic in the legislature. Republicans held their greatest majorities in 60 years, largely won by campaigning against President Obama and Obamacare. Rick Snyder was able to win the governorship because of his status as an outsider, though this initially put him in a precarious position with a confident legislature. By the time he came out in support of a state-based exchange he had already expended political capital on other issues such as tax reform and education.

In this political environment it was very difficult for supporters of an exchange to convince Republicans that this was a part of Obamacare they would like. Even harder would be to convince them that their constituents would understand the nuance that there is an element of Obamacare worth supporting. The Snyder administration knew they had to reach out to Democrats to get the necessary 56 votes in the House and 20 votes in the Senate, though efforts at bi-partisanship further emboldened skeptical conservatives. Some said that they did not know very much about the issue, but there must be reason to be concerned if Democrats were willing to work with Governor Snyder (Interviews 2011-2013). As one conservative leader put it, "Bi-partisanship is a fallacy. It's impossible when you come from polar opposite philosophies without completely abdicating your positions. It's impossible," (Interview May 2013).

Electoral incentives at least in part explain the evolution among Republicans in each chamber. In November 2011 it would be three full years before a member of the Senate would be up for re-election. As a result, they had more freedom to consider the policy merits of a state-based exchange than did House members whose primary challengers would be filing to run in just a few months, and SB 693 passed the Senate. According to interest group leaders who lobbied on the issue, many Senators were concerned by how their constituents responded to this

vote (Interviews 2012-2013). By March 2013 when the Senate rejected the $31 million establishment grant, these same members were only a year away from the beginning of primary season and were uncomfortable with the idea of taking another vote on Obamacare.

The dynamic was different in the House, which during the 2011-2012 session was even more conservative than the Senate. House leadership pursued all avenues of opposition, including supporting the Attorney General's lawsuit and delaying a vote on SB 693 until after the Supreme Court ruling and then until after President Obama was re-elected. It was only then that they were willing to support an exchange. After two years of opposing all things related to President Obama and Obamacare, the November 2012 election reduced the Republican majority in the House by half. Some Republicans worried that they would lose their majority in the 2014 election, meaning that the 2013 session could be the last best opportunity to advance their agenda. As such, they were more willing to work with Governor Snyder and thus less likely to block the level 1 establishment grant to create a partnership exchange. To be clear, this was not true of every Republican, and maybe not even most Republicans who initially opposed an exchange, but it was true of enough Republicans to change the outcome of the vote for approving the federal grant.

Interest group influence

The second factor affecting the debate over a health insurance exchange in Michigan was the work done by interest groups on both sides to influence the outcome. On one side was what all involved described as an unprecedented coalition of supporters of groups typically aligned with Democrats and groups typically aligned with Republicans. These included many of the

most powerful groups in Lansing, including business groups, insurers, consumers, hospitals, and providers. On the other side of the debate was the Michigan chapter of the National Federation of Independent Businesses, the Tea Party, and conservative groups such as the Mackinac Center and Americans for Prosperity.

Both supporters and opponents worked hard on the question of whether Michigan would create an exchange. There is a risk in concluding that opponents were effective because their preferred outcome was achieved. This outcome may have been reached anyway or for a variety of other reasons. Even still, the ability of these to shape the terms of the debate is remarkable and impressive. The Mackinac Center was a thought leader, including spreading the arguments made by national groups like CATO and ALEC to Tea Party activists. Just the fact that the exchange made it on to the agenda as such a politicized issue should be seen as a success for these groups.

Republican lawmakers were particularly nervous about being on the wrong side of Tea Party anger. The grassroots nature of this movement was unlike anything they had experienced. According to a variety of stakeholders, the Tea Party in Michigan did not necessarily have the largest numbers, but these were people who were at every town hall meeting, every coffee hour, and at legislative committee meetings. They also effectively used the blogs, web sites, and social media to communicate and mobilize. They were the loudest people at these meetings and would not relent. They followed and participated in each step of the legislative process to a far greater extent than most constituents and were not easily convinced by talking points. As one interest group leader described, “They will question everything you give them. The traditional things don’t work. You can’t just put out an argument and have them accept it. They will break it down,” (Interview May 2013).

Tea Party members warned lawmakers that the future of the American republic was at stake over the exchange vote. Given what they perceived as the high stakes, they felt a responsibility to be loud. These activists were by default skeptical and combative to arguments made by politicians. For example, when asked whether the Obama or Snyder administrations could have done anything that would have won their support of health reform, one Tea Party activist responded "No, because it's really the antithesis of our form of government." This person further replied that "These types of things need to be addressed on a state and local level. I concur that there needs to be a reform in insurance, but it should be done at the state level and open to private market solutions," (Interview May 2013). This person refused to consider that this was the goal of the state-based insurance exchange supported by Governor Snyder.

The Tea Party successfully created a climate in which it was uncomfortable for Republican lawmakers to support an exchange. This was particularly true in the House. For example, of the nine Republicans on the House Health Policy Committee who voted against SB 693, all but three had a Tea Party rating greater than 70%. Two members of the committee were in the top 10 in terms of Tea Party rating (Michiganvotes 2012).

Institutional context

Three particular aspects of Michigan's institutional design played an important role in the debate over a health insurance exchange. These elements may not have determined the outcome, but they shaped the process, affecting what decisions needed to be made, when they needed to be made, and by whom. First, everyone interviewed mentioned Michigan's term limits. Even legislators described being surprised by the fact that such important health policy decisions were

being made by people with so little health policy knowledge and experience. Supporters of an exchange, whether from the Snyder administration or from interest groups, faced the difficult challenge of educating members on the details of regulating health insurance. The complexities of this argument created space for opponents to use a less nuanced argument of the exchange needed to be stopped at all costs because it is the implementation Obamacare and big government.

Second, the fact that Michigan is in session year-round gave supporters of an exchange another opportunity to push for the passage of SB 693 after the Supreme Court ruled and President Obama was re-elected. Only a handful of other states had that option. On the other hand, being in session year-round meant that opponents always had the option of stalling and had more time to mobilize opposition.

Third, the requirement that a bureaucracy cannot spend money received from a federal grant unless specifically approved by the legislature gave opponents another lever by which to attack the ACA. Otherwise, Governor Snyder could have gone about setting up the state's partnership exchange.

Inter-governmental dynamic

The dilemma faced by the Obama administration was whether to be firm on deadlines and let states deal with the consequences or to relax deadlines and continue to encourage states to take control of their exchange. At each opportunity, HHS was willing to push back deadlines in the hopes getting one or two more states to participate. Ironically, federal flexibility on deadlines emboldened opponents to further resist an exchange. The debate over whether to create MI

Health Marketplace would have been moot had the Obama administration not extended the June 29th deadline for the level 2 establishment grant or the November 16th deadline by which states had to declare whether they were creating an exchange. These extensions gave states like Michigan a second chance to consider their stance. However, it also created policy and political challenges for those advocating for an exchange. State officials did as much as they could, but worried about having to backtrack to accommodate the regulations. Business leaders and consumer advocates say they heard many opponents question why they should believe HHS on anything since they continued to give in. Opponents believed HHS lacked the will and the capacity to create three dozen exchanges simultaneously.

Feeding this skepticism was the fact that HHS delayed issuing the final regulations until after the November 2012 elections. As one Republican staff member put it, "This was not a vote against a state-based exchange or a vote for a federal exchange, but a vote against doing something with too many unanswered questions," (Interview December 2012). An adviser to Governor Snyder feels they could have won approval of SB 693 if they had the answer to all the questions that were asked of them (Interview May 2013). An insurance leader described that, "The more doubt you have, the harder it is. The longer it took to get the regs out, the more it fed people's doubts," (Interview May 2013). Instead, opponents preferred to call what they saw as a bluff and hope the federally facilitated exchange collapses under its own weight.

Michigan could not have considered passing SB 693 in November 2012 without this federal flexibility. But this flexibility ironically gave fuel to the primary arguments being made by opponents.

What next?

It remains to be seen what the implications of the decision to default to a federal exchange will be for Michigan consumers. Stakeholders on both sides of the debate were quick to point out that this is about much more than creating a web site. Officials in the Snyder administration suggest that an example of the difference between a state and federal exchange is that the federal exchange will have a user fee of 3.5% compared to the fee in Colorado of 1.5% (Interview May 2013). Rather than determine the governance and structure of its exchange, Michigan's involvement may be limited to including its flag on the exchange web site.

Another important issue is uncertainty over who can be a navigator and what they will do. Agents and brokers are nervous of being squeezed out of a role and lobbied aggressively for a state-based exchange. Consumer groups are similarly worried that the federal government will not be able to devote enough resources to enrollment and consumer assistance. Don Hazaert, Director of Michigan Consumers for Healthcare, worried that the federal government would only have $2 million to spend on enrollment, compared to the tens of millions being spent by states running their own exchange. As a result, there would probably only be one or two navigator organizations in the state and they would have to prioritize their focus on the 6-9 counties with the greatest need (Hazaert 2013).

Given each of these issues, the Snyder administration is working to convince lawmakers to take over the state's exchange in its second year. They describe more and more Republicans being willing to support state control. At the same time, even interest groups that have supported a state-based exchange say that they value stability and certainty more than state control of the

exchange. Once they go down the path of working with a federally run exchange, they may not want to change directions.

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