

Implementing Obamacare:
Intergovernmental Battles over the
Creation of Health Insurance Exchanges

by

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Dedication

For Sarah, Olivia, Anne, and Thomas

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Abstract

The Affordable Care Act's (ACA) implementation has been marked by deep political division. Health insurance exchanges were a provision expected to elude controversy given their history of Republican support and since states choosing not to create an exchange would cede control to the federal government. Yet, only 17 states chose to create their own exchange, including only one led entirely by Republicans. Why did so few states opt for maintaining control?

Partisanship, the notion that Republicans refused to support an idea endorsed by President Obama and other Democrats, is one of the most common explanations given for opposition. However, I argue that focusing on partisanship obscures important aspects of the policymaking process. No one variable explains each state's decision. Instead, I develop a framework to integrate lessons from multiple theoretical perspectives. The framework includes a focus on the strategic actors attempting to influence policy. It also acknowledges that these strategic interactions take place within a specific state context that is shaped by institutional design, prior policy decisions, and partisanship. Each state's context is also nested within the broader national context.

I use a grounded theory approach to conduct comparative case studies. I focus on the two states that came the closest to setting up an exchange (Michigan and Mississippi) and two of the last states to opt for state control (Idaho and New Mexico). I conducted 154 interviews with policymakers in 24 states and at the federal level between June 2011 and March 2014, including approximately 18 interviews per case study state.

I find that gubernatorial support was a necessary, but not sufficient condition for a state to decide to create an exchange. In many states the key division was not between Democrats and Republicans, but was within the Republican Party. Tea Party opposition could be overcome if the legislature contained "pockets of expertise," particularly influential legislators with deep policy and institutional knowledge. Term limits and the timing of the legislative calendar affected who was empowered to make decisions, as did state-specific path dependent forces. Flexibility by the Obama administration helped some states but ironically emboldened opponents in others.

Chapter 1 - Introduction

The Patient Protection and Affordable Care Act of 2010 (PPACA or ACA) is arguably the most significant health reform law enacted in generations. Its passage was a major policy and political achievement for President Barack Obama and his congressional allies. Nearly a century's worth of leaders had tried and failed to pass health reform (Starr 2011). It is widely seen as one of the cornerstones of President Obama's legacy (Shear 2013).

The ACA is ambitious legislation. The act consists of 10 titles, with 487 separate subsections, with a major focus on expanding insurance coverage (McDonough 2011). The Congressional Budget Office (CBO) estimated that by 2019, the ACA would reduce the number of nonelderly people who are uninsured by 32 million, increasing the proportion of legal residents under age 65 with insurance from 83% to 94% (CBO 2010). Coverage is expanded through a combination of mandates, incentives, and program expansions. The law requires everyone to obtain coverage, as well as companies with over 50 full-time employees to provide insurance. Insurance companies are prevented from denying coverage based on pre-existing conditions. Children are allowed to stay on their parents' plan until age 26. Medicaid is expanded to include everyone below 138% of the federal poverty level,¹ eliminating the previous categories of eligibility. Small businesses and individuals with incomes between 100% and

¹ The statutory threshold is 133% FPL, but 5% of an individual's income is disregarded, making 138% the practical threshold (KFF 2012a).

400% of the federal poverty level can receive subsidies to purchase private insurance in an online marketplace called an exchange.

President Obama celebrated the ACA's passage on March 23, 2010 with two signing ceremonies. In the East Room of the White House he declared that "Today, after almost a century of trying; today, after over a year of debate; today, after all the votes have been tallied – health insurance reform becomes the law of the land in the United States of America." He later told a group at the Department of Interior that "health care reform is no longer an unmet promise. It is the law of the land. It is the law of the land," (White House 2010).

As supporters of the ACA would subsequently learn, what a law actually accomplishes is determined as much by how it is implemented as by what is included in the statute (Pressman and Wildavsky 1979, Bardach 1977, Thompson 1981, Jacobson and Wasserman 1999, Patashnik 2008). Opponents such as Speaker of the U.S. House of Representatives John Boehner (R-OH) eventually conceded that the ACA is indeed "the law of the land," (Nather 2012), but only after more than 30 congressional attempts at repeal, a 5-4 decision by the U.S. Supreme Court on a lawsuit signed by 26 states, and President Obama's re-election in 2012.

Even then, opponents continued to work to undermine the law's existence and reach. Disagreement over whether to fund major elements of the law played a major role in the federal government shutdown in October 2013. As most elements of the law went into effect in January 2014, key elements of the law were still being adjudicated in the courts, approximately half the states were not participating in the Medicaid expansion, and the daily negative coverage of the reform's implementation was undermining President Obama's second term agenda and Democrats' chances in the 2014 and 2016 elections.

The law's implementation would have been an enormous challenge under ideal political conditions. Countless decisions needed to be made and billions of dollars spent before major elements of the law would fully go into effect. An implementation period spanning three election cycles left the reform vulnerable to political opposition and shifts in partisan control over key institutions.

Further complicating the law's implementation is the high level of involvement given to states (Skocpol and Jacobs 2010, Greer 2011, McDonough 2011, Sparer 2011, Jones 2012, Weissert and Weissert 2012, Doonan 2013, Weil 2013). States an important in role in expanding Medicaid, developing health insurance exchanges, reviewing health insurance premium increases, and enforcing new market regulations. Jacobs and Skocpol presciently argued 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). Before federal and state agencies could do the technocratic work of developing programs and writing regulations to implement major elements of the law, another round of legislative battles was needed as states decided whether and how they would participate. The most comprehensive federal health reform enacted in generations was therefore to a large extent placed in the hands of state-level leaders who fervently opposed the law's very existence (Starr 2011).

The division of responsibility between levels of government has been contentious, with states resisting flexibility in some cases and resenting perceived federal overreach in others. State-driven opposition nearly led to the unraveling of the entire law, as more than half the states joined a lawsuit challenging the constitutionality of the Medicaid expansion and the individual mandate. The U.S. Supreme Court ruled 7-2 in June 2012 that the ACA's Medicaid expansion is unconstitutionally coercive and 5-4 to give states the option of implementing this key element of

the law. The Court also ruled 5-4 to keep the mandate, but through Congress' power to tax rather than as an issue affecting inter-state commerce (*NFIB et al. v. Sebelius* 2012). This was a mixed result for the plaintiff states in that the commerce clause ruling gave "conservatives new doctrine to limit congressional power, which they have been seeking since the New Deal," (Von Drehle 2012). Even still, the ACA was left mostly intact, including the option that states create their own health insurance exchange or face federal preemption.

Health Insurance Exchanges

Health insurance exchanges were one part of the ACA that was expected to elude controversy and attract bipartisan support. As I describe in chapter three, purchasing pools of this sort had been proposed for decades and supported by conservative groups such as the Heritage Foundation. Exchanges were expected to draw political strength from a flexible identity as a "conservative means to a liberal end," (Jones, Bradley, and Oberlander 2014). Progressives would like the expansion of coverage and conservatives would like that the expansion comes through a state-based marketplace mechanism in which private insurers compete. Although the final version of the ACA passed Congress without a single Republican vote, the idea of state-level exchanges was not a particularly controversial part of the debate (Rigby *et al.* 2014). In fact, the only two exchanges in operation when the ACA was passed were created by Republican governors. A major Republican alternative to the ACA sponsored by Senator Tom Coburn (R-OK) and Congressman Paul Ryan (R-WI) called for creating state-based exchanges (Ryan 2009, Coburn 2011).

The law required that an exchange be ready for open enrollment in every state by October 2013, but states first needed to decide whether to create the exchange themselves or default to a

federally facilitated exchange. Carrots and sticks were included to encourage states to take control of creating an exchange. States choosing to do so received multi-million dollar planning grants and flexibility over major design issues, whereas states choosing not to create their own exchange were threatened with loss of control to the federal government (see chapter three for more details). An alternative model was developed in which states could partner with the federal government, retaining responsibility over plan management and consumer assistance, while allowing the federal government to develop the IT infrastructure and run other aspects of the exchange.

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-based 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 over a policy they support in principle. Complying with the Obama administration would also potentially undermine their judicial and legislative challenges (Jones, Bradley, and Oberlander 2014). 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.

The Obama administration expected most states to opt for maintaining control of their exchange (Interviews 2011-2013). Virtually every state took initial steps in 2010 towards creating an exchange by applying for a federal planning grant to begin the exploration process, even as many were in the midst of lawsuits challenging the constitutionality of the law. Republican leaders described opposing the ACA in general, but supporting the creation of an exchange for one of two reasons: 1) they wanted to maintain state control, and 2) insurance exchanges were originally a conservative idea they wanted to do anyway (Interviews 2011-2013). However, state opposition to the exchanges increased in early 2011 as a result of the 2010 elections, with Governors Rick Scott (R) of Florida and Bobby Jindal (R) of Louisiana refused the \$1 million planning grants their predecessors had been awarded. Opposition gained further momentum when Governors Mary Fallin (R) of Oklahoma and Sam Brownback (R) of Kansas returned exchange innovator grants of \$54.6 and \$31.5 million dollars, despite having recently advocated for creating an exchange.

By the time the Supreme Court announced in November 2011 that it would hear the ACA cases, only 12 state legislatures had passed a bill creating an exchange and one governor had done so by executive order. More than half of these early adopters were led entirely by Democrats, with Arnold Schwarzenegger (CA) and Brian Sandoval (NV) being the only Republican governors to have signed legislation creating an exchange since the ACA's enactment. At the same time, 14 states had already committed to not create an exchange. Republicans controlled 25 of these 28 legislative chambers and all but three of these states were led by Republican governors.

This left 23 states as still undecided about whether to create an exchange. The majority were led by Republicans, including 16 with Republican governors, and 19 with Republican

control of at least one chamber of the legislature (Table 1). Nine were led entirely by Republicans. Only two of these states were led entirely by Democrats. The states were split in how they would vote in the 2012 election, with nine voting for Barack Obama and 14 for Mitt Romney.

These 23 states originally had until November 16, 2012 to decide whether to create an exchange. However, after President Obama won re-election and Democrats retained control of the Senate on November 6th, it became clear that the ACA would not be repealed. Given this political reality, state leaders asked for more time to decide. Hoping more states would opt to retain control of their exchange, HHS pushed back the deadline by which states would have to declare their intentions from November 16 to December 14, 2012 (Sebelius 2012a), as well as moved the deadline by which states would need to submit plans to create a partnership exchange to February 15, 2013 (Sebelius 2012b).

Each of these 23 states had already taken important steps towards creating an exchange. By January 2012, HHS gave an average of \$24.1 million in planning, early innovator, and level 1 establishment grants to all but one of these states (Table 2). The other state, Virginia, had passed a bill declaring its intention to create a state-based exchange. Three of these states had legislation or executive orders authorizing state officials to study creating for an exchange. However, by the December 2012 deadline, only six of these 23 states declared their intention to create an exchange. Of these, Mississippi's application was denied after the Governor made it clear that he would actively block the insurance commissioner in this process. Similarly, by the February 2013 deadline, only six of these states had submitted plans to create a partnership exchange.

Table 1- State Decision-Making and Partisan Control, as of November 2011

	Unified R Control	Mixed Control, R Governor	Unified D Control	Mixed Control, D Governor
Exchange	UT	NV	CA ^a , CA, HI, MA, MD, RI ^b , VT, WA, WV	CO, OR
Undecided	AL, AZ, ID, IN, NE ^c , PA, SD, TN, WI	IA, ME, MI, MS, NJ, NM, VA	DE, IL	KY, MN, MO, NY, NC
No Exchange	AR, FL, GA, KS, LA, ND, OH, OK, SC, TX, WY	AK		MT, NH

a Legislation creating an exchange was signed into law in 2010 by Republican Arnold Schwarzenegger, though by November 2011 the state was led by Democrat Jerry Brown.

b Governor Lincoln Chaffee had been a Republican while in the U.S. Senate, was independent when elected governor, but subsequently joined the Democratic Party.

c Nebraska's legislature is officially non-partisan

In total, only 17 chose to operate their own exchange by the beginning of open enrollment on October 1, 2013, with 28 states defaulting to a federally run exchange, and six choosing a partnership (see Figure 1). The Obama administration was eager to give states as much control as possible, and so approved a variety of alternative arrangements in states that had rejected full control. As states and the federal government struggled with the complexities of implementation, the lines between these categories became blurred and represented more of a continuum than three distinct models. Two states that decided to create their own exchange ran out of time and so relied on the federal website for the first year (Idaho and New Mexico). Of

these, New Mexico retained control of its small business exchange. Mississippi rejected control of its individual exchange but also opted to run its small business exchange. In addition to the six that chose a formal partnership, seven were allowed to do a *de facto* partnership in which they conducted plan management activities within the context of the federally facilitated exchange.

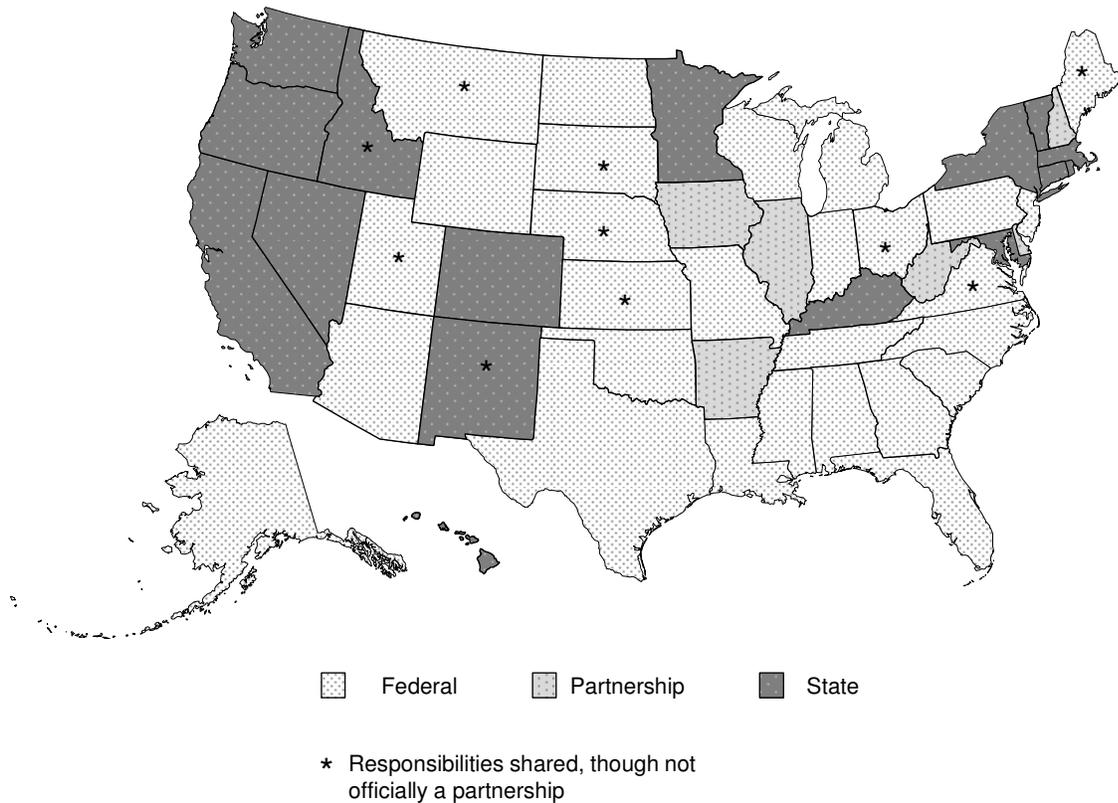
Table 2- State Decision-Making and Exchange Grants Received (in millions) as of November 2011

	Exchange	Undecided	No Exchange
1	CA (\$40)	AL (\$10)	AK (\$0)
2	CO(\$19)	AZ (\$31)	AR (\$9)
3	CT (\$8)	DE (\$4)	FL (\$1) ^a
4	HI (\$15)	ID (\$21)	GA (\$1)
5	MA(\$13)	IL (\$6)	KS (\$33) ^a
6	MD (\$28)	IN (\$8)	LA (\$1) ^a
7	NV (\$20)	IA (\$9)	MT (\$1)
8	OR (\$10)	KY (\$71)	NH (\$1)
9	RI (\$65)	ME (\$7)	ND (\$1)
10	UT (\$1)	MI (\$11)	OH (\$1)
11	VT (\$19)	MN (\$31)	OK (\$56) ^a
12	WA (\$24)	MS (\$21)	SC (\$1)
13	WV (\$11)	MO (\$22)	TX (\$1)
14		NE (\$7)	WY (\$1)
15		NJ (\$9)	
16		NM (\$35)	
17		NY (\$61)	
18		NC (\$13)	
19		PA (\$35)	
20		SD (\$1)	
21		TN (\$5)	
22		VA (\$1)	
23		WI (\$39) ^a	
Total	\$273	\$459	\$108
Average	\$21	\$20	\$8

Source: CMS 2014.

^a State returned all or portions of this grant money

Figure 1 – State Decisions for Creating Health Insurance Exchanges, as of October 1, 2013



Source: Interviews and KFF (2014a)

Research Questions

The Obama administration made a number of strategic choices to convince as many states as possible to create their own exchange, offering money and flexibility. Federal deadlines were pushed back repeatedly in the hopes of enticing more states to take control. Yet only 17 states chose to create their own exchange, including only one led entirely by Republicans. Why did so few states opt for maintaining control? In other words, why would so many states reject control of a policy that previously attracted bi-partisan support and that was specifically designed with state flexibility in mind? What are the implications of these battles for the success of the

exchanges? What more, if anything, could the Obama administration have done to increase the number of these states that created an exchange?

Partisanship, the notion that Republicans refused to support an idea endorsed by President Obama and other Democrats, is one of the most common explanations given for why states chose to oppose or create a state-based exchange (Young 2012, Burke and Kamarck 2013, Purdum 2013, Rigby and Haselwerdt 2013). The final breakdown of state decision-making supports this argument. Of the 30 Republican governors in office when open enrollment began in October 2013, only three (10%) presided over the creation of a state-based exchange, compared to 13 of the 20 Democratic governors (65%). Partisanship is a particularly compelling explanation for decision-making as of November 2011 when the U.S. Supreme Court announced it would hear the ACA case. The 13 states that had already decided to create an exchange were led almost entirely by Democrats, whereas the 14 states that had already decided to reject an exchange were led almost entirely by Republicans.

However, partisanship is an incomplete explanation obscuring important aspects of how states made their decisions, particularly for the 23 states that were undecided as of November 2011. In many cases, the most important division was among Republicans, not between Republicans and Democrats. Republicans in most of these supported exchange planning, partly as a way of hedging their bets so that they would preserve the option of maintaining state control in case the law survived its judicial and electoral challenges. Ultimately, only five of these states decided to create a state-based exchange, with only two of the 16 of these states led by Republican governors opting for state control.

Rather than a satisfying explanation of state decision-making, the partisan breakdown of state choices is itself a puzzle requiring explanation. Why did some Republicans support creating

an exchange while others opposed? Why did some change their stance over time? What changed between the initial months after the ACA was enacted when each received planning grants, November 2011 when each was still undecided but accepting federal exchange grants, and February 2013 when only five of these had conditional approval from HHS to create their own exchange?

Methods

I address these questions in two stages. The first is a 50-state analysis using a wide variety of data to identify patterns of decision-making (chapter three). I describe the history of insurance exchanges and then examine state responses to this portion of the ACA, arguing that state responses evolved across four time periods.

The second is case studies of four states in which I explore these patterns in more depth (chapters 4-7). My approach is rooted in the logic of the comparative method as articulated by Ragin (1987). The goal is to look for “configurations of conditions,” or “the different combinations of conditions associated with specific outcomes.” I organize each case study chapter around the same four time periods as chapter three.

A number of scholars emphasize the benefits of thick description in policy analysis (Brown 2010). For example, Stonecash (1996) argues that the state politics literature needs to move towards a focus on explaining political processes and outcomes, and that the best way to do this is a methodological shift to comparative case study. McGrath (2009) warns that “measuring a process like implementation across states using a static set of criteria is not usually

possible unless those criteria are so general as to be of only limited utility,” and that a better approach is to examine factors affecting implementation within specific states.

The comparative case study method has a number of advantages over multivariate regression models for the questions I ask. First, inherent in this approach is a flexibility to use all pertinent data and to present it in a variety of ways, including qualitatively and quantitatively. Second, statistical power is significantly limited with only 50 cases. Instead, the comparative method accounts for every instance of a particular phenomenon. Some scholars attempt to solve this problem using pooled time series data. This approach increases statistical power but runs the risk of incorrectly treating the observation at time one for a given state as independent from the observations at times two and three. Doing so obscures the nuances across time periods that are the very thing I am trying to explain.

Finally, “the comparative method forces the investigator to become familiar with the cases relevant to the analysis. To make meaningful comparisons of cases as wholes, the investigator must examine each case directly and compare each case with all other relevant cases.” Ragin (1987) describes this as distinct from the statistical method which involves disaggregating cases into variables and then examining relationships among variables; that is, making comparisons not as meaningful wholes.

My approach is also rooted in the tradition of grounded theory in that the theoretical substance emerges directly from the data rather than being imposed *a priori* (Charmaz 2006). This is backwards from the traditional scientific approach in which individual hypotheses are developed and tested. Grounded theory is consistent with Ragin’s comparative method in that all data are seen as important and relevant. Unlike a purely grounded theory study, I use a review of the literature (chapter two) to guide my data collection and analysis. Even so, I follow a “ground

up” process in which the theoretical arguments of each chapter, and of the entire dissertation, are developed from the analysis.

Data

I conducted 154 semi-structured interviews with leaders in 24 states between July 2011 and March 2014, including an average of 18 people in four case study states. These interviews informed the 50-state analysis in chapter three and were the primary source of data for the case study chapters. 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 each of the case study states I attempted to speak with an advisor to the governor, legislative leaders from each chamber, Republican and Democratic legislators on the relevant committees, legislative staff, bureaucrats in the state’s department of insurance and department of health, and leaders of interest groups that lobbied on the exchange, including business groups, insurers, brokers and agents, hospital and provider associations, consumer advocates and the Tea Party. I also spoke with leaders at the national level, including in the White House, the Department of Health and Human Services, and staffers to relevant congressional committees.

In exchange for their candor, I do not include any identity-revealing information without an interviewee’s permission. Approximately 40% 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 such as 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 these meetings as an ethnographer, taking extensive notes on the presentations, comments, and interactions among state and federal leaders.

I attended, watched, or read the minutes of every legislative hearing on an exchange in my four case study states, and took a similar ethnographic approach at these meetings.

I rely on a variety of secondary sources such as detailed analysis of media coverage, as well as statistics and polling information from organizations such as the Commonwealth Fund, the Kaiser Family Foundation (KFF), and the National Conference of State Legislatures (NCSL). I use roll call data for every vote on the floor of a state senate or state house on a bill authorizing the creation of a health insurance exchanges, with information compiled from the official legislative web site of each state. The State Refor(u)m document library developed by NASHP was helpful for obtaining copies of primary documents used by state policymakers and interest groups.² In one case I filed a freedom of information request under the Kansas Open Records Act to obtain a copy of a letter written by Gov. Sam Brownback.

Case Selection

I focus my examination on the process by which four states decided what type of exchange to establish: Idaho, Michigan, Mississippi, and New Mexico. The decision-making process in each state took many twists, including governors vetoing authorizing legislation before eventually supporting an exchange, Republicans disagreeing strongly with each other, and Democrats unsure of how to react. Legislation to create an exchange passed in seven of the eight legislative chambers, yet only Idaho and New Mexico decided to take control. Even then, they decided so late in the process that they had to ultimately rely on the federal website for at least the first year.

² State Refor(u)m is a project funded by the Robert Wood Johnson Foundation and led by the National Academy for State Health Policy (NASHP). The document library can be found at www.statereforum.org

These states were chosen for four reasons. First, each was among the 23 states that were undecided as of November 2011. Idaho and New Mexico were two of the very last states that chose to create an exchange, whereas Michigan and Mississippi were two of the states that came closest but did not. Examining the similarities and differences between these four states can help identify the factors that affected how the other 23 states reacted.

Second, all are led by Republican governors, with the legislature controlled by Republicans in two cases (Idaho and Michigan), Democrats in one case (New Mexico), and switched from mixed control to Republican control during the period of analysis in the other case (Mississippi). The states also varied in terms of presidential vote. Two of the states under examination voted for Barack Obama in 2008 and 2012 (Michigan and New Mexico), whereas two of the states voted for John McCain and Mitt Romney (Idaho and Mississippi). Table 3 shows the relationship between these two sets of variables – legislative control and the presidential vote. At least one state from this analysis is in each cell.

Third, the policy context in these states varies in interesting ways (see Table 4). Holding partisan control constant (i.e. comparing down the left column and within the bottom-left cell in Table 3), I will explore whether there were differences resulting from Idaho's relatively competitive insurance market compared to Michigan and Mississippi in which the largest insurer has greater market share. These differences may affect the position and intensity of lobbying activities by the insurance industry and/or consumer groups, as well as the strength of the arguments for a private insurance marketplace.

Table 3 – 2008/2012 Vote vs. Partisan Control of States Led by a Republican Governor and Undecided as of Nov 2011

		Partisan Control	
		Unified Govt (R Gov/R Leg)	Divided Govt (R Gov/D Leg)
2012 Vote	Obama	ME, MI , PA, WI	NM, NJ, IA
	McCain/Romney	AL, AZ, ID , IN, MS* , NE, SD, TN	MS* , VA

*Mississippi's legislature switched from divided to unified Republican control in the 2011 election

Note: States in bold are included in comparative case studies

Table 4 - Summary of Four Case Study States

	Idaho	Michigan	Mississippi	New Mexico
Governor	R	R	R	R
House	R	R	R	D
Senate	R	R	R	D
2012 Election	Romney	Obama	Romney	Obama
Exchange	State	Federal	Federal	State
Joined lawsuit	Yes	Yes	Yes	No
Bureaucratic capacity	16th	1st	40th	30th
Term limits	No	Yes	No	No
Year-round legislature	No	Yes	No	No
Planning grant	\$1m	\$1m	\$1m	\$1m
Early innovator grant	-	-	-	-
Level 1 est. grant	\$20.4	\$40.6	\$20.1	\$34.3
Elected ins. comm.	No	No	Yes	No
# Insurers >5% market	4	4	4	2
Market share of largest insurer	38%	59%	54%	59%
Uninsured rate	18%	13%	19%	21%

Source: Burke and Wright (2002) and KFF (2014a)

The institutions of these states also differ in interesting ways. First, Mississippi is the only of these four states to have an independently elected insurance commissioner. Whereas the other insurance commissioners worked in concert with their governors, Commissioner Chaney in Mississippi worked against his governor's stated preferences. Second, Idaho, Mississippi, and New Mexico have relatively short legislative sessions, typically lasting 60-125 calendar days, whereas the Michigan legislature meets year-round. Third, Michigan has legislative term limits, whereas, Idaho, Mississippi, and New Mexico do not. Fourth, the states vary in terms of bureaucratic capacity.

Summary of Findings

My central theoretical argument is that no one variable explains each state's decision on an exchange (see Appendix A for a brief summary of findings). Instead, it is important to focus on a combination of variables and apply multiple theoretical perspectives. In chapter two I develop a framework to integrate lessons from these perspectives. The framework includes a focus on the strategic actors attempting to influence policymaking, such as governors, legislators, bureaucrats, and interest groups. The framework also acknowledges that these strategic interactions take place within a state context that is shaped by institutional design, prior policy decisions, and partisanship. Each state's context is also nested within the broader national context.

Applying this framework to the debate over whether a state should create a health insurance exchange, I argue that governors are the most important actor. A governor's support was a necessary condition for creating an exchange. No exchange was created without a governor's endorsement. Mississippi came the closest, with an independently elected insurance

commissioner trying to do so on his own. At the same, a governor's support was not a sufficient condition; it did not ensure an exchange would be created. In many cases, governors engaged in a lengthy and intense negotiation with the legislature. Rick Snyder of Michigan is an example of a governor unable to win enough support from legislators.

Interest groups played an important role in creating a political environment that made it easier or more difficult for policymakers to support state control of an exchange. A fascinating dynamic developed with most state-level groups such as insurers, brokers, hospitals, providers, small businesses, and consumer advocates supporting an exchange, with the Tea Party, conservative think tanks, and a handful of industry groups in opposition. The Tea Party was an amazingly successful counter-weight to traditionally powerful groups, particularly given that it is relatively new and is decentralized without a clear leadership structure. A small number of citizens, many of whom had no prior involvement in politics, were able to influence the outcome in their state through grassroots opposition. Conservative think tanks filled a leadership void by supplying data and reports for activists to use.

It was very hard for Republicans to support an exchange if the Tea Party was strong in their state. Michigan and Mississippi are examples of Tea Party opposition playing a major role in convincing Republicans to block an exchange. A weak Tea Party in New Mexico made it easier for Republican Governor Susana Martinez to support an exchange. The Idaho case shows that it was possible for Tea Party opposition to be overcome if industry groups lobbied aggressively and if the legislature contained "pockets of expertise," (Burns *et al.* 2008). These are influential legislators who have amassed a particularly high level of clout and knowledge of health policy.

Pockets of expertise were ironically more common in the states with short legislative sessions and limited staff support. Legislators in Idaho and New Mexico maintained professions, including people in key positions who were doctors, insurance agents, and former insurance executives. Term limits and long legislative sessions in Michigan meant that legislators had little experience making policy, but were full-time politicians with limited expertise in a particular subject.

Prior policy decisions shaped the terms of each state's debate. Alternative paths to creating an exchange were possible if a state had already established a similar type of exchange, such as the Health Insurance Alliance in New Mexico and the High Risk Pool in Mississippi. The attractiveness and viability of these alternative paths were affected by partisanship and institutional design.

The primary in many states was within the Republican Party, not between Republicans and Democrats. This partisan dynamic increased the importance of Republican pockets of expertise since legislators with the most experience and interest in expanding insurance coverage tend to be Democrats. Idaho is one of the most conservative states in the country but became the only state led entirely by Republicans to create an exchange. Democrats also mostly preferred supporting a state-based exchange, even if it would be run by Republicans and a less regulated model than they would prefer.

The balance of power between actors was also influenced by the national context. Federal implementers were in regular contact with officials in each state's executive branch, but were limited in their ability to negotiate with legislators and interest groups. Deadlines set by the Obama administration conflicted with many states' legislative calendar, making it difficult for states to make decisions according to the federal timeline. Extending deadlines made it possible

for Idaho to choose to create an exchange, but weakened leverage with conservative policymakers and interest groups. Opponents used this flexibility to argue that the Obama administration lacked the will and the capacity to follow through with its threats to take control.

Plan for the Dissertation

The next chapter outlines the theoretical framework that serves as the foundation for this analysis. Chapter three contains a 50-state analysis of events during four time periods between the law's enactment in March 2010 and October 2013 by which point every state had decided which exchange path to pursue. Chapters four and five contain an in-depth analysis of two states that chose not to create an exchange: Michigan and Mississippi. This is followed by case studies of two states that chose to create an exchange: Idaho and New Mexico. Each chapter follows the same outline as the 50-state analysis in chapter three in that it will trace the evolution of decision-making across the same four time periods. Chapters conclude by applying the integrated framework from chapter two to draw out the theoretical insights gleaned from that state. Chapter eight will bring these case studies together, identifying the patterns and explanations across these four states.

Chapter 2 - Integrated Theoretical Framework

Writing about the history of Medicare, Jonathan Oberlander suggests that “Some readers will look to this book for a single, overarching theory of Medicare politics. They will be disappointed – and they should be...Given the size, complexity, and diversity of a program like Medicare, it would be surprising indeed to discover a single theory that explained everything. I have not found such a theory, nor do I believe one exists.” Instead, Oberlander calls for a poly-theoretical approach to understanding the history of Medicare, arguing that “multiple theoretical lenses are necessary if Medicare’s political picture is to be properly developed,” (2003).

The same is true for the creation of health insurance exchanges as part of the Affordable Care Act. As described in chapter one, partisanship is the most common explanation offered by scholars and pundits to explain the ACA’s implementation (Burkey and Kamarck 2013, Rigby and Haselswerdt 2013). Other perspectives are considered, but still with a focus on a single dominant explanation, including ideology (Shor 2013), federalism and institutional design (Béland, Rocco, and Waddan 2014), and pressure from interest groups (Cauthon 2011; Stiles 2013; Gray, Lowery, and Benz 2013). Each of these studies offers important contributions by identifying factors affecting state decision-making. However, limitations of quantitative analysis require holding constant variables that do not remain constant in real life and using variables that are inter-related to a greater degree than can be captured in a regression equation. A case-based approach is particularly well suited for this question, allowing me to explore complex relationships between multiple variables and apply lessons from multiple theoretical

perspectives. As Oberlander writes about Medicare (2003), it is important to present the policy as it really is rather than to artificially fit the policy to a model.

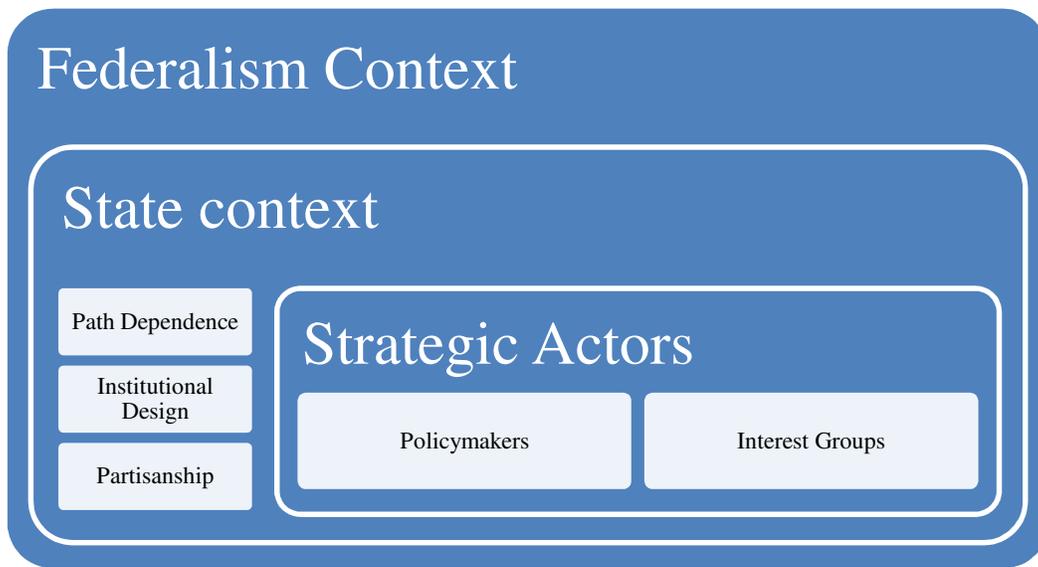
This poly-theoretical approach has a strong foundation in the implementation literature. Writing in 1981, Thompson expressed skepticism that we will ever have a unifying theory of implementation. Similarly, Bardach (1977) writes that “The political and institutional relationships in an implementation process on any but the smallest scale are simply too numerous and diverse to admit of our asserting law-like propositions about them. It is the fragmentary and disjunctive nature of the real world that makes a general theory of the implementation process unattainable, and indeed, unrealistic.” But there is little guidance in the literature on how to do poly-theoretical policy analysis.

I propose an integrated framework to incorporate these theoretical perspectives into a general explanation of state implementation of federal law. This is not the same as trying to develop a unified theory of implementation, but rather a way to structure analysis of the complex interplay between types of variables. This framework draws on the following theoretical perspectives: 1) federalism, 2) path dependence resulting from prior policy decisions, 3) differences in institutional design, 4) partisanship, and 5) interest group influence. I also add a sixth potential explanation, that individuals are important. In other words, it is possible that holding all else constant, people may come to different conclusions and make different decisions (see Appendix B for a summary of the key points from each perspective).

Figure 2 is a schematic representation of this framework, highlighting the overlapping contexts in which strategic actors such as elected officials, bureaucrats, and interest groups attempt to influence the outcome of policy debates. The state context in which actors operate is affects the process by which decisions are made, including which groups are empowered and

which are disadvantaged. Each state operates within a broader context of federalism, with the federal government providing carrots and sticks to incentivize states to make certain choices such as operating an insurance exchange. Each state is at a different starting point in its negotiation with the federal government as a result of prior policy decisions, institutional design, and partisanship.

Figure 2 – Integrated Framework of State Policymaking



It is not necessary to review the entire literature devoted to each theoretical framework. Nor is it my goal to generate a list of testable hypotheses. This would be inconsistent with the grounded theory approach articulated in chapter one. It would result in more than 40 separate hypotheses, making it infeasible to test each one directly. Instead, my goal is to examine the relationships between theoretical perspectives using the rich details of case study analysis.

The dynamics within each state and between levels of government affect the relative power of strategic actors, but also evolve depending on the results of elections and other policy

debates. In other words, these contexts are regularly evolving. Policymakers and interest groups work to influence the context in which they operate, seeking an advantage by altering path dependence, institutional design, and partisanship. This chapter discusses each theoretical perspective in detail, highlighting insights which help explain state decision-making around the creation of an insurance exchange.

Federalism

A central question of the federalism literature is how authority should be distributed between levels of government. In the abstract, higher levels of government are thought to be better situated to handle broader redistributive policies, whereas more local levels of government better address local development and infrastructure (Peterson 1995, Oates 1999). National governments have access to greater resources and can take advantage of economies of scale in developing and carrying out policies (Greer and Jacobson 2010). The case for state-level control over policymaking, more frequently raised by conservatives, is that states are more attentive and responsive to regional differences in political ideology, economics, culture, and health systems than “one-size-fits-all” solutions imposed by Washington (Peterson 1995; Sparer and Brown 1996; Leichter 1996, 1997; Conlan 1998; Grogan 1998; Thompson and Diulio 1998; Jones, Bradley, and Oberlander 2014).

These arguments were frequently invoked in the congressional debate over the ACA. Supporters of the House bill argued that a national exchange would be more effective, having greater bargaining power and lower administrative costs (Jost 2009). Rather than require that 50 states do the work of developing essentially identical IT software and then spend the resources to manage an exchange, they believed it would more efficient to have a single exchange developed

by the national government. Supporters of the Senate bill argued that by running their own exchange, states could determine how it interacts with their state's Medicaid program, define the role of brokers and agents, and tailor outreach efforts to local conditions (Interviews 2011-2013).

As I describe in chapter three, the Senate version was ultimately adopted not because this vision of federalism was more convincing, but because of shifts in the political dynamics resulting from Democrats losing their filibuster-proof majority in the Senate. This is consistent with Morgan and Campbell's observation that "The motivation for delegated governance has rarely been technical feasibility or efficiency, even when those are the publicly stated justifications, but rather political factors," (Morgan and Campbell 2011). Béland *et al.* (2014) add that "the law's intergovernmental structure has amplified political conflict over its implementation by distributing authority to political actors at both levels of the American federal system."

In this section, I draw on four insights from the federalism literature to lay the foundation to examine intergovernmental dynamics in my case studies. First, the balance of power between levels of government is dynamic rather than static. The appropriate analogy is not a layer cake in which all the boundaries are clear, but rather a marble cake in which the roles of each level overlap. Sometimes this overlap is cooperative, though other times it is coercive, contested, and competitive (Volden 2005, Posner 2007, Bulman-Pozen and Gerken 2009, Fox 2010, Rabe 2011). Rather than delineating a clear division of power between levels of government, the ACA is "a virtual tapestry of federalism in federal statutory design," (Gluck 2011), with at least five distinct intergovernmental approaches: 1) some parts are implemented directly by the federal government, 2) others are implemented entirely by the states (within the constraints of federal law and rulemaking), 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, Weil 2013).

Second, the federal government can use a variety of carrots and sticks to define a favorable relationship with states (Stoker 1991). For example, it can threaten do a complete takeover of an issue, bargained preemption, partial preemption, or collaboration (Rabe 2011; Weissert and Weissert 2012). The federal government regularly incentivizes state participation in federal programs by attaching large amounts of money (Nicholson-Crotty 2012). The federal executive branch has increased its use of waivers and rule-making to pursue policies and intergovernmental arrangements through means other than by statute (Bolton 2003; Gais and Fossett 2005; Thompson and Burke 2007; Thompson and Burke 2009; Gluck 2011; Weissert and Weissert 2012). The ACA included a variety of incentives to convince as many states as possible to create their own exchange, including autonomy, flexibility, and the promise of money, as well as threat of deadlines and a federal takeover.

The third insight is that in some cases the federal government may overstep its bounds, infringing on a state's role in policymaking. Bednar (2009) describes four ways states are protected from encroachment by the national government: 1) constitutional division of powers, 2) judicial maintenance of these boundaries, 3) electoral punishment, and 4) party allegiance between officials at each level. Each of these intergovernmental tensions has been on full display during the implementation of the Affordable Care Act. Gluck (2011) calls the ACA "the most recent, high-visibility example of the stunningly complex and varied ways that federalism manifests itself from the inside of federal statutes." All of the four safeguards of federalism

described by Bednar (2009) have been triggered, with the focus on state flexibility written into the law a function of the Senate's institutional design (structural safeguard), party leaders at each level of government working together to oppose the law (partisan safeguard), the courts being called on to verify the reform's constitutionality (judicial safeguard), and the 2012 presidential and congressional elections largely being fought over whether the ACA should remain intact or be repealed (electoral safeguard). A fascinating element of the debate over health insurance exchanges is that many Republicans advocated for a fifth approach to challenging what they perceived as federal encroachment: abdicating control over the exchange to the federal government. They expected that the federal government was either bluffing or incapable of following through with its threat to take over exchanges in so many states. If enough states resisted, they believed the federal government would have no choice but to relent.

Direct state challenges have become more common in recent years, with resistance to No Child Left Behind being a prominent example (Shelly 2008; Manna 2010). States can challenge the legality of a federal law, pass legislation of their own, or pursue a ballot initiative to undermine elements of the reform (Shelly 2008; Provost 2010; Weissert and Weissert 2012; Rigby 2012). For example, seven states filed a lawsuit against the enforcement of the Motor Voter Act of 1993 (Shelly 2008). Twenty-seven states passed a law or resolution challenging the 2005 REAL ID law, ultimately leading the federal government to extend deadlines and delay enforcement (Regan and Deering 2009). Nicholson-Crotty (2012) chronicles a history of states "leaving money on the table" by returning grants or refusing to apply for available funds. Opponents of state-based insurance exchanges regularly cite these episodes as examples of the potential power of state resistance.

The fourth insight from the federalism literature is that although the terms of the intergovernmental negotiation are set by Congress in statute, the negotiation continues throughout a law's implementation as a result of interactions between the bureaucracies of each level of government. Doonan (2013) observes that "no single model was useful in clarifying how and why federalism plays out in particular ways for specific programs," in part because traditional studies focus only on the legislative process while neglecting rulemaking and implementation. A handful of scholars have addressed this gap, describing this relationship as executive, administrative, or intrastatutory federalism (Gais and Fossett 2005; Metzger 2008; Gluck 2011; Weissert and Weissert 2012; Doonan 2013). Gluck (2011) describes it as "informal, non-constitutional federalism" that it is "messy, varied, and dynamic." Executive federalism added another layer of complexity to the negotiations between states and the federal government over whether states would create an insurance exchange. The White House and HHS invested considerable energy in negotiating with governors and bureaucrats, but did not have established channels through which to communicate with state legislators.

These three insights from the federalism literature help explain the intergovernmental dynamics between states and the federal government during the ACA's implementation, and the role of federalism within my integrated framework. In order to address Doonan's (2013) criticism that federalism studies need to explain variations in intergovernmental dynamics, it is necessary to appreciate each stage of the policymaking process. Similarly, it is important to recognize that states are not single entities and do not necessarily make rational choices as states. Decisions are the cumulative effect of strategic choices made by multiple individual actors. To make sense of the choices states make in intergovernmental negotiations, it is necessary to understand who these actors are and the factors shaping their state context. The next three

sections focus on important elements of this context: path dependence, institutional design, and partisanship.

State Context: Path Dependence

One of the major streams in the political science literature to explain policymaking is built around the concept of path dependence. This body of work is rooted in the observation by Schattschneider (1935) that “new policies create a new politics.” Andrea Campbell (2012) explains that “Public policies do not arise in a vacuum but are shaped in profound ways by earlier policies. Existing policies define the political environment, shaping the capacities, interests, and beliefs of political elites and states and therefore the outcomes of subsequent rounds of policymaking.” Skocpol (1992) describes that “Policies not only flow from prior institutions and politics; they also reshape institutions and politics, making some future developments more likely, and hindering the possibilities for others.” Paul Pierson (2000) writes that “Specific patterns of timing and sequence matter” and that “particular courses of actions, once introduced, can be almost impossible to reverse.” He relates path dependence to the economic concept of increasing returns, highlighting that timing and sequence matter and that the cost of switching directions increases markedly over time.

This argument is compelling both from a practical and political point of view. Jacobs and Callaghan (2013) explain that “once established, policies generate both identities and groups that equate their interests with programmatic continuation and expansion and generate resources to mobilize beneficiaries.” Having already paid the start-up costs, policymakers generally find it easier to continue on their current path. Similarly, new political forces develop to support the evolution of new policies in particular directions.

Campbell's (2012) review of this literature finds that path dependence and policy feedback processes have been studied within a wide variety of policy domains, including social security, the GI Bill, AFDC/TANF, Head Start, Social Security Disability Insurance, food stamps, public housing assistance, tax expenditures, criminal justice, education, military conscription, and the women's rights movement. For example, Shelly (2008) found that state-level resistance to the No Child Left Behind Act of 2001 was affected by contextual factors such as poverty rates and the size of the Hispanic population, as well as the number of highly qualified teachers in the state and the type of accountability system already in place. Similarly, seniors became one of the most politically engaged age groups upon the creation of Social Security (Campbell 2003).

A number of scholars have applied the concept of path dependence to explain health reform – or the lack of health reform. For example, Hacker (1998) uses path dependence to explain why national health care systems have evolved in different directions in Britain, Canada, and the United States. Chen and Weir (2009) find that the regulatory strategies adopted by states to contain health care costs were significantly shaped by characteristics of their private insurance markets and dominant health care systems. Finally, the politics surrounding the reauthorization of the State Children's Health Insurance Program (SCHIP) were significantly shaped by how the program was implemented and developed (Grogan and Rigby 2009, McGrath 2009).

Path dependence theorists would argue that each state's decisions about a health insurance exchange is a function of its unique history and prior policy choices. For example, policymakers in states that have received Section 1115 Medicaid waivers may be more likely to support creating an exchange based on their prior history in negotiating with the federal

government and because they potentially have an interest in maintaining good relations (Thompson and Burke 2007; Thompson and Burke 2009). Similarly, policymakers in states that have already enacted many of the elements of the ACA or that have been particularly pro-active on developing health policy may find it easier to create an exchange, both in terms of the programmatic challenges and winning enough support in the legislature. Alternative paths to creating an exchange were available in Mississippi (chapter four) and New Mexico (chapter six) because of unique institutions that had been established earlier.

Another useful insight from this literature is that the policy itself is an important element of the political debate (Pierson 2000). As Hacker (2010) writes, political science mostly treats policy as an afterthought or as a means of testing theories on electoral influence and legislative politics. Instead, “On a range of key matters at the core of the discipline – the role and influence of interest groups; the nature of partisan policy competition; the sources of elite polarization; the relationship between voters, activists, and elected officials; and more – the substance of public policy makes a big difference.” In the case of health insurance exchanges, every state was not voting on a single model of legislation written by the federal government. Among other things, the major proposals in each state differed on the level of regulation and openness of the marketplace, whether insurance companies would be allowed to sit on the exchange’s governing board, and whether the exchange would be established as a governmental entity or as a non-profit organization. Understanding the roots of these differences, as well as the effect they had on each state’s debate, is key to understanding why a state chose to create an exchange or not.

Critics of the path dependence literature warn that the concept “is too shallow to be false” but too ambiguous to explain much (Brown 2010). For example, Haeder and Weimer (2013) argue that the possibilities for comprehensive health reform have been too narrowly confined by

the limitations of path dependence. Béland (2010) writes that path dependent arguments often describe concrete episodes of incremental change without really explaining them. Oberlander (2003) finds that in the development of Medicare policy, path dependence theories cannot properly account for changes that take a policy off its predetermined path. Yes there are policy feedbacks with Medicare, but without knowing the denominator of potential feedbacks, it is difficult to know the explanatory power of the numerator of relevant feedbacks. Patashnik and Zelizer (2010) highlight a number of conditions under which policy feedback does not occur.

My integrated model includes a place for path dependence while also acknowledging its limitations. Prior policy decisions must be recognized as an important part of the context shaping state decision-making, largely because they affect the range of options available to policymakers. Even if it is too shallow to be a complete explanation on its own, it plays an important role in shaping the strategic environment in which policymakers and interest groups operate.

State Context: Institutional Design

The battle over which policy should be adopted often manifests itself as a debate over who is empowered to make decisions. As a result, it is important to focus on the role that political institutions themselves play in shaping policy. This can be thought of as a sub-set of the path dependence literature, though with more of a focus on institutional design than on prior policy decisions. Steinmo and Watts (1995) argue that scholars and pundits are missing the big picture in their analysis of why certain policies are adopted and others are not. Echoing the phrase used by Bill Clinton's strategists in 1992, they write that "it's the institutions, stupid." Similarly, Immergut (1992) writes that the analysis of policy making should focus more

explicitly on institutions and procedures since “they select the groups whose views will be represented and they shape demands by changing the strategic environment in which the demands of groups are formulated.”

Applied to the state-level implementation of the ACA, it may be that the institutional context of states differs in ways that would make it easier or harder to create an exchange. Interest groups and policymakers are still important. The influence of interest groups and policymakers is shaped by key differences in how states make decisions. Political scientists have developed measures for comparing legislative professionalism (Squire 2007), bureaucratic capacity (Huber and McCarty 2006), and gubernatorial power (Kousser and Phillips 2012). However, these concepts are too broad to adequately explain differences in states’ decisions on the exchange. In other words, simply comparing states according to their ranking on a measure of overall professionalism or capacity obscures why any observed differences are meaningful. Instead, it is useful to examine the impact of individual components of institutional differences (Grossback and Peterson 2004). In this section, I highlight six major institutional issues political scientists focus on when comparing states. The first four relate to the legislative branch, with the last two dealing with the executive branch.

First, the size and composition of each state legislature varies dramatically, including by how many legislators are elected, how many constituents they represent, and the size of their districts (Table 5). Boundaries are roughly proportional within states since the landmark Supreme Court rulings of *Baker v. Carr* (1962) and *Reynolds v. Simms* (1964) established the principle of one person one vote for both chambers of each state legislature. However, there is significant variation between states. The average number of constituents represented by each state representative in the nation is 59,677, with a range of 3,291 in New Hampshire to 465,674

in California.³ Similarly, the average number of constituents represented by each state senator is 154,499, with a range of 18,788 in Wyoming to 931,349 in California. Other than the Nebraska legislature which only has one chamber, Alaska has the fewest number of legislators with only 20 senators and 40 representatives. New Hampshire is on the other end of the spectrum, with 24 senators but 400 representatives. In fact, with 424 legislators, the New Hampshire General Court is described as the fourth largest legislature in the world (nh.gov 2013). These differences theoretically affect the ability of legislators to be responsive to their constituents.

Second, the amount of time each legislature stays in session varies from state to state (McDonough and McGrath 2001). Unlike Congress which meets year-round, most state legislatures only meet for part of the year. Thirty-nine states specify a limit on the length of their session, with 17 of these having different limits in alternating years (NCSL 2013).

With the exception of Kentucky, Louisiana, and Virginia, states with different session lengths have the longer session in odd numbered years, resulting in shorter sessions during election years. Since Louisiana and Virginia hold their legislative elections in odd numbered years, the effect is the same. In states such as New Mexico, the legislature is restricted in alternating years to only considering bills amending the budget and is not allowed to consider bills on new policy such as creating a health insurance exchange.

³ These numbers are derived using population data from census.gov and data on legislatures from ncsl.org.

Table 5 - Distribution of Number of Legislators per State
of States

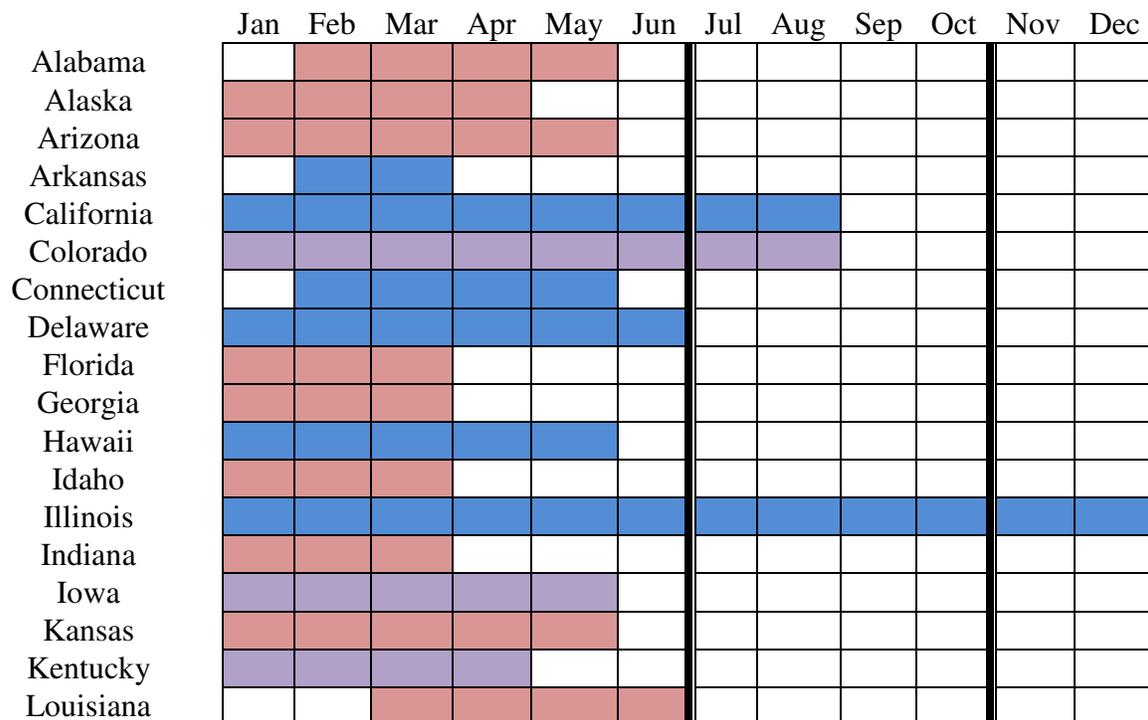
Legislators in Upper Chamber	
20-30	10
30-40	24
40-60	14
60+	2
Number of Residents per Legislator in Upper Chamber	
50-100,000	23
100,000-300,000	22
300,000-500,000	3
500,000-700,000	0
>700,000	2
Legislators in Lower Chamber	
40-70	8
70-100	13
100-130	17
130-160	9
160-190	1
190+	2
Number of Residents per Legislator in Lower Chamber	
3,000-10,000	6
10,000-50,000	24
50,000-100,000	12
100,000-150,000	5
150,000<	3

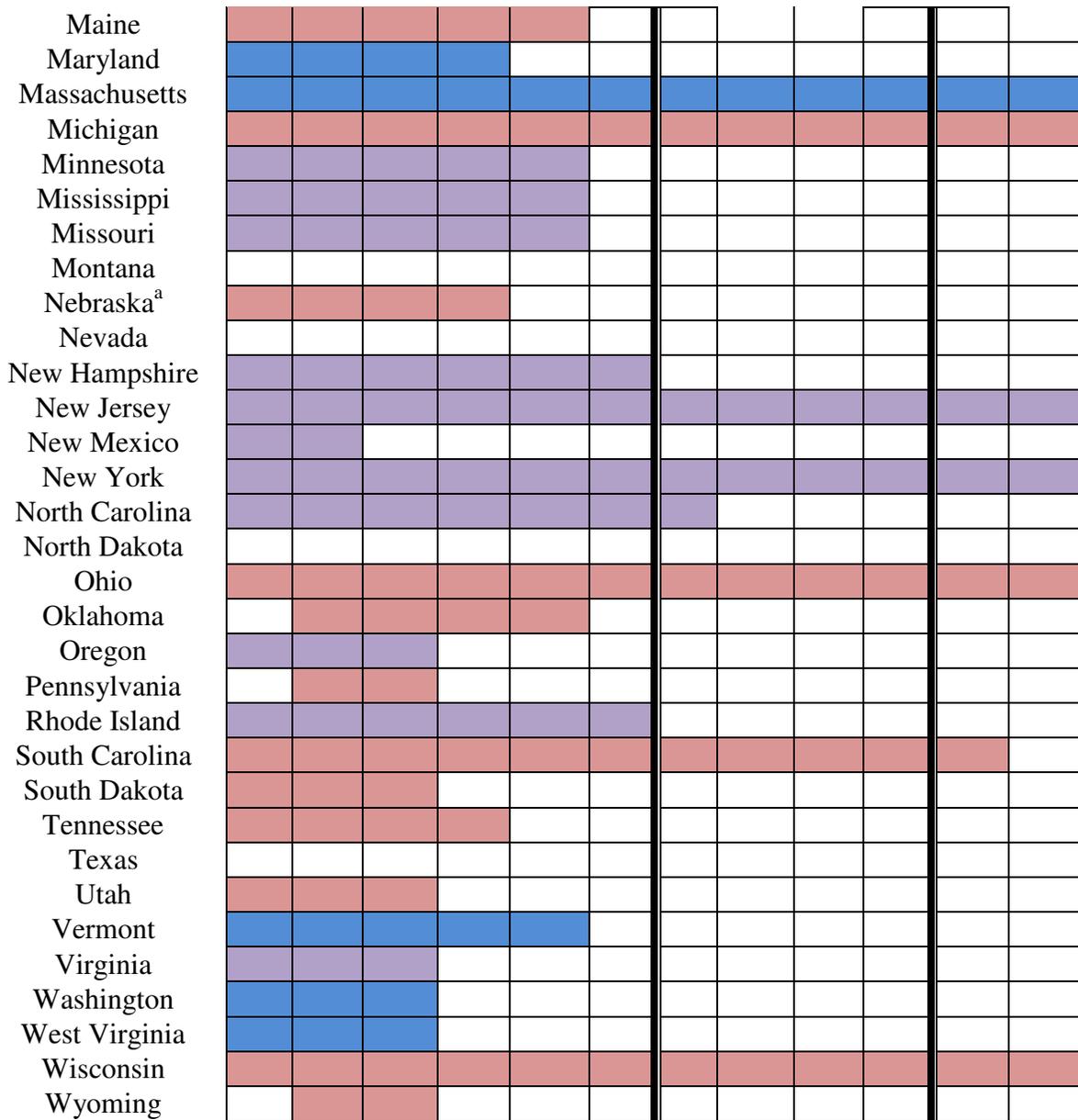
Source: NCSL 2013 and United States Census 2010

Differences in length of session are important because they affect the degree of policy and procedural expertise legislators develop (Squire 2007, Burns *et al* 2008). The length of session, along with the salary given to legislators, affects who can serve. Some legislatures are comprised of citizens who return to day jobs when the session is over, whereas others are inhabited by career politicians (Kousser 2004).

Also, states experience the implementation of a federal law differently depending on when their legislature is in session. For example, few states were in session much longer in 2010 after the ACA was signed into law on March 23rd. This amplified the importance of the 2010 elections and limited the ability of outgoing Democratic governors to entrench elements of the law before their departure. Similarly, many Republican state leaders wanted to delay making decisions on an insurance exchange until after the Supreme Court ruled on the ACA's constitutionality. Because the Supreme Court's decision did not come out until June 28, 2012, this meant that only the nine states with sessions extending into July could consider exchange legislation that year (Jones 2012) (Figure 3). States have the option of holding a special session in which legislators are called back to consider specific bills, however states vary dramatically in terms of how often they hold special sessions.

Figure 3 - Length of State Legislative Sessions in 2012





Note: States coded by partisan control: Blue = Fully Democratic, Red = Fully Republican, Purple = Mixed
 Vertical lines depict the Supreme Court decision announced June 28th and the election on November 6th

^a Nebraska's legislature is officially non-partisan, but the state is led by a Republican governor
 Source: NCSL 2012.

Third, 15 states place limits on how many terms their legislators are allowed to serve, generally restricting them to 6-12 years (Table 6). In some states, the clock resets if the legislator changes chambers or is out of power for a certain period. In other states, there are

lifetime limits preventing the legislators from ever serving again (NCSL 2013). The term limit movement took off in the early 1990s, passing by directive initiative in 20 of the 22 states that voted for them, and being instituted by statute in two other states. Between 1997 and 2004, the state supreme courts in Massachusetts, Oregon, Washington, and Wyoming overturned their state's term limits, while the Idaho and Utah legislatures repealed theirs (Mooney 2009).

Table 6- Term Limits in State Legislatures

State	Year Enacted	<i>House</i>		<i>Senate</i>	
		Limit	Year of Impact	Limit	Year of Impact
Maine	1993	8	1996	8	1996
California	1990	12 ^a	1996	12 ^a	1998
Colorado	1990	8	1998	8	1998
Arkansas	1992	6	1998	8	2000
Michigan	1992	6	1998	8	2002
Florida	1992	8	2000	8	2000
Ohio	1992	8	2000	8	2000
South Dakota	1992	8	2000	8	2000
Montana	1992	8	2000	8	2000
Arizona	1992	8	2000	8	2000
Missouri	1992	8	2002	8	2002
Oklahoma	1990	12 ^a	2004	12 ^a	2004
Nebraska	2000	n/a	n/a	8	2006
Louisiana	1995	12	2007	12	2007
Nevada	1996	12	2010	12	2010

a In California and Oklahoma, a legislator may serve a total of 12 years in the legislature during his or her lifetime. The total time may be split between the two chambers, or spent in its entirety in a single chamber. Before 2012, California's limits were identical to those in Arkansas: six years in the assembly and eight years in the senate.

Source: National Conference of State Legislatures, 2013.

<http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>

Advocates argued that term limits would make legislators more responsive to their constituents, non-traditional candidates better situated to run, the seniority system weaker, the relationship between legislators and special interests weaker, and that state spending would decrease as a result (Greenberg 1994, Masket and Lewis 2007, Basham 2011). The evidence supporting these arguments is mixed at best. Instead, studies show that under term limits, legislators are less beholden to constituents in their districts (Caery *et al.* 2006), in part because they are more likely to run for higher office (Powell 2000, Lazarus 2006). The number of bills introduced has spiked as legislators have less time to make their mark (Kousser 2004), resulting in increased state spending (Erler 2007). Under term limits, there are more lobbyists and they exert more influence in the legislative process (Mooney 2005). The power of legislative leaders has diminished (Apollonio and La Raja 2006), putting the executive branch in a stronger position relative to the legislature (Carey *et al.* 2006). Given all these consequences of legislative term limits, bipartisan negotiation and consensus building has been more difficult (Sarbaugh-Thompson *et al.* 2006).

Each of these consequences of term limits has important implications for the debate over an insurance exchange. The 2010 elections gave Republicans control of at least one legislative chamber in 12 of the 15 of the states with term limits, including one of the states in my sample: Michigan. This meant that supporters of an exchange would have to win support from legislators that had less policy and legislative experience, were less willing to compromise, and that were more easily influenced by interest groups. Of these 12 states, only Colorado decided to create an exchange.

Fourth, states vary dramatically in the amount of staff support provided to each legislator, either compounding or limiting the effects of term limits and the length of session. Legislators

with greater staff support are more likely to be well informed on policy issues and are better able to provide constituent services (Squire 2007, Bowen 2010). As a result, they are also better able to negotiate with the governor and his or her staff (Grossback and Peterson 2004). In seventeen states there is one staff member assigned to each legislator. Fifteen states give their legislator more staff, whereas 14 states offer less. Nine states allocate money to legislators to directly hire their own staff. Some legislative aides work year-round whereas others only work when the legislature is in session (NCSL 2010a).

The amount of staff support for legislators in a given state does not lead to clear predictions about whether that state will decide to create an exchange. When staff support is minimal, legislators with particular expertise in health policy or insurance may be looked to for information to a greater extent. Similarly, lobbyists may play a greater role in supporting their legislative allies (Hall and Deardorff 2006). This could push the debate in either direction depending on the strength and preferences of these interest groups and legislative pockets of expertise.

Another reason each of these four differences between legislatures is potentially significant is that they affect the likelihood that policy entrepreneurs (Oliver and Paul-Shaheen 1997) or pockets of expertise (Burns *et al* 2008) will emerge. These are influential legislators who are regularly looked to by others for guidance on particular policy issues. Applying the concept from organizational theory that “every change needs a champion,” (Bingham 2007), these policy entrepreneurs and pockets of expertise often play a prominent role in shepherding proposals through the legislative process.

Turning from the legislative to the executive branch, the fifth insight from this literature is that governors vary in their ability to advance an agenda (Berch 1992, Dukakis 2001, Beyle

2004). Governors differ in their capacity to shape the state budget, appoint cabinet members, and reorganize state agencies (Weissert and Weissert 2012). Although governors are largely held accountable by the public for state policies, legislators generally hold a monopoly on the power to introduce, amend, and pass laws. The only formal legislative power many governors hold is reactive - the ability to veto or sign bills passed by the legislature (Kousser and Phillips 2012). Even this authority varies by state, with 43 having line item veto powers and 37 being able to reduce the budget without legislative approval (Weissert and Weissert 2012). As a result, governors supporting the creation of an exchange were severely limited in their formal powers to advance enabling legislation.

Governors possess significant informal powers which they use to leverage their limited formal capacity (Sigelman and Dometrius 1988). For example, although they cannot formally author legislation or debate in the legislature, in some states bills proposed by the governor are referred to as “governor’s bills” and their staff can introduce the bills in committee. Kousser and Phillips (2012) explain that this gives governors very little formal power since the legislative sponsors officially control the contents of these bills and the legislative branch maintains authority over their fate. However, governors are in office full time whereas most legislatures are part time. They can take advantage of their position and prestige as chief executive to attract attention to an issue and influence the public agenda to a greater extent than can other state actors (Bernick 1979). The importance of these informal powers may vary by state, by person, and by issue. A recent study shows that governors were more successful with advancing their proposals in the budget than at passing legislation (Kousser and Phillips 2012). As the head of the executive branch, governors also play an important role in the programmatic implementation

of policy. They have significant ability to sidetrack policies they do not support, as well as to prioritize policies they do support.

Another power that governors have is to sidestep the legislature entirely, creating policy by executive order. Decisions made this way are vulnerable to being superseded by legislation or a change in gubernatorial power. The option of creating an exchange was technically available to every governor, though the political feasibility of this approach varied by state. Governors in Kentucky, New York, and Rhode Island ultimately created their exchange by executive order after their legislatures failed to act. By contrast, legislators in Idaho (chapter six) and New Mexico (chapter seven) threatened to sue if their governor tried to create an exchange this way.

Sixth, there is significant variation between the capacities of state-level executive branch agencies, including variation between states and across agencies within a state. These differences are important given that studies show that bureaucrats are playing an increasingly powerful role in shaping policy (Morone 1993, Schneider *et al.* 1997, Bowling and Wright 1998, Sapat 2004). One way they do this is by leveraging their contacts with lobbyists to influence the legislative process (Bradley 2014).

Some states have large professional bureaucracies with highly educated experts, whereas others have small agencies with less policy expertise (Weissert and Weissert 2012). Similarly, states differ in which administrative officials are appointed and are elected, as well as which appointed actors need to be confirmed by the legislature (Bowling and Wright 1998; Marshall 2006; Provost 2010). Some states allow for legislative review of rules passed by the bureaucracy (Woods 2005), and 39 states require federal grants to be specifically approved and appropriated

by the legislature before an agency is allowed to spend the money (Gerber *et al.* 2005, Ball and Weeks 2013).

It is not clear that bureaucratic capacity should directly influence which approach a state will choose in the debate over an insurance exchange. One reason it may not matter is that state bureaucracies were able to receive federal grants to hire consultants to do much of the technical work. Low capacity states could use these grants to hire the staff to match the resources of a high capacity state. States also had the opportunity to participate in multi-state technical assistance networks, such as the Robert Wood Johnson Foundation State Health Reform Resource Network.

State Context: Partisanship

Another major aspect of a state's political context is partisanship. This literature is built on the premise that elected officials are focused on winning elections. At the extreme, politicians are conceptualized as devoid of policy preferences and single-mindedly focused on winning elections (Downs 1957, Mayhew 1974). More recent scholars refine this by acknowledging that politicians want the best of both worlds: to be re-elected while enacting their preferred policies (Arnold 1990, Jacobs and Shapiro 2000). In other words, policy debates affect elections, just as elections affect policy debates.

Related to the literature on partisanship, studies of public opinion conclude that there is a relationship between public opinion and policy change, though the direction of influence between public opinion and policymaking is not always clear. Page and Shapiro (1992) provide evidence that policy tends to move in the same direction as public opinion and that in the

aggregate, public opinion does appear to influence policy. Similarly, Jacobs (1993) demonstrates a growing sensitivity among policymakers to public beliefs about health care policy in the United States and Britain over the course of the 20th century. At the same time, Converse (1964) and Zaller (1992) argue that a great majority of people do not have a complete set of beliefs producing a clear ideology. Instead, everyone has competing considerations, and a person's position at any given time is a weighted average of these considerations. Jacobs and Shapiro (2000) argue that the conventional wisdom that politicians respond to public opinion when making major policy decisions is wrong. Rather than simply tracking public opinion to know which policies to support, politicians craft their presentations to change public opinion to align with their policy preferences. These efforts can succeed because voters rely on partisan cues when making decisions on complicated policy issues (Lupia 1994, Lupia and McCubbins 1998).

The first insight from these literatures that is useful for understanding the debate over insurance exchanges is the observation that sometimes politicians personal policy preferences conflict with their goal of winning elections. As a result, Lee (2009) argues that Republicans and Democrats have a tendency to oppose each other even over issues about which they generally agree. This is particularly important given recent evidence that the American electorate, Congress, and state legislatures are increasingly polarized (Shor and McCarty 2011). Partisan incentives may therefore lead Republicans to vote against creating a state-based insurance exchange simply because it is so closely identified with President Obama and supported by Democrats.

A second insight puts this point in an intergovernmental context. Although Republicans tend to prefer local control, studies show that intergovernmental disputes sometimes have a

partisan edge such that leaders at each level support the actions of another level of government if it is led by a member of their party, and oppose actions led by a member of a different party (Keiser and Soss 1998; Yackee and Yackee 2009; Medoff *et al.* 2011, Nicholson-Crotty 2012). Policymakers on either side of the ideological spectrum and at either level of government will argue for a decentralized or centralized approach when it suits their policy and political goals (Barrilleaux *et al.* 2002; Nathan 2005; Conlan 2006; Adelman and Engel 2008; Shelly 2008; Doonan 2013). Both levels of government are involved in nearly all domestic issues (Gais and Fossett 2005) and there can be multiple state-federal relationships found within the same law (Gluck 2011). Politicians at both levels can use the ambiguity of federalism to take credit for successful policies and avoid blame for bad ones (Volden 2005).

National Democrats expected that state-level Republicans would support the creation of exchanges. The idea has a long history of support from conservatives and was not a controversial element of the congressional debate over the ACA (Rigby *et al.* 2014). Republican state legislators were expected to like the option of maintaining control. Since the ACA's enactment, Republican policymakers have been generally unified in their opposition to the whole law, but have been split over whether to create an exchange in their state. Both sides frame their argument in terms of federalism. Opponents argue for resisting what they perceive as federal encroachment by refusing to cooperate because they believe the ACA will collapse under its own weight (ALEC 2011; Cannon 2013), whereas supporters argue that cooperation is a way to minimize federal overreach and maintain the state's historical role as the primary regulator of private insurance (Otter 2013). These partisan considerations ironically lead some of the law's strongest opponents to support a position potentially likely to bring greater control for the federal government.

Similarly ironic is that liberal Democrats around the country faced a dilemma of whether to advocate for state control of an exchange – in some cases a weakly regulated clearinghouse exchange in which insurers would sit on the board of directors - rather than preferring to default to the federal government in the hopes that they would operate a more regulated active purchaser exchange. Prior to the Supreme Court ruling and President Obama’s re-election, the law was vulnerable and Democrats may have felt a need to entrench as much of it as possible in case it was later struck down or repealed. Having an exchange signed into law, even if it contained fewer consumer protections than some Democrats would have liked, may also have undermined the lawsuit and weakened opponents’ attempts at repeal.

There are a number of limitations to relying on partisanship to explain why states decided to create an exchange or not. Oberlander (2003) argues that in order to demonstrate that electoral mandates have a direct impact on public policy, three conditions must be satisfied: 1) the electorate must be offered a choice of public policy options, 2) voters must respond to this choice in an identifiable way, and 3) elected officials must shape policy to conform with the choice of the electorate. “Under any circumstances, it is difficult to establish that all three conditions have been met,” (Oberlander 2003). Aside from their ability (or inability as the case may be) to convince other legislators to support creating an exchange, there is little evidence that Republican supporters of an exchange influenced public opinion.

It is difficult to directly test the impact of changes in public opinion given that so few state-wide surveys specifically asked whether respondents favored a state-based or federally facilitated exchange. There is consistent polling about the ACA as a whole, though this is not particularly helpful for understanding state decisions about insurance exchanges because the expectation was that even those who opposed the overall law would prefer state control of an

exchange. New techniques exist to impute state-level public opinion from national surveys (Lax and Phillips 2009), though this approach overlooks an important issue for explaining the mechanism through which public opinion influences policy change. The fact that it is difficult to obtain state-level polling on this question for research purposes indicates that it would have been difficult for legislators to obtain at key moments in the debate, and thus makes it unlikely that they were responding to changes in public opinion.

One of the best indicators of a state's attitude towards the ACA may be how it voted in the 2012 presidential election. The political incentives of supporting an exchange may be closely linked with the electoral success of President Obama in a particular state. Given that the ACA is so closely linked with President Obama – commonly referred to as “Obamacare” – Republicans in states that voted for President Obama in 2008 and 2012 might be more likely to support an exchange, whereas states that voted for John McCain in 2008 and Mitt Romney in 2012 more likely to oppose an exchange. This is particularly true for the states that made their decision after the November 2012 elections, including all four states in my sample.

As the integrated framework in figure 2 shows, partisanship is an important part of the intra-state context in which decisions are made about whether or not to create a health insurance exchange. However, one of the lessons I will demonstrate through analysis of my four case studies is that partisanship was not by itself a determining factor. Many Republican leaders supported creating an exchange in their state. Whether they were powerful enough to have their preferences adopted largely depended on other aspects of their state's context, such as path dependence and institutional design, and the relative strength of interest groups supporting and opposing an exchange.

Strategic Actors: Interest Groups

With the previous sections as context on the inter-governmental and intra-state environment, I now turn to the literature on interest groups. These scholars presume that the development of public policy is a result of influence on policymakers by private interests. Rather than reflecting the will of the greater public, policy is portrayed as reflecting the interest of narrowly focused groups. The importance attributed to interest groups relative to other factors varies dramatically between studies, with some viewing their influence as the most important element affecting how policy is made, and others viewing them as inconsequential and marginal (Leech and Baumgartner 1998). Hall and Deardorff (2006) characterize this literature as “noteworthy for the noncumulative and frequently inconsistent nature of its findings.”

It is important to identify who has a stake in health insurance exchanges, how they attempt to influence the decision-making process, whether they are successful, and why. With these questions in mind, I highlight five points from the literature that will guide the analysis contained in subsequent chapters.

The first is that a large number of groups have an interest in health policy and try to influence policymaking at the federal and state levels. In 2009, when Congress began debating the Affordable Care Act, there were 13,789 registered lobbyists in D.C., of which more than a quarter were focused specifically on health. Interest groups are similarly active in health policy at the state level. Of the 47,803 state-level lobbyists registered in 2012, more than one-sixth represented an organization with a stake in the debate over an insurance exchange.⁴ The expectation when the ACA passed in 2010 was that the major health and business groups in each state would strongly prefer their exchange be run at the state level. They would lobby their

⁴ According to analysis conducted by the author using data found using the Lobbyist Link tool at <http://www.followthemoney.org/database/graphs/lobbyistlink/index.phtml>

legislatures accordingly and most states would respond to this pressure by choosing to create an exchange (Skocpol and Jacobs 2010, Rigby and Haselswerdt 2013).

As I describe in more detail in the next chapter, the passage of the ACA coincided with the rise of a different type of group – the Tea Party. The Tea Party is not comprised of lobbyists representing private interests, but of citizens believing they are acting for the good of the nation and their communities. In this way, the Tea Party is better thought of as a grassroots social movement. Its influence was made possible and has been amplified by growing partisan polarization. They have pushed the Republican Party further to the right, having a dramatic effect on the political climate in many states (Skocpol and Williamson 2012).

Although the Tea Party as a whole may be better conceptualized as a social movement, individual Tea Party groups act very much like interest groups (Nownes 2013). They visit legislators in their offices, testify at hearings, and contribute resources to electoral campaigns. As a result, many of the theoretical insights from the interest group literature therefore apply to the Tea Party as well. Skocpol and Williamson (2012) explain that one of the most important consequences of the Tea Party movement has been the “populist boost given to professionally run and opulently funded right-wing advocacy organizations devoted to pushing ultra-free-market policies.” Every state has a conservative think tank that also behaves much like an interest group, although they are not registered lobbyists in every case. These groups are loosely connected through a national umbrella organization, the State Policy Network.

The second insight from this literature is that the role of interest groups at the state level differs somewhat from the role of interest groups at the federal level. Some groups have a strong presence at the national level and are able to operate in multiple states. Most groups, however, are either stronger at the national level or at the state level (Salisbury *et al.* 1987, Heinz *et al.*

1990, Weissert and Weissert 2012). Multiple studies find that although lobbying techniques increasingly focus on national strategies, the network of dominant state interest groups is predominantly local (Oblak 2000, Wolak *et al.* 2002). State-level groups often prefer state control of an issue to federal involvement because it gives them greater opportunity to influence policy development (Gray, Lowery, and Godwin 2007; Tandberg 2010). Simultaneously tracking and adhering to policy in 50 separate states is burdensome and may ironically inspire national interest groups which tend to resist regulation to ultimately advocate for more uniform national standards (Skocpol and Jacobs 2010).

States vary dramatically in the size of their lobbying community (Brasher 1999), in part because they vary in the extent to which lobbying is regulated (Newmark 2005, Ozyimy 2010). In 2012 there was an average of 956 registered lobbyists per state, with as many as 5,759 in New York and as few as 81 in Wyoming. In fact, Wyoming was one of only two states to have more legislators than registered lobbyists, with the other being New Hampshire. The average ratio nationally was nearly 7 lobbyists for every state legislator, though the proportion was highest in Arizona where there were more than 38 lobbyists for every legislator.⁵

Third, to the extent that interest groups exert influence on the development of policy, it is because they can mobilize resources in a way that the general public cannot. These groups benefit from a singularity of purpose that can make it easier to form and focus attention on their particular cause (Weissert and Weissert 2012). Approximately 80% of groups are estimated to have formed from pre-existing occupational groups, with many of the rest brought together through a common ideology (Walker 1991, Leech and Baumgartner 1998). Interest groups provide the policy information, political intelligence, and manpower important for advocating

⁵ According to analysis conducted by the author using data found using the Lobbyist Link tool at www.followthemoney.org.

their cause and building a coalition of supporters (Hall and Deardorff 2006, Weissert and Weissert 2012). In some cases, groups combine resources by forming coalitions around a particular issue (Jarman and Greer 2010, Weissert and Weissert 2012).

Money is one of the most important tools interest groups use. Groups lobbying Congress for health-related causes in 2009 spent more than \$3.3 billion (McGrane 2009). For example, the pharmaceutical industry, as represented by PhRMA, spent \$100 million of its own money promoting the bill after winning important concessions (Weissert and Weissert 2012). Interest groups gave \$555 million in campaign contributions to legislators - more than any other sector.⁶ A 2009 National Institute on Money in State Politics report found that the health care industry gave \$394 million to state-level office holders and political committees in 2004–2008. Pharmaceutical groups spent nearly half of this money, though other major contributors included hospitals, health systems, physicians, and health insurance companies (National Institute on Money in State Politics 2009). Much of an organization's money comes from membership dues, though some tap additional sources of income (Walker 1991, Leech and Baumgartner 1998). Money can be used as encouragement for support in an upcoming vote, as a thank you for a previous vote, or as a punishment for a previous vote (Stratmann 1988, Weissert and Weissert). Money tends to go to incumbents (Romber 1994) and party leadership (Hojnacki *et al.* 1998, Wilkerson and Carrell 1999).

The Supreme Court's decision in *Citizens United v. Federal Elections Commission* (2010) has enabled private donors to spend large amounts of money for political purposes. Two of the most prominent spenders in the political debate surrounding the ACA are billionaire brothers David and Charles Koch. They move money through multiple layers of organizations,

⁶ According to analysis using data found at <http://www.opensecrets.org/lobby>

making it very difficult to know exactly who they are giving money to and how much they have spent (Barker and Meyer 2014). Multiple states within my sample had conservative organizations with explicit or rumored connections to the Koch Brothers. They are reportedly major contributors to the State Policy Network of conservative think tanks that became influential in many places (Kopan 2013), including Michigan and Mississippi where conservative groups helped defeat an exchange.

Fourth, the literature on interest groups documents an interesting paradox, that lobbyists spend most of their resources on potential allies rather than on likely opponents (Bauer, Pool, and Dexter 1963; Grier and Munger 1986; Brownars and Lott 1997). In part, lobbyists tend to give money to whoever is in leadership positions as a way of gaining access (Gutermuth 1999, Wilderson and Carrell 1999). Even so, the evidence suggests that lobbyists devote more energy to lobbying those “whose views they least needed to change,” (Hall and Deardorff 2006). Hall and Deardorff (2006) explain that this is because policymakers are working under intense constraints and are not able to work on everything they would like to accomplish. Lobbyists contribute support in the form of a legislative subsidy, mobilizing their resources to assist their natural allies in achieving mutual goals.

Fifth, the evidence is not clear that interest groups actually affect policy outcomes (Snyder 1992, Hall and Deardorff 2006). For example, Smith (1995) and Cigler and Loomis (2002) find little evidence that PAC funding directly affects a legislator’s vote on a given bill. The ability of a group to achieve a desired outcome depends in part on the type of outcome desired. The fragmented nature of the policymaking process at the national and state levels means that it is much easier to block a policy proposal than to successfully adopt one (Steinmo and Watts 1995, Oberlander 2003b, Weissert and Weissert 2012). To succeed, proponents of a

particular issue need to win in multiple committees, multiple chambers, and multiple branches of government, whereas opponents only need to succeed at one of these veto points. Some types of policy changes are also easier for interest groups to advocate for than others. For example, Oberlander (2003a) finds that interest groups have minimal influence over the broad changes to the Medicare program, but are very influential over more technical micro-policy changes.

In summary, the literature shows that interest groups devote significant resources to shaping policy, but are not always successful. Their level of influence can depend on the amount of resources they are able to devote to a cause, be it money, manpower, or political intelligence. Their influence can also depend on the type of interest being represented, the type of policy being considered, and the relative strength of competing groups given a state's context.

Strategic Actors: Policymakers

Before concluding, it is important to consider the policymakers themselves. The political science literature generally treats policymakers as rational actors guided by a game theoretic calculation of incentives and payoffs. The earlier section on partisanship cited scholars noting that policymakers are likely also driven by a desire to see certain policies enacted (Arnold 1990, Jacobs and Shapiro 2000). This observation implicitly acknowledges the possibility that two people facing similar environmental constraints and incentives may arrive at different conclusions.

I am unaware of any literature arguing that individual personal judgment is an important factor contributing to the development of public policy. The closest may be the concept of bounded rationality used in a wide range of disciplines to account for decision-making that is

limited for cognitive or other reasons. Selten (2002) explains that it is wrong to assume that human beings conform to an ideal of rationality. Bounded rationality is not irrationality or blind guessing, but a way to include non-optimizing behaviors in models of decision-making.

What I am arguing is related, but a bit different. Rather than saying that policymakers make different choices because of differences in how they deal with limited information, I am suggesting that they might still make different choices even if they had complete information. Even if the former is true, it implies that there are differences at the individual person level affecting the choices they make. In the following chapters I highlight many incidents in which individuals made choices that are not entirely explained by context or external incentives.

Summary

Just as Oberlander (2003a) writes that there is no single politics of Medicare policy, I argue that the politics and dynamics surrounding the implementation of the Affordable Care Act are multi-faceted and complex. Rather than use the exchanges as a case to test a specific aspect of a single perspective, I use lessons from multiple theoretical frameworks to understand how states decided whether or not to create an exchange. This is an important distinction which shapes how I frame the questions, how I conduct the analysis, and the types of answers I will find.

As the review of the literature in this chapter has shown, it is impossible to understand the implementation of this component of the ACA without understanding how states and the federal government interact. Nor is it possible to understand the debate over exchanges without understanding that states are not unitary actors making decisions, but are the culmination of a

contentious process that aggregates the decisions of specific actors. Partisanship is an important component of a state's context, but it is an incomplete explanation for the decisions ultimately made at the state-level. Instead, it is necessary to recognize that state policymaking is a process in which differences in institutional design and policy history significantly shape the incentives of key groups, as well as how the decision will be made and who will be empowered to influence the outcome. Understanding the institutional and policy context is key to evaluating the strategic decisions made by partisan elected officials and interest groups.

I bring these theoretical perspectives together in an integrated framework represented schematically in figure 2. I use a grounded theory approach to identify the specific elements determining whether a state chose to create an insurance exchange. My framework can be thought of as a broad outline, with the details being filled in through the analysis presented in each case study chapter. For example, although I have identified at the outset that interest groups can play a prominent role in shaping policy, and that their relative power can depend on their intra-state context, I rely on my data to develop the specific arguments about how this happens within each state. In chapter eight, I bring these insights together to develop broader conclusions.

Chapter 3 - 50-state overview

Significant portions of this chapter come from a paper co-authored with Katharine Bradley and Jonathan Oberlander entitled “Pascal’s Wager: Health Insurance Exchanges, Obamacare, and the Republican Dilemma.” The paper was published in the February 2014 issue of *The Journal of Health Politics, Policy, and Law*. Both co-authors have given their permission to use our paper here.

Introduction

The idea that small businesses and the uninsured should buy insurance coverage through organized purchasing pools has pervaded American health policy for at least two decades. The insurance exchanges included in the Affordable Care Act have their roots in proposals dating to at least the 1990s and in a reform enacted by Massachusetts in 2006. This chapter begins by outlining the history of health insurance exchanges, culminating with the enactment of the ACA. I then describe the evolution of state responses to their role in creating exchanges over four distinct time periods between the passage of the ACA in March 2010 and the beginning of the exchange’s open enrollment in October 2013.

The Origins and Development of Health Insurance Exchanges

In the early 1990s, Alain Enthoven (1993) called for creating health insurance purchasing cooperatives to promote managed competition. President Clinton’s Health Security Act, influenced by Enthoven’s model, sought to establish health alliances through which most

Americans would obtain coverage. The Clinton Administration struggled to explain the role of alliances and benefits of managed competition to the public and nothing was passed. After the Clinton plan's demise, the idea lived on as policy analysts continued to propose similar institutions—albeit without the stigmatized “alliance” label—as a cornerstone of reform (Meyer and Wicks 2003). Meanwhile, small business purchasing pools—commonly known as health insurance purchasing cooperatives—emerged in a handful of states during the 1990s, including California, Texas, and Florida, though they produced mixed results and in some cases did not survive (Long and Marquis 2001; Wicks 2002). Then, in 2006, as part of its landmark reform law, Massachusetts established a health insurance “Connector”—open to the uninsured and smaller firms—raising the profile of purchasing pools in the national health care debate (McDonough 2011). In 2009, Utah opened its own health insurance exchange, focused on small employers.

The precise role and scope proposed for these institutions have changed over time and varied considerably by plan. The Clinton Administration envisioned alliances as the central insurance hub for most Americans, whereas the ACA's exchanges have a more limited role as a residual means to cover the uninsured—a scaling down that reflects lessons the Obama Administration learned from the Clinton reform misadventure about the political perils of alienating insured Americans (Oberlander 2010).

But the primary rationale for such reforms—leveraging the advantages of broader risk pooling—has remained consistent. The uninsured lack purchasing power in the non-group health insurance market, where they face discrimination based on health status and higher administrative costs. Similar problems confront small businesses buying coverage on the small group market (Jost 2012; Kingsdale 2012). If individuals in these groups can be pooled together

in larger numbers into a regulated insurance market, then risk can be spread more broadly and they should gain access to more affordable coverage. Administrative costs should also decline as larger scales are achieved and the costs of marketing, underwriting, and other expenses drop (Blumberg and Pollitz 2009; Kingsdale 2010; Cutler, Davis, and Stremikis 2010). In other words, purchasing pools aim to bring efficiencies of the large group market to small businesses and the uninsured. Advocates also contend that purchasing pools can enhance choice of health plans, ensure greater transparency, and save money by promoting cost-conscious consumer decisions and price competition among insurers (Enthoven 1993; Kingsdale 2010).

Purchasing pools have drawn support from Republican-allied stakeholder groups, including small business associations seeking better health care options for their members and private insurers enticed by the prospect of expanding markets. Not surprisingly, given the emphasis on choice, competition, and consumerism, as well as the reliance on private insurance, such pools have also attracted conservative policy analysts and Republicans seeking market-friendly policies to expand insurance coverage and control health spending. For example, the Massachusetts Connector derived from a Heritage Foundation proposal (McDonough et al. 2006). After the Massachusetts law passed, Heritage research fellow Edmund Haislmaier (2006) praised the Connector for advancing “consumer choice of plans and true coverage portability.” He argued that “governors and legislators would be well advised to consider this basic model as a framework for health care reform in their own states.”

Even during the intensely partisan debate over the ACA, purchasing pools remained a GOP favorite. A major Republican alternative to the ACA—the 2009 Patients’ Choice Act, co-sponsored by Senator Tom Coburn (Oklahoma) and Congressman Paul Ryan (Wisconsin),

subsequently the 2012 Republican nominee for Vice President—proposed creating state exchanges that would provide a “one-stop marketplace for health insurance” (Ryan 2009).

During the 2000s, liberal analysts and Democratic politicians also increasingly embraced purchasing pools as a desirable and politically feasible strategy to cover the uninsured (Meyer and Wicks 2003). Exchanges have remained a crucial component in health reform models since the 1990s largely because they offer a way to expand coverage while preserving private insurance—widely seen as the only viable path that reform legislation can take through Congress. Exchanges, in fact, draw political strength from a flexible identity: while their consumer choice dimension appeals to the right, their promise to regulate health insurers appeals to the left. They also promise to improve coverage for both uninsured individuals and small businesses, augmenting their ability to resonate with reformers of different ideological stripes and diversifying their political constituency. Purchasing pools consequently provide a vehicle to expand coverage that potentially has broad, bipartisan political appeal. That potential is evident in polling data. In a June 2010 Kaiser Family Foundation survey, 87% of all respondents—including 77% of Republicans—said they had a very or somewhat favorable opinion of exchanges, the highest level of support for any feature of the ACA (KFF 2010).

The 2006 Massachusetts reform law appeared to confirm the political logic of purchasing pools. Health reform legislation in Massachusetts enjoyed strong bipartisan support from Democrats, the state’s Republican governor (Mitt Romney), and GOP legislators. The law—which strengthened existing insurance market reforms and established income-related subsidies, an individual mandate to purchase coverage, penalties for employers not offering coverage, and a new insurance purchasing pool—passed the state House and Senate by a nearly unanimous vote (McDonough et al. 2006). Massachusetts thus provided Democrats with both policy and

political blueprints for passing health reform, since its enactment suggested that national health reform could be realized if Congress and the president emulated the state's successful formula (Oberlander 2010; McDonough 2011; Starr 2011).

The ACA and Health Insurance Exchanges

During the 2008 presidential campaign, the three top-tier Democratic candidates—Hillary Clinton, John Edwards, and Barack Obama—all offered variants on the Massachusetts model. Democrats, though, made one important addition to the purchasing pools: a Medicare-like, government health plan for Americans under age 65. For liberals, the public option provided that the uninsured could choose to join a non-profit insurance program that would not discriminate against sicker enrollees. Advocates also viewed the public option as the key to controlling spending: its lower administrative costs and greater purchasing power would produce savings and force private insurers to lower premiums or lose market share (Hacker 2008, 2009). Moreover, the presence of a public plan could promote competition in states where small numbers of insurers dominate the non-group market (Holahan and Blumberg 2009).

After the 2008 elections, exchanges remained a foundation of Democrats' health reform plans. But while the House passed legislation authorizing the federal government to operate a national insurance exchange that contained a public option, the Senate bill gave states responsibility for establishing and regulating the new insurance marketplaces, with the federal government stepping in only if states chose not to set up an exchange. It also omitted a new government insurance health plan. The Senate bill reflected the decentralizing preferences of

conservative Democrats like Ben Nelson of Nebraska and the need to mobilize all 60 Democrats to overcome a Republican filibuster.

Liberals who favored the House bill argued that states could not be trusted to enforce insurance regulation or implement federal law, and that a national exchange would create a more efficient and fair system—though the House bill did permit states to establish their own exchanges if they satisfied federal requirements (Jost 2010; Abelson 2010). Conservatives countered that the national exchange concentrated too much power in Washington at the expense of states. Ben Nelson warned that “the national exchange is unnecessary and I wouldn’t support something that would start us down the road of federal regulation of insurance and a single-payer plan” (Budoff Brown 2010).

Meanwhile, liberals saw a national exchange as an even more important goal after it became clear that the law would not include a public option because it could not clear the Senate. In negotiations between the two chambers to combine their respective bills, President Obama initially supported the House vision of a national exchange (Werner 2010). However, Ted Kennedy’s death and Scott Brown’s surprise victory in the Massachusetts special election cost Democrats their filibuster-proof majority in the Senate, upending Democrats’ intraparty negotiations and forcing them to fashion a new process to enact the law. White House Chief of Staff Rahm Emanuel was among those calling for Democrats to cut their losses and push for a smaller, incremental bill. Legislative leaders Nancy Pelosi (D-CA) and Harry Reid (D-NV) convinced President Obama to follow through with the more comprehensive reform (Budoff Brown and Thrush 2010). To do this, Senate Democrats passed the ACA using a budget reconciliation process requiring a simple 51-vote majority and House Democrats had to support the Senate’s bill without amendments and without the opportunity to negotiate in a conference

committee. This improvised process built around the Senate's bill had important consequences for the law's final shape, including a greater reliance on (McDonough 2011).

Reformers had, then, compelling political reasons to promote federalism by empowering state exchanges. Absent a significant role for the states, the ACA would not have passed Congress. But as Paul Starr (2011, p.2) notes, reformers had won "an uneasy victory" since the ACA's "implementation was left in large measure to governors and legislatures" committed to overturning Obamacare. Tim Jost (2010) presciently warned that adopting the Senate's version of reform 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.

The Role of States

States choosing to create an exchange faced at least five initial policy design decisions. First, they could set up a single state-wide exchange, run multiple exchanges for different parts of their state, or create a multi-state partnership. Second, states had to decide how aggressively to regulate their exchanges, either choosing a clearinghouse model in which any plan meeting minimal requirements is allowed to participate, or an "active purchaser" model in which only plans meeting a higher standard are allowed to participate. Third, an exchange could be designed as a non-profit corporation, a state entity, or a quasi-governmental organization. Fourth, states had to make decisions about governance, including whether to allow brokers and representatives of insurance companies to serve on the boards of directors. Fifth, states could set up separate exchanges for the non-group (individual) and small-group (business) markets, or develop one combined exchange.

Building on the federalism literature presented in chapter two, there are at least three policy reasons a state may want to take control of creating its exchange. Jones and Greer (2013) label these friction, churn, and take-up. First, each state has unique market characteristics which will be better reflected in policy designed at the state level. A federally created exchange will experience “friction” with existing state policies and contexts. For example, some states are dominated by a single insurer whereas others have more competition. States vary significantly in the number and scope of mandated benefits. Some argue that a federally facilitated exchange will not be customized to a state’s unique set of mandates but will apply the broadest set of mandates across the country, thereby raising premiums. In some states pre-existing condition exclusions or community rating will be new with the ACA, whereas others made these changes years ago. State-based exchanges can be designed with these variations in mind.

Second, creating an exchange at the state level will facilitate coordination with Medicaid and CHIP. This is particularly important given the concern that people with incomes fluctuating near eligibility thresholds will “churn” between programs, leading to disruptions in coverage and care.

Third, the success of an exchange will depend on whether individuals and small businesses participate. Experience with the early phases of Medicare Part D and CHIP suggest that take-up may be slow initially but can improve as policymakers focus on increasing enrollment (Jones and Greer 2013). Consumer outreach and education will likely be best directed at the local level. In addition to understanding their own markets, they can partner with local stakeholders who bring credibility and visibility. For example, the Boston Red Sox (2007) played a prominent role in publicizing Massachusetts’ exchange and the state of Oregon is

turning to Portland-based folk singers such as Laura Gibson to promote its exchange (Jenkins 2013).

Even if it eventually takes over control of its exchange at a later point, a state that inherits a federal plan will have lost the opportunity to make decisions which will dramatically affect both what the exchange strives to accomplish and whether it succeeds. This includes shaping whether the exchange is run inside government or as a non-profit organization, the role of the exchange in determining what plans can be sold, who can act as a “navigator,” the role of brokers, how the exchange is financed, and whether interest group representatives are allowed to sit on the board.

States choosing to move forward also need to make decisions about a myriad of technical details, particularly with respect to the creation of the complex IT infrastructure required for the exchange to succeed. Each exchange connects state and federal databases from multiple agencies in order to determine an applicant’s immigration status and income. Though the exchange is designed to connect people with private insurance plans, some states will also make it the primary portal through which people apply for Medicaid, CHIP, and other public programs, thereby increasing the technological complexity.

States have also been tasked with defining the essential health benefits package sold on their exchange (Bagley and Levy 2014). Approximately half the states selected a plan whereas half defaulted to the largest small-group product (Cassidy2013). It is interesting to note that more states chose to select their state’s benefit plan than to run an exchange.

To help states make these decisions and plan for the creation of an exchange, the federal government awarded three types of non-competitive grants: 1) a planning grant of approximately

\$1 million received on September 30, 2010 by every state except Alaska and Minnesota⁷; 2) an innovator grant ranging from \$6 million to \$54.5 million received by 11 states in February 2011, including a consortium of New England states administered by the University of Massachusetts (this grant aims to fund the development of IT infrastructure for exchanges and promote the sharing of IT models with other states); 3) level 1 establishment grants available on a quarterly basis and received by 36 states and the District of Columbia as of February 2013, at an average of about \$37 million; and 4) a level 2 establishment grant intended to carry exchanges to 2015 when they are to be self-sustaining. By April 2014, 15 states had received a total of \$2.6 billion in level 2 grants, averaging \$171 million per state (KFF 2014b). The final deadline for the level 2 grant initially was June 29, 2012 though the federal government subsequently extended this deadline to October 15, 2014. As Table 7 shows, many millions of dollars in planning, level 1 and level 2 grants were awarded to states that ultimately decided not to pursue implementation of state-based exchanges, although some of these grants were later returned.

These data reveal that an exchange was seriously considered by many states that ultimately opted for federal control. All but one received at least a planning grant, and all but 13 received a larger level 1 establishment grant. Applying for these grants did not require legislative approval, and therefore should not be taken as an indication that a bill could pass. But these grants did require a governor's signature, suggesting that there was at least some support within the executive branch and a belief that legislation could be passed.

⁷ After Mark Dayton (D-MN) replaced Tim Pawlenty (R-MN) as governor in January 2011, Minnesota applied for and received a \$1 million planning grant.

Table 7 - Federal Exchange Grants Awarded by Type of Exchange, as of March 2013

Exchange type	No grant	Planning but no level 1/2	Planning and level 1	Planning, level 1 and level 2
State			CO, HI, ID, MN, NM, UT	CA, CT, DC, KY, MA, MD, NV, NY, OR, RI, VT, WA
Partnership			AR, DE, IL, IA, MI, NH, WV	
Federal	AK	FL, GA, KS, LA, MT, ND, OH, OK, SC, TX, WI, WY	AL, AZ, IN, ME, MS, MO, NE, NJ, NC, PA, SD, TN, VA	

Source: Centers for Medicare and Medicaid Services (2014)

In the three years after the ACA’s passage in March 2010, floor votes were held on 27 bills in at least one chamber of 22 states⁸ (see Table 8). More than 60 bills to establish an exchange were introduced in other states but never received a floor vote (CBPP 2013). The roll call data indicate clear partisan differences, but also that Republicans were hardly unanimous in their opposition. On these bills, 91% of Democratic legislators voted in favor of legislation creating an exchange, compared to 42% of Republican legislators. However, while no Republicans voted for exchange legislation in New Jersey, Vermont, and West Virginia, approximately 90% of Republican legislators in Nevada and Hawaii voted to establish exchanges, as did more than 90% of Republicans in the lower chambers of the Alabama, Missouri, and North Carolina legislatures. Typifying the changing politics of health reform,

⁸ Democrats had majorities in 28 of 44 legislative chambers in these states, and shared control of the Oregon House with Republicans. Roll call data was compiled from the legislative website of each state.

overwhelming Republican majorities in Massachusetts (2006) and Utah (2009) voted to create purchasing pools prior to the ACA's enactment. It is important to remember that exchange bills were not identical across states, making it difficult to draw definitive conclusions about partisan differences by comparing roll call votes. Still, these votes underscore the lack of unity among Republicans and show how the debate over exchanges became more polarized along partisan lines following the ACA's enactment.

Table 8 - Roll Call of Floor Votes on Legislation to Create Exchanges, Pre-and Post-ACA

Pre-ACA

State	Date	Legislature (upper-lower)	Bill	Status	% R	% D
MA	April 2006	D-D	Ch. 58	Enacted	91.3%	100.0%
UT	March 2009	R-R	HB 188	Enacted	93.9%	96.3%
Total					92.6%	98.1%

Post-ACA

State	Date	Legislature (upper-lower)	Bill	Status	% R	% D
CA ^a	Sept 2010	D-D	SB 900	Enacted	2.4%	94.6%
CA ^a	Sept 2010	D-D	AB 1602	Enacted	4.8%	93.2%
MS ^b	March 2011	D-R	HB 1220	Passed, not law	59.8%	91.1%
WV	April 2011	D-D	SB408	Enacted	0.0%	97.8%
RI	April 2011	D-D	SB 87	Passed, not law	85.7%	80.0%
NM	April 2011	D-D	SB 38	Vetoed	21.3%	92.3%
MD	April 2011	D-D	HB166	Enacted	41.1%	94.7%
MO	April 2011	R-R	SB 609	Passed House	97.2%	96.4%
VA ^c	April 2011	D-R	HB 2434	Enacted	92.0%	35.6%
WA	May 2011	D-D	SB5445	Enacted	33.8%	97.6%
NC	May 2011	R-R	HB 115	Passed House	95.6%	34.6%
VT	May 2011	D-D	HB202	Enacted	0.0%	90.4%
CO	June 2011	D-R	SB11-200	Enacted	27.1%	98.1%
NJ	June 2011	D-D	A1930	Passed	0.0%	80.8%

				Assembly		
NV	June 2011	D-D	SB440	Enacted	88.9%	97.2%
OR	June 2011	D-S	SB99	Enacted	63.6%	95.7%
CT	July 2011	D-D	SB 921	Enacted	25.8%	94.2%
HI	July 2011	D-D	SB1348	Enacted	89.0%	100.0%
ND	Nov 2011	R-R	HB 1474	Failed House	14.5%	87.0%
MI	Nov 2011	R-R	SB 693	Passed Senate	50.0%	100.0%
AL	April 2012	R-R	HB 245	Passed House	92.4%	79.5%
NJ	May 2012	D-D	A2171/ S 1319	Vetoed	0.0%	87.5%
NJ	Dec 2012	D-D	A3186/ S2135	Vetoed	0.0%	89.0%
NM	Feb 2013	D-D	HB 168	Failed House	0.0%	79.0%
MN	March 2013	D-D	HF 5	Enacted	3.0%	96.0%
NM	March 2013	D-D	SB 221	Enacted	96.0%	84.0%
ID	March 2013	R-R	HB 248	Enacted	53.0%	95.0%
				Total	42.1%	87.5%

Source: Official web site of each state legislature

Note: Information current as of March 2013

^a Two companion bills were enacted the same day

^b Bill did not make it through a conference committee

^c Bill states intent to create an exchange, but does not authorize any particular action

Evolving State Reactions

The roll call data in Table 8 hints at the evolution of the Republican response to insurance exchanges. If we count only post-ACA votes in states where legislators in at least one chamber voted, 42% of Republicans voted for exchanges through February 2013, compared to an average of 93% in the two states with votes prior to the ACA. It is also telling that no state passed legislation to create an exchange between July 2011 and March 2013. The remaining states could not move forward until opposition had run its course.

The rest of this chapter outlines the changes in state decision-making over four distinct periods between the time that President Obama signed the ACA into law in March 2010 and the February 2013 deadline by which states had to declare their intention to pursue a state-run or partnership exchange. Initially, many Republicans pursued legal and legislative challenges to Obamacare while also moving ahead with exchange planning (1: March 2010-December 2010). But resistance emerged after the rightward shift in state legislatures following the 2010 elections (2: January 2011-October 2011) as a number of Republican-led states reversed their previous support for exchanges. Still, other GOP-led states embraced the concept. State Republican leaders had to decide whether to bet on the ACA's survival and pursue state planning for an exchange, even if they opposed Obamacare.

The Supreme Court case on the ACA's constitutionality and impending exchange deadlines dominated the third period (3: November 2011-June 2012) as resistance further hardened in some GOP-led states. A large number of Republican leaders tried to stall their state's decision-making, hoping they would be spared from making these choices. Democrats pushed hard to create exchanges, wanting to entrench a major element of the ACA in case the law was not upheld. The final period (4: July 2012-October 2013) encompassed reactions to the Supreme Court ruling upholding the ACA and to President Barack Obama's reelection. States that had waited were finally forced to make decisions regarding exchanges. Many asked for extensions so they could more seriously consider creating an exchange now that their opposition had failed. Wanting as many states to take control as possible, the Obama administration continually gave states more time to decide.

1) March 2010 – December 2010: Hedging Bets

Most Republican-led states initially responded to the ACA's enactment by simultaneously opposing it and laying the foundation for its implementation. At first, health insurance exchanges were not controversial. Every state except Alaska and Minnesota applied for and received an exchange planning grant of approximately \$1 million (Table 6), including all 20 states that joined the lawsuit in 2010 and the other six states that later joined the lawsuit in 2011. California became the first state after the ACA to pass legislation establishing an exchange, with Republican governor Arnold Schwarzenegger signing a pair of authorizing bills despite the opposition of Anthem Blue Cross and the Chamber of Commerce. Schwarzenegger had previously offered his own, Massachusetts-style health reform plan in 2007 and had endorsed the ACA. Upon signing the California exchange laws, the governor noted that after the 2007 plan had failed to pass the legislature, "we said, we'll be back" (Jewett 2010).

But as California was moving to implement exchanges and other states were accepting planning grants, many were also joining efforts to overturn the ACA. Republican leaders in 13 states filed a joint lawsuit challenging the ACA's constitutionality on the very day that President Obama signed the bill into law. Within two months, seven more states joined the lawsuit focused on the constitutionality of the ACA's individual mandate and Medicaid expansion. Ballot initiatives and constitutional amendments prohibiting a state-based exchange or "mandatory participation in any health care system" passed in Alabama, Missouri, Montana, Ohio, Oklahoma, and Wyoming (NCSL, 2013). Opposition to the individual mandate, which united state Republicans, thus overshadowed support for exchanges.

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 ARRA was signed, CNBC on-air editor Rick Santelli “ranted” 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 what he described as 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. Subsequent 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).

The growing Tea Party movement played an important role in many state elections. Running against Obamacare proved to be a successful strategy for Republicans in 2010, contributing to a major shift to the right across the country during the November elections. Republicans made extraordinary gains and reclaimed a majority in the U.S. House of Representatives, while significantly narrowing the Democrats' margin in the Senate. Republicans also performed well at the state level. The GOP enjoyed a net gain of six governors, 12 lower houses, and seven upper houses. When these leaders took office in January 2011, 29 states had Republican governors (in addition to a Republican-turned-Independent governor in Rhode Island), and 21 had unified governments with the GOP also controlling both legislative chambers. Republicans enjoyed strong majorities in the chambers they controlled, with an average margin of 33 in lower houses and 13 in upper houses (NCSL 2011).

Outgoing Democratic governors realized that the dramatic shift to the right in their states would have important consequences for the ACA's implementation. The deadline for major grants in late December 2010 gave them an opportunity to attempt to commit incoming Republican governors to following through on state exchanges. For example, outgoing Democratic administrations in Kansas, Oklahoma, and Wisconsin each applied for exchange innovator grants averaging approximately \$30 million.

2) January 2011 – November 2011: Republican Reversals

Early 2011 was the most active legislative period in the debate over the creation of state-level insurance exchanges (Table 8). Eight states passed legislation between January and July 2011 to create an insurance exchange (MD, WA, VT, CO, NV, OR, CT, and HI). This represents nearly two-thirds (8/14) of the states that ultimately created an exchange legislatively. Of these, Nevada was the only state with a Republican governor, though Democrats held significant majorities in both the House and Senate. Authorizing legislation passed at least one chamber in five other states (MS, RI, MO, NC, and NJ). Two more states (VA and WV) passed legislation either declaring their intent to create an exchange or to study doing so. After Hawaii in July 2011, legislation creating an exchange would not be enacted in any other state until Idaho, Minnesota, New Mexico did so in March 2013.

Newly elected Republicans faced the choice of whether to halt exchange planning altogether or continue laying a foundation in case the law survived. Even as most states followed through on their \$1 million planning grant, the total number of states suing over the ACA grew to 26, with 12 states considering state constitutional amendments prohibiting the individual

mandate. More than 200 bills and resolutions opposing the ACA were filed during this period, with bills passing in at least a dozen states (NCSL 2011). Most of this opposition dealt with the mandate or the ACA as a whole, not with the exchanges in particular.

Amidst the deepening opposition to the ACA and changed political environment, Republicans began to target exchanges. In February 2011, 21 GOP governors sent a letter to Secretary of Health and Human Services Kathleen Sebelius arguing that “the system proposed by the PPACA . . . will ultimately destroy the private insurance market.” The governors asked the federal government to waive a variety of ACA rules relating to exchanges and provide states with “complete flexibility” to operate the purchasing pools. They warned that if the federal government did not accommodate these requests, then “HHS should begin making plans to run exchanges under its own auspices” (Kaiser Health News, 2011). Indiana Governor Mitch Daniels, a signatory to the letter, charged that the ACA “expects to conscript the states as its agents in its takeover of health care” (Daniels 2011a).

In February 2011, Republican Governor Rick Scott of Florida made Florida the first state to return its \$1 million planning grant. He said he did not “want to waste either federal money or state money on something that’s unconstitutional,” (Sack 2011). On March 23rd, 2011, the one-year anniversary of the ACA, Louisiana Health and Hospitals Secretary Bruce Greenstein announced that the state would not establish an exchange and would instead return its \$1 million planning grant (NCSL 2011). These decisions came on the heels of the ruling by Roger Vinson on January 31, 2011 that the individual mandate was unconstitutional. He was the second federal judge to find the mandate unconstitutional, but the first to argue that the entire ACA should be struck down because the mandate was inextricably linked with the rest of the law.

In April 2011, Oklahoma Governor Mary Fallin announced that she was returning the \$54.6 million innovator grant received two months earlier. At this point this was by far the largest grant received by a state, and as of April 2014 was still the largest grant returned. One year earlier she had argued in favor of creating an exchange. In March 2010, after accepting the grant, Fallin wrote to the legislature that “[u]nlike the federal exchange Washington may try to force on us, the exchange we are trying to build offers a positive, free-market alternative to the big government, tax-and-spend plan that is the PPACA.” Republican legislative leaders did not agree and pressed her to return the money. Although the Republican-controlled House narrowly approved enabling legislation, Senate President Pro Tem Brian Bingman announced he would not even hear a bill to authorize an exchange. Fallin ultimately relented, saying that returning the money “accomplishes [her] goal from the very beginning: stopping implementation of the president’s health care exchange in Oklahoma.” Senator Bingman celebrated the governor’s subsequent decision to return the money, saying “it will serve as a defensive strategy that protects Oklahoma from the federal health care law,” (Kliff 2011).

The story of exchange planning and resistance in Kansas illustrates political dynamics in backpedaling states, including the intraparty divisions that often arose as the exchange debate unfolded. Before the federal Department of Health and Human Services (HHS) would award an innovator grant to Kansas, it wanted a statement of commitment from newly elected Republican Governor Sam Brownback. As a U.S. senator the year before, Brownback had been a vocal critic of the ACA and had voted against the law. He continued to speak out against the ACA after becoming governor in January 2011 and supported the new Kansas attorney general’s participation in the anti-ACA lawsuit. Yet on February 11, 2011, Brownback wrote a letter confirming his intention to allow the Kansas Department of Insurance to administer ACA-related

grants received from HHS. He described this as part of his “plan for Kansas to provide efficient management, coordination and appropriate oversight consistent with Kansas values of Kansas’s implementation of the Patient Protection and Affordable Care Act.”⁹ Five days later HHS announced that \$241 million in innovator grants had been awarded to 11 states, including \$31.5 million to Kansas. Brownback praised this decision, saying that leaders in Kansas had been talking about creating an exchange for a decade and that he took the grant “not to do Obamacare, but to use that to do an exchange that provides a market mechanism, because I think we could use more market forces in health care,” (Brownback 2011).

Republicans in the Kansas legislature disagreed with the governor’s logic and argued that accepting the grant required him to comply with and implement the ACA. Pressure intensified after at least 19 Kansan legislators, as well as Governor Brownback’s chief of staff and policy director, attended the American Legislative Exchange Council’s (ALEC) annual meeting in early August. ALEC’s *A Legislator’s Guide to Repealing Obamacare* urged states to not apply for any exchange grants and to return any they had received (ALEC 2011). At the ALEC meeting, participants heard from the Heritage Foundation’s Edmund Haislmaier, who emphasized the need for “an unrelenting fight [against Obamacare]” with “house by house, floor by floor, room by room combat,” and that “There will be numerous places and lines of attack where we can undermine this law,” (Mooney 2011). Michael Cannon of the Cato Institute argued at the meeting that refusing to pass legislation to set up an exchange is “the most powerful blow that a state can strike against Obamacare,” (Kaplan 2012) and that officials who signed the lawsuit and accepted exchange grants were violating their oath of office by implementing a law they believed was unconstitutional (Mooney 2011).

⁹ Letter dated February 11, 2011 from Governor Brownback to Insurance Commissioner Sandy Praeger, obtained through a freedom of information request under the Kansas Open Records Act.

Days after the ALEC conference—perhaps in response to arguments from conservatives, as well as pressure from Tea Party groups and some Republican state legislators—Governor Brownback announced he was returning the grant money. Kansas insurance commissioner Sandy Praeger, an independently elected Republican, criticized Brownback’s decision. She briefly continued to hold stakeholder engagement meetings to prepare for a state-run exchange should political conditions change.

The status of Kansas and Oklahoma as early innovators—two of only 11 states to receive awards to develop special IT systems—made their reversals particularly significant. However, while Republicans in these states were renouncing their original plans to create exchanges, other Republicans were moving forward. Wisconsin, the other Republican-led state to receive an innovator grant, was at this point still working to create an exchange. Some Republican leaders made quiet progress or let state agencies continue planning while governors themselves publicly disavowed the ACA. An advisor to a Republican governor in a western state noted that while “the lawsuit is basically a lottery ticket by which everything goes away,” the state still needed to make progress on the exchange in order to maintain autonomy in case the ACA survived (Interview August 2011). By November 2011, 13 Republican-led states had accepted \$194 million in establishment grants to create exchanges (Healthcare.gov 2012).

Republican governors such as Mitch Daniels of Indiana used executive powers to advance exchange planning. Daniels—mentioned at the time as a potential Republican presidential candidate in 2012—signed an executive order in January laying the foundation for an exchange. He noted that while many Republican governors “are hoping for either a judicial or legislative rescue from this impending disaster [of the ACA] ... we can’t count on a miracle... We have no choice but to prepare for the very real possibility that the law takes effect in 2014

(Daniels 2011a).” The order stated that “Indiana currently believes a State-created exchange protects Hoosiers from undue federal regulation,” and ensures that it will be a non-profit corporation with minimal regulatory powers (Daniels 2011b). However, Daniels also emphasized that Indiana still had to decide whether it was “appropriate” to proceed with an exchange. Subsequent efforts in 2011 to pass legislation establishing an exchange failed in the Indiana state legislature.

Elsewhere, the effects of the rightward shift after the 2010 elections reverberated even in states that voted to create an exchange. Colorado managed to pass exchange legislation even though only 13 out of 33 House Republicans voted for it and none of the 15 Colorado Senate Republicans supported the exchange. The bill had been introduced in 2010 with bipartisan support, including from Republican co-sponsor Amy Stephens, who in 2011 became House Majority leader. According to one state official, Stephens “totally under-estimated the opposition she would have from her party for being a sponsor on the bill”; opponents subsequently derided the bill as “Amycare.” But an unusual coalition of Democrats and Colorado business groups, including the Chamber of Commerce and the state chapter of the National Federation of Independent Business, came together to win approval of exchange legislation (Goldman 2012).

Exchange planning activity often occurred relatively quietly. An advisor to a Republican Governor in a western state reported that the intense rhetoric surrounding the individual mandate and the lawsuit required conservatives who wanted to create an exchange to walk a very fine line (Interview June 2011). In these conflicted states, officials tried to keep planning activities under the radar in order to avoid alarming conservatives whose opposition could, ironically, lead to imposition of a federal exchange. For example, Iowa Governor Terry Branstad publicly opposed

the ACA, but at the same time took steps to plan for a state exchange. Insurance Commissioner Susan Voss related that in one of their first meetings in 2011 Branstad said something to the effect of “I know I’ve signed the lawsuit and am speaking out against Obamacare—but can you get me the money Kansas just gave back?”¹⁰ The answer to Governor Branstad’s question was no, but Iowa was among the 29 states that applied for and received a multi-million dollar level 1 establishment grant by October 2011. Nine of these 29 states were plaintiffs in the joint lawsuit, 12 were led by Republican governors, and seven were entirely under Republican control.

By November 2011, 12 states had passed a bill creating an exchange and one governor had done so by executive order. Fourteen states had already committed not to create an exchange. This left 23 states as still undecided on the issue. As described in chapter one, the majority were led by Republicans, including 16 with Republican governors, and 19 with Republican control of at least one chamber of the legislature. Nine were led entirely by Republicans. Only two of these states were led entirely by Democrats. The states were split in how they would vote in the 2012 election, with nine voting for Barack Obama and 14 for Mitt Romney.

3) November 2011 – June 2012: Supreme Uncertainty

The Supreme Court’s deliberations on the ACA’s constitutionality loomed over this third post-enactment period. The Court’s November 2011 announcement that it would hear oral arguments the following March upped the ante for state policymakers, particularly given the start of most state legislative sessions in January/February 2012, impending primary and general

¹⁰ As told by Commissioner Voss in the opening plenary session of the 2012 AcademyHealth National Policy Conference.

elections throughout 2012, and the November 16, 2012 deadline by which states had to declare their intentions (just 10 days after the election) (Jones 2012). As an insurance official in Minnesota put it, “the stakes are higher as the deadlines loom larger. There is more stealth activity by bureaucrats trying to implement as much as they can” in case the law is struck down (Interview March 2012). Democrats became more anxious to pass legislation establishing state exchanges, while Republicans became emboldened in their attacks and increasingly embraced delay tactics.

The case for delaying exchange implementation gathered additional steam as word spread among conservatives that a glitch in the ACA could make it impossible for people to receive insurance subsidies in a federal, as opposed to state, exchange. While the ACA’s text refers to premium tax credits available in state exchanges, it does not explicitly do so for federal exchanges (Adler and Cannon 2011). Legal scholars such as Tim Jost (2011) argued that in practice this drafting error will not actually prevent uninsured persons from obtaining subsidies in federal exchanges. But some conservatives believed they had discovered another legal Achilles' heel in Obamacare.

The idea (or myth) that states could stop the ACA’s insurance expansion by not creating their own exchanges intensified conservative resistance to implementation efforts. The Cato Institute’s Michael Cannon was quoted by citizens in public hearings in at least four states (Michigan, Missouri, New Hampshire, and Pennsylvania) arguing that “states have the collective power to deny the Obama Administration the legal authority to dispense more than a half-trillion dollars in new entitlement spending, to expose the full cost of the law’s mandates and government price controls, as well as to enforce the law’s employer mandate – simply by not creating exchanges” (Cannon 2011a and 2011b). Cato and ALEC—the aforementioned

conservative group that authored the *Legislator's Guide to Repealing Obamacare*—sent analysts to visit Republican state legislators and persuade them to follow a path of “absolute non-collaboration” with the ACA, including boycotting the exchanges (Feder and Millman 2012).

Conservative resistance to moving ahead with exchanges thus strengthened in many states during this period. Exchange implementation ran into trouble even in states that had received federal planning grants. The New Hampshire Executive Council¹¹ blocked the \$1 million planning grant the state had been awarded. Similarly, the Michigan House prevented the Department of Licensing and Regulatory Affairs from spending its \$10 million establishment grant and the Missouri legislature stopped the Health Insurance Pool from spending its \$21 million establishment grant. In April 2012, the Missouri House also passed a bill declaring that any “official, agent, or employee of the United States government who undertakes any act within the borders of this state that enforces or attempts to enforce any aspect of the federal Patient Protection and Affordable Care Act is guilty of a Class A misdemeanor,” (MO HB 1534 2012). This despite voting unanimously one year earlier to create the Show-Me Health Insurance Exchange “to comply with the requirements of the federal Patient Protection and Affordable Care Act,” (MO HB 609 2011).

Scott Walker of Wisconsin remained one of the last hold-outs among the conservative governors, keeping large amounts of grant money and maintaining support of the establishment of a state exchange. However, pressure from within his party increased so that by December 2011 Walker announced that although he was not returning the \$38 million grant the state had received, he was halting all implementation activities until after the Supreme Court ruling.

¹¹ The structure of New Hampshire's state government is unique, including the largest legislative body in the country (a 400 member House of Representatives) and an Executive Council (a five-member panel serving as an additional check on the Governor's power). Contracts exceeding \$5,000 and money appropriated outside the regular budget cycle require approval by the legislature's Joint Fiscal Committee and the Executive Council.

Walker soon backpedaled even further in the face of increased pressure. Tea Party members sent him envelopes full of strings to symbolize the strings they believed were attached to federal money, and in January 2012 Senator Frank Lasee (R), Chair of the state Senate Insurance Committee, announced that he would not allow exchange legislation to progress (Nocera and Millman 2012). Meanwhile, Walker's Democratic opponents collected one million petition signatures in response to the labor disputes of 2011, surpassing the threshold to trigger a recall election. Two days after the signatures were delivered, Governor Walker announced that he was giving back the innovator grant to HHS. The recall efforts may have pushed him further to the right on the exchanges. Given the need to raise large amounts of money, Democrats speculated that he wanted to free himself of any baggage that may have troubled Tea Party groups from whom he hoped to solicit help in the recall election (an election he went on to win).

The standoff in Ohio is another good example of the division among Republicans over an insurance exchange during this period. Republican Lieutenant Governor Mary Taylor was an outspoken critic of Obamacare who opposed the creation of an insurance exchange. Although fellow Republican Governor John Kasich also opposed the ACA and ensured that the new Republican Attorney General signed the lawsuit immediately after he took office, he supported a state exchange in order to avoid ceding control to the federal government. Their difference would not have mattered except that in Ohio, the Lieutenant Governor is given control of a state agency; Mary Taylor was in charge of the Department of Insurance. In other words, if Governor Kasich went forward with an exchange, that would mean putting a strong critic in charge, giving Taylor a new role, or somehow creating a state insurance exchange without involving the insurance department. None of these options was deemed feasible and progress on an exchange thus stopped in Ohio before it ever began (Interviews November 2011).

Rising opposition to exchanges promoted concern from health care stakeholders. In fact, in some cases, groups opposed to the ACA—such as chambers of commerce and NFIB chapters—strongly encouraged states to create their own exchanges. They feared that moving control from state capitals to D.C. would result in stricter regulation and rules unfavorable to local market conditions. Segments of the insurance industry, which could profit from expanding markets, also supported the exchanges and in some cases worked to advance their creation. The Blue Cross and Blue Shield Association hosted a meeting in November 2011 for its member plans on how to overcome conservative state opposition to exchanges, including using potentially more positive terminology such as “marketplace” (Nocera 2011).

Other Republican-led states continued to apply for exchange grants. On February 22, 2012, HHS announced that it had awarded 10 more level 1 establishment grants, bringing the total number of states to 34. Pennsylvania and Tennessee, two of the new grantee states, were led entirely by Republicans, and Republicans controlled either the executive branch or at least one chamber of the legislative branch in five other grantee states.

Finally, some governors asserted executive power to circumvent legislatures. Andrew Cuomo (D-NY) and Steve Beshear (D-KY) issued executive orders establishing an exchange, thereby surmounting opposition by Republicans in their state’s legislature. In New Jersey, Republican Chris Christie went the other direction, vetoing exchange legislation passed by Democratic majorities in the General Assembly and the Senate. Christie’s rationale for the decision epitomized the influence of the Supreme Court case on state Republicans. He argued that the ACA’s constitutionality “is cloaked in uncertainty” and “[b]ecause it is not known whether the Affordable Care Act will remain, in whole or in part, it would be imprudent for New

Jersey now to create an exchange before these critical threshold issues are decided with finality by the court” (Christie 2012).

In summary, Republicans were still divided over what to do about the exchanges. However, the division was not the same in early 2012 as in late 2010. A number of early advocates switched to opposition, while some early opponents switched to implementation. Meanwhile, many Republican state leaders remained in a holding pattern, waiting to see if the Supreme Court would overturn the ACA or if the 2012 elections would enable the GOP to repeal the law.

4) July 2012 – October 2013: Decisions and Deadlines

On June 28, 2012, the Supreme Court issued its much-anticipated ruling on the constitutionality of the Affordable Care Act. With Chief Justice John Roberts writing for a 5-4 majority, the Court ruled that the individual mandate was functionally equivalent to a tax, making it constitutional under Congress’s power to levy taxes (KFF 2012). Obamacare had narrowly survived. However, in a surprise move, the Court also found that the ACA’s Medicaid expansion coerced states and that the federal government could not take away existing Medicaid payments from states that didn’t expand their programs. The ACA’s Medicaid expansion effectively became optional for states, opening up another, unexpected front in state resistance to health care reform.

The Court ruling upholding the ACA meant that one of Republicans’ major hopes for overturning Obamacare had evaporated. Seeking to win over more states, the Obama administration announced the day after the ruling that it would extend the deadline for the level 2

establishment grant through December 2014—despite the fact that the extension in effect rewarded states that resisted the strongest. Yet the administration offered opposing states a new way out of their dilemma. In August, HHS released final rules for Partnership Exchanges in which states would operate exchange functions related to insurance plan management and consumer assistance while allowing the federal government to take responsibility for other functions, such as establishing the necessary IT infrastructure. The partnership option provided a potentially attractive way forward for states that were unable to implement a state-based exchange in 2013 yet unwilling to cede all operational responsibility to the federal government.

Even so, the landmark Court decision had little impact on state exchange activity. States that had enabling legislation or an executive order continued to actively implement their exchanges, while states that had delayed making a decision continued to wait. Even after the Court's decision, many Republican state leaders still hoped that the 2012 elections would lead to the ACA's demise.

President Obama's reelection four months later, along with the Democrats' expansion of their Senate majority, at least momentarily transformed the politics of health reform implementation. The ACA would most likely not be repealed and its major provisions, including the exchanges, would go forward (Oberlander 2012). Since uncertainty over the ACA's long-term fate had been essentially had significantly decreased, it was much harder for states to hedge their bets. The GOP would have to live with Obamacare, and state Republicans had little time to accommodate that reality—the deadline for submitting a blueprint for a state-based exchange came just 10 days after the November 6th election.

Republican-led states reacted in different ways to the changed landscape. Republican governors such as Terry Branstad (IA), Bill Haslam (TN), and Bob McDonnell (VA) considered moving forward, but ultimately decided not to pursue state exchanges. The Republican Governors Association asked for more time to decide, as well as for answers to what they considered unresolved questions. The Obama Administration tried to convince these states to build their own exchanges—just as it did immediately after the Supreme Court ruling by extending key deadlines shortly after the November elections. Secretary Sebelius (2012a) responded that states were still required to submit a letter of intent by November 16th but could wait until December 14th to submit a blueprint for a state-based exchange and until February 15, 2013 to submit a blueprint for a partnership exchange. On the eve of the November 16th deadline, Secretary Sebelius (2012b) told states that they could also wait until December 14th to submit letters of intent. By mid-January, HHS’s message was that “there is no deadline,” and that states could at any point decide to take control of their exchanges (Pear 2013).

At this point Florida governor Rick Scott, an ardent ACA opponent, expressed a willingness to consider creating an exchange. He told a reporter that “The election is over and President Obama won. I’m responsible for the families of Florida...If I can get to yes, I want to get to yes,” (Baker 2012). Governor Scott met with Secretary Sebelius in early January 2013 but ultimately did not submit proposals for either a state-run or partnership exchange. In fact, only three Republican governors newly decided to pursue a state-based exchange following the 2012 elections: Governors Rick Snyder (MI), Susana Martinez (NM), and Butch Otter (ID). Subsequent chapters describe in depth the debates that took place in these states leading to state-run exchanges in Idaho and New Mexico, but a federally run exchange in Michigan.

Finally, in some states Republican opposition to an exchange hardened following the elections. In North Carolina, outgoing Governor Beverly Purdue (D) had earlier submitted plans to run a partnership exchange and had accepted a level 1 establishment grant to finance planning efforts. North Carolina Republicans, though, won the governorship in the 2012 elections and strengthened their majority in the legislature. In 2013, the state House and Senate quickly passed legislation aimed at preventing North Carolina from participating in a partnership exchange, and Governor Pat McCrory (R) announced his opposition as well. Mississippi, discussed in chapter four, is another example of a Republican governor hardening his position in the period after President Obama's re-election.

Even after the Supreme Court ruling and 2012 elections ended Republicans' dream of repealing Obamacare before implementation of major provisions, GOP opposition to exchanges remained strong. Out of 30 states led by Republican governors when open enrollment began in 2013, only four are creating or working to create their own exchanges. Other Republican leaders are focusing on alternative ways of undermining the exchanges, including limiting Congressional appropriations for their operation and challenging the federal government's legal authority to provide subsidies in exchanges not run by states (Cannon 2013).

Conclusion

Health insurance exchanges started as a relatively uncontroversial part of the ACA. While provisions such as the individual mandate and public option attracted considerable controversy, the idea of creating state-run, regulated insurance marketplaces for the uninsured and small businesses appeared to have broad bipartisan appeal. States were widely expected to

jump at the chance to operate their own exchanges and even states whose leaders opposed the ACA were presumed to prefer running exchanges to surrendering control to Washington.

Ensnared in a broader partisan struggle over the ACA, exchanges became another front in the battle over the role of government. Exchanges became controversial largely because they suffered from guilt by association—with President Obama, Democrats, and Obamacare. Giving states control over establishing exchanges was supposed to promote decentralization and dampen charges of a federal “takeover” of the health system (Sparer 2011). But that embrace of federalism became a source of tension (Jennings and Hayes 2010). Exchanges emerged in many states as unlikely targets of the fervor against Obamacare; instruments of compromise were transformed into objects of conflict. Opponents took advantage of the legislative process required to authorize exchanges to refight the health care debate. In a polarized political environment, even popular, seemingly benign reforms can appear to ACA opponents as serious threats and slippery slopes leading to socialized medicine.

Yet, this chapter hints at the other important factors affecting state decision-making, foreshadowing the conclusions of the subsequent case study chapters and reinforcing the need for an integrated framework (chapter two). A governor’s support was a necessary, but not sufficient condition for the creation of an exchange. Legislators and bureaucrats were key voices in this debate, as were the many interest groups operating in each state. The Tea Party played a particularly important role in many Republican-led states, with a relatively small number of grassroots activists able to influence policymakers through sustained and vocal opposition. A state’s prior policy decisions, as well as its institutional design, affected who was empowered to make decisions and the range of options available. All of these internal state conflicts took place

within the same national context, with the federal government struggling to incentivize more states to take control.

With this 50-state overview as a foundation, the next two chapters examine the process that led Mississippi and Michigan to reject establishing an exchange. These two states arguably came closer than any in the country to deciding to maintain control. The following chapters explore the debate that led to Idaho and New Mexico deciding to run their own exchange. These were two of the final states that decided to create an exchange. In depth case studies of these four states will allow for a more thorough exploration of the patterns highlighted in this chapter.

Chapter 4 - Michigan

Introduction

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.

Michigan's role in national politics might have suggested a political environment open to implementing the ACA. Every Democratic 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

Table 9 – Michigan’s Political and Demographic Context

Political Environment

- 2012 presidential election: Barack Obama (54%)
- Governor
 - 2003-2010: Jennifer Granholm (D)
 - 2011-present: Rick Snyder
 - Yes term limits
- Michigan House of Representatives
 - 2011-2012: Republican majority of 16
 - 2013-present: Republican majority of 8
 - Yes term limits
- Michigan Senate
 - 2011-2012: Republican majority of 24
 - 2013-present: Republican majority of 24
 - Yes term limits

Demographics & Health Status

- Total population: 9,714,000
- Distribution of Population by Federal Poverty Level
 - Under 100%: 19%
 - 100% - 138%: 7%
 - 139% - 399%: 40%
 - 400%: 34%
- Distribution of Health Insurance Coverage
 - Employer: 50%
 - Other private: 5%
 - Medicaid: 17%
 - Medicare: 15%
 - Uninsured: 12%

Health Reform

- Joined lawsuit against the ACA
- Federal exchange
- Expanding Medicaid

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 national debate over health reform. Rep. John Dingell (D) of Dearborn, who in June 2013 became the longest serving member in Congressional history (Spangler 2013), 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. Dingell, Conyers, and Levin 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 March 23, 2010.

Not all members of the Michigan congressional delegation were as supportive of the ACA as were Dingell, Conyers, and Levin, indicating that residents in parts of the state would likely not be supportive of its implementation. Bart Stupak famously 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. Dave

Camp was the ranking Republican on the House Ways and Means Committee throughout the legislative debate over the ACA and took over as Chair when Republicans won control of the House in 2011. He 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).

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? Following the same outline as chapter three’s 50-state overview, this chapter discusses the evolution of the debate over a health insurance exchange in Michigan through four time periods between March 2010 and October 2013 (see Appendix C for a timeline of key events in Michigan).

1) March 2010 – December 2010

The reaction in Michigan to the passage of the Affordable Care Act was sharply divided. 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 constitutionality of the ACA’s individual mandate and Medicaid expansion (Keyes 2010). Governor Jennifer Granholm (D) argued that Cox did not have the authority to join the lawsuit without her approval. There was little she could do to stop him, though she did take steps to lay the foundation for the ACA’s implementation during the last few months before she was term-limited out of office.

Granholtm Prepares for Implementation

On March 31st, Governor Granholm 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 would benefit Michigan, and that critics were spreading misinformation for political gain (Gaddis 2010). Janet Olszewski, the cabinet-level official in charge of the Department of Community Health (DCH), was charged with leading the council and facilitating coordination between state agencies. DCH was awarded a \$999,772 planning grant on Sept 30, 2010 to do preliminary analysis and involve stakeholders. Input was solicited from a variety of groups, including hospitals, providers, small businesses, insurers, unions, and consumer advocates.

Secretary Olszewski submitted the Council's report to Governor Granholm on December 2, 2010. The report recommended that administering its own exchange would put Michigan in a better position to coordinate eligibility with Medicaid and MICHild (the state's CHIP program), "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," (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 said 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 this timeline.

Growth of the Tea Party

While Governor Granholm's administration laid the foundation for the ACA's implementation in Michigan, political battles over its existence continued in full force. Opposition to the law coincided with the growth of the Tea Party in Michigan. In the days immediately after Rick Santelli's "rant" on the floor of the Chicago Stock Exchange in February 2009, a small group of Michiganders used Twitter and Facebook to organize themselves and hold rallies across the state (Kremer 2009).

As health reform was making progress in Congress, Tea Party groups began transitioning their focus from the stimulus to opposing what they labeled "Obamacare." 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. Congressman John Dingell's town hall meeting in Romulus was a dramatic example of the growing level of animosity over health reform in the state. Audience members yelled out of turn, got in his face, and said things like "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!" This month of direct confrontation ultimately did not derail national attempts at reform,

though it gave the growing Tea Party movement in Michigan an increased sense of purpose and confidence.

When the ACA was enacted the following March, Tea Party leaders began a petition drive to put the issue on the November 2010 ballot. A team of 300 volunteers collected approximately 150,000 signatures by July, falling 200,000 short of the state's requirement to put an initiative on the ballot. Jack McHugh, the senior legislative analyst at the Mackinac Center for Public Policy, was part of this effort and responded that "Politicians who read this as public acceptance of the new law do so at their peril," (Gantert 2010).

Despite this failure, Tea Party groups formed the Mobile Action Patriot Strikeforce (MAPS) to try to influence the Republican primaries in August. MAPS built on "The Tea Party Activist Toolbox" published in 2009 by Jack McHugh of the Mackinac Center for Public Policy. The tool kit called for an aggressive style, saying 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," (Braun and McHugh 2010).

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. Among the candidates for governor was Attorney General Mike Cox who accused others in the race of "failing to stand up against Obamacare," as he had done by signing the lawsuit (Cox 2010). Rick

Snyder was arguably the least conservative Republican in the field, but emerged as an outsider, winning the primary and general elections.

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. The switch of party control in the House was dramatic and without recent precedent. Democrats went from a majority of 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 had 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 a large percentage of members would be new to the issue of health policy. The membership of each chamber's health policy committee experienced 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 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 there were 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.” This environment gives interest groups greater leverage because “nobody knows enough to push back,” (Interview June 2011).

As the new session was set to begin in January 2011, the foundation for political battles over an 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, debate over the ACA was still focused on the mandate. Most policymakers were not talking about an exchange and those who were would soon be out of power.

2) January 2011 – October 2011

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, 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 told state leaders 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 and work in DCH as one of the new administration’s leaders on the ACA’s implementation. Steven Hilfinger, Director of the Department of Licensing and Regulatory Affairs (LARA) became another point person on the issue.

A Lansing-based consultant firm (Public Sector Consultants) was tasked with facilitating work groups to develop consensus about a health insurance exchange among a wide range of stakeholders. An advisor to Governor Snyder described this process as a way of finding out where everyone stood: “It is always better to bring people, interest groups in from the beginning of the process rather than impose something them, because no matter what 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 final report was issued on June 17, 2011 detailing recommendations, with more than 50 receiving unanimous or "near-unanimous" support. 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 or group was opposed to Michigan taking control of its exchange (PSC 2011). These recommendations were then presented to the legislature.

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 business leader described support as a matter of pragmatism:

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. An insurance leader 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).

As important as this show of interest group support was, it was not clear which recommendations Governor Snyder would adopt and how the legislature would respond.

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 describes 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 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 insurance (Snyder 2011b).

The debate over the content of the 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).

Chris Priest 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 in fact used, but mostly as context for introducing the governor's proposal for an exchange called "The MI Health Marketplace," (pronounced My Health Marketplace).

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.¹² These events were coordinated with legislative leaders so that 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 the Senate Health Policy and Insurance 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 asked 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 timeline recommended by the Granholm administration, challenging the legislature to have a bill on his desk by Thanksgiving. A key staff person for the House Health Policy Committee (the committee which ultimately defeated the legislation) described that "Our goal is to have our legislation on the governor's desk by Thanksgiving. That

¹² 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).

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 member of 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 do 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 advocated 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 Governor Snyder advanced plans to create an exchange, opposition to the ACA continued to grow. Animosity came most strongly from three sources: 1) national organizations, 2) the Mackinac Center for Public Policy (pronounced Mack-in-awe), and 3) grassroots organizations. First, Governor Snyder resisted pressure from national groups such as CATO, ALEC, and the Republican Governors Association, to return money or otherwise 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). 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).

Opposition at the state level was most prominently driven by the Mackinac Center for Public Policy. Based in Midland the Mackinac Center has been called the "the largest right-wing state-level policy think tank in the nation," (Steimel 2013). The Center is 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 such as CATO. In these reports, McHugh argued that creating an exchange would “lend the appearance of legitimacy to the law,” thus undermining the judicial challenge (McHugh 2011a). He also argued that “there is no such thing as a state-run exchange” since everything needs to be approved by the federal government and because interest groups would have too great an influence (McHugh 2011c). These articles published by the Mackinac Center became the basis of the arguments used by the Tea Party and opponents of an insurance exchange.

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. An estimated 3,000 people filled the Capitol Building protesting the law the day Snyder signed the bill into 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

November 2011 was an important turning point in the debate over whether to create 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 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. It was not

immediately apparent that 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, in part due to his campaign promise to change the way business is conducted in Lansing. As one Republican Senate staff member described, there was “an expectation that once he arrived they would teach him what is going on and 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, 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 others in 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, including the emergency manager bill already discussed and 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 set 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 (Interviews 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 are on the ballot every two years (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, rather trying 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. 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 calculus was similar in the Senate, with only eight Republicans needed to join the 12 Democrats.

An advisor to Governor Snyder 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). 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 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 (Colbeck 2011).

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. On her blog the next day, Tea Party activist Joan Fabiano said this was because the Senate pushed the bill

through without normal debate. Fabiano was one of the original leaders of the Tea Party movement in Michigan and was connected online to other activists. 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 principles," (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).

The attacks became personal when Senator Rick Jones reacted to Fabiano's post by writing her 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 closed 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 of an exchange by representatives of state agencies, practitioners, insurers, businesses, and consultants working in other states. The meetings also provided an opportunity for citizens to offer brief testimony or file a written statement indicating their support or opposition of an exchange. Despite having so many hearings, no vote was ever announced during this period.

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. 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 run 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 made the case 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 (see Figure 3 in chapter 2). Only nine states had sessions running into July and the Supreme Court’s ruling was expected at the end of June, meaning that 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 2012). 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.

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. 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). Opponents admitted that they had little to lose by stalling since they did not believe they would gain much control if they did an exchange anyway (Interviews 2011-2013).

House Republican leaders were also aware that creating an exchange brought little political benefit but potentially significant 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 Republican senior staff member 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

announced that 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 2014). 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 the 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, authorizing LARA to spend the \$9.8 million level 1 grant it had just been awarded (MI Senate Roll Call #675 2011). 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 access to this planning money. 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 testimonies.

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. Members of the Lakes Area Tea Party had a table near the room’s entrance containing literature against an exchange. 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.¹³ 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 a 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.

¹³ 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”.

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. A previous example of Tea Party mobilization occurred two months earlier, on October 17, 2011. Fabiano called for the Tea Party movement to engage in “focused activism” directed entirely at stopping SB 693. She wrote that “Attendance at a Committee 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). This meeting was a dramatic example of the Tea Party’s ability to mobilize attendance at legislative meetings.

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 that an 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 the state on a dangerous path. One person

strangely 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.

It is hard to gauge 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. However, 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 – October 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 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 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 opposed 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 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 Lamé 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 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 ten days away, 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 published 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 a federal exchange would have limited choice, whereas an exchange run by Michigan would be open, religious liberties would be protected, and the state could ensure that agents and brokers play a role as navigators. Finally, he warned that a federally run exchange would be a slippery slope towards a single-payer system (Bolger 2012).

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 legislators 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 in October

2013. 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 position 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. According to a comment 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 at this meeting on November 29th was described by some participants as a perfect storm of multiple factors (Interviews 2012-2013). 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 threatened 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 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 proceed. 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 an exchange instead of maintain the Right to Work boycott, though some were not sure they still wanted to given the abortion connection. 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 to creating an exchange and five in favor, with two abstaining, one not registering a vote, and two being absent (Table 10). This vote effectively killed SB 693 and Michigan’s prospect of running its own exchange. The bill was much closer to passage than this vote makes it appear. 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 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 voted no but had supported an exchange and likely would have voted in favor of SB 693 had it not been tie-barred to abortion.

Table 10 - 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, R
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 (Burns 2012). Instead, Rep. Womack stopped attending meetings 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.¹⁴ After the electoral loss, he stopped attending hearings altogether, missing every meeting of his three committee assignments between August and December 2012.¹⁵

Rep. Lesia Liss (D) was the other Democrat not to show. This was noteworthy given her role as the minority vice-chair on the committee and that 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 after her defeat - 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 voted 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

¹⁴ 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.

¹⁵ Determined using the minutes for each of the meetings for his three committees during this period.

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,” (McGillivray 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 have passed. 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).

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. This time the application was to support the creation of a partnership exchange. At least one legislative 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 which the Snyder administration would focus on in a partnership, such as plan management and consumer assistance (CMS 2014). 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 its \$30.7 million level 1 grant on January 17, 2013 (CMS 2014), 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 intention 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 the fourth 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 implement such an exchange. The interest groups supporting an exchange were optimistic the legislature would approve the funds for three reasons. First, they noted that the House was more moderate in 2013 than in the previous two years, with the Republican margin having been reduced in half by the 2012 elections (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 Democrat 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 it would do the same with latest grant. As a result, they did not lobby the Senate as aggressively as they had the House (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 out 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 began operating on January 1, 2014, it was not run by the state or as a partnership, but was part of the federal exchange.

Early Results of Michigan Exchange

The writers of the ACA did not anticipate that more than half the states would reject maintaining control. As a result, the law technically only allocates money for outreach and enrollment to states creating their own exchange. HHS had to take money from the Prevention Fund and other parts of its budget in order to provide funds for these states (Reichard 2013). Whereas nine of the states choosing to operate their own exchange received level 2 establishment grants of more than \$100 million to fund outreach (KFF 2014b), the 27 states using the federal exchange needed to split \$67 million (CMS 2014).

Four organizations in Michigan received a combined total of \$2.5 million for outreach. Only one, Michigan Consumers for Healthcare, is working statewide, with the rest operating solely in southeast Michigan (CMS 2014). The state would have had access to more money for outreach if the legislature had appropriated the level 1 grants the Snyder administration sought

and received. The Obama administration indirectly provided help for ten states led by Republican governors, including Michigan. Enroll America, an organization run by President Obama's former Director of Public Engagement Anne Filipic, sent paid staff and volunteers throughout the country to encourage people to sign up for insurance on healthcare.gov.

Compared to some states where there is very little competition (such as Mississippi as described in the next chapter), Michiganders are able to choose from an average of 43 plans from ten insurers. This varies by part of the state, with some areas having as few as five plans and some as many as 55 (Fangmeier *et al.* 2013).

More than 270,000 people in Michigan selected a plan through the exchange during the first open enrollment period ending March 31, 2014. Although this is only 38% of potential enrollees, it was the 6th highest percentage in the country, and the second highest of any state not running its own exchange.¹⁶ Michigan enrolled a higher percentage of potential enrollees than twelve states that created their own exchange (KFF 2014c).

Conclusion

Michigan very nearly became the first state led entirely by Republicans to create either a state-based or a partnership exchange. 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 have passed the bill. From there, it may have passed on the floor of the House for Governor Snyder to sign. 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

¹⁶ Or third highest counting Idaho which is a state-run exchange relying on the federal website.

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 unwilling to take another vote on the exchange. If the chambers had been able to agree at the same time, Michigan would have created a partnership exchange. Instead, it is one of the 34 states that ceded full control to the federal government.

At first glance it may seem that partisanship explains Michigan's decision: the state is led by Republicans and Republicans generally oppose Obamacare, therefore Michigan chose to reject a state-based exchange. However, partisanship is an incomplete explanation which does not capture how close Michigan came to passing authorizing legislation. This answer is also inadequate given that a few months later the same Republican governor signed legislation passed by the Republican-controlled legislature to expand Medicaid as part of the ACA. Instead, I rely on the integrated framework articulated in chapter two to highlight the multiple facets of this decision.

Federalism Context

The expectation among national Democrats passing the ACA was that states would appreciate the flexibility to implement the law according to local conditions, and therefore nearly all would choose to run their own exchange. This expectation was consistent with regular requests from conservative leaders for greater autonomy at the local level. However, the federalism literature suggests that policymakers on each side of the political spectrum may argue for a greater or lesser role for states depending on their policy and political goals. This tension is inherently built into the debate over an exchange given that the consequence for opposition by

Republicans is a greater role for the federal government. Governor Rick Snyder argued that the exchange would be more consumer-friendly and tailored to local market conditions if run at the state level. However, opponents did not frame the debate in these terms. They argued this was a federal overreach either way and that it would make no difference who ran the exchange, the state would only have nominal flexibility. Believing this also meant that they did not have much to lose by gambling that the administration was bluffing and not capable of simultaneously creating exchanges in dozens of states.

Feeding their skepticism was the fact that HHS delayed issuing the final regulations until after the November 2012 elections. A Republican staff member described the November 2012 committee vote saying, “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 more of the questions that were asked about how the exchange would operate and that they could have had these answers if the federal government had been faster at issuing regulations (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).

This posed a challenge for the Obama administration, particularly in the context of executive or administrative federalism in which negotiations primarily take place between the executive branch agencies at each level (Gais and Fossett 2005; Metzger 2008; Gluck 2011; Weissert and Weissert 2012). HHS worked closely with the state agencies of the Snyder administration, and even with a handful of legislators who supported creating an exchange, but they had a harder time engaging with opponents in the legislative branch. Who should they

negotiate with and what should they offer? Republican leaders in the Michigan House refused to cooperate on an exchange until each of the safeguards against federal encroachment described by Bednar (2009) had been exhausted. They would not even hold a committee vote until the Supreme Court ruling and the results of the 2012 presidential election forced the issue. It is unlikely that anything could have convinced them to take a different approach.

The other dilemma faced by the Obama administration was whether to be firm on deadlines and let states deal with the consequence of a federal takeover 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. The debate over whether to create the 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. Ironically, federal flexibility on deadlines emboldened opponents to further resist an exchange. Business leaders and consumer advocates say they heard many opponents question why they should believe HHS on anything since they continued to give in (Interviews 2012-2013). Opponents believed HHS lacked the will and the capacity to create three dozen exchanges simultaneously.

State Context: Path Dependence

An insight from the path dependence literature is that the policy itself is an important element of the political debate. The actual bill put forward by Senator Jim Marleau that passed the Senate and nearly passed the House Health Policy Committee was for a very conservative model of an exchange. The MiHealth Marketplace would have been a clearinghouse in which any plan meeting basic federal criteria would be allowed to participate. Stakeholder groups with a vested interest in the exchange would be allowed to sit on the board, with the role of brokers and agents being protected. It would be run as a non-profit housed outside of government rather than within a state agency or as a quasi-governmental entity. These specific elements of the policy proposal were extremely important for winning the support of Governor Snyder and the Republican-controlled Senate. Even still, it was not enough to win over the support of enough House Republicans on the House Health Policy Committee (and potentially in the general House Republican Caucus).

It is also important to note that the state had not previously decided to operate a high risk pool or other insurance program comparable to what existed in Mississippi and New Mexico. These prior decisions created alternatives for executive branch leaders in these states that wanted to create an exchange. Governor Snyder had no such backup option when exchange legislation failed.

State Context: Institutional Design

The fragmentation of American policymaking resulting in a large number of veto points tends to give opponents of reform the upper hand in legislative debates. Supporters of an

exchange needed to win support in multiple committees in multiple chambers, whereas opponents only needed to succeed once to kill legislation. 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, 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. In some ways this was an advantage to supporters of an exchange, meaning they would have another chance in a way that most other states would not. However, being in session year-round meant that opponents always had the option of stalling. States with firm session deadlines in the spring or summer had to make their decisions for the year with whatever information was available at that time. Opponents in Michigan argued that there were still too many unknowns that made it imprudent to move forward, even as nearly two dozen other states decided they had enough information to pursue a state-based or a partnership exchange. They frequently pointed to the fact that the Obama administration still had not released final regulations or that the whole law could be eliminated by the Supreme Court or as a result of the 2012 elections.

Second, nearly everyone interviewed attributed great significance to Michigan's term limits. Even the legislators themselves described bewilderment that such important health policy decisions were being made by people with so little health policy knowledge. The year-round legislative calendar may compound the program, limiting the amount of real world experience legislators bring. It is difficult for pockets of expertise, or legislators with deep understanding of a policy issue, to develop in these conditions. The issue is not so much a question of knowledge,

but of leadership. There were no clear leaders on health policy that Republicans in the Michigan legislature could look to for guidance. Of the top four Senate leaders, only one had previously served in the Senate and had not worked in health policy. The top four House leaders had an average of two years of legislative experience, with none having worked in health policy.

Senators Marleau took ownership of the exchange as sponsor of SB 693 and was in a powerful position as Chair of the Senate Health Policy Committee. Supported by a highly engaged staff, he was able to sort through the complex policy details. However, he had no working experience in health policy and was brand new to the Senate. He had served six previous years in the House, but did not have long-term relationships with many legislators given that the vast majority of legislators had less experience than him. Representative Gail Haines had even less clout as Chair of the House Health Policy Committee given that she was only in her second term in the legislature, and that she had not sponsored a single piece of health-related legislation in her first term other than a bill that did not pass which would have regulated the technology used in abortions (Haines 2010).

Third, institutional capacity was a significant factor, though not necessarily in a way easily predicted by this literature. The Michigan legislature has an average of 6.5 staff members per legislator (NCSL 2009), one more than the national average. Michigan's bureaucracy ranks very high in terms of administrative capacity compared to other states (Burke and Wright 2002). This would suggest that the state had the resources to become educated on the issues surrounding creating an exchange and then carry out the planning work, thus potentially mitigating the effects of a lack of policy knowledge resulting from term limits. To a large extent this was true. The Snyder administration had multiple people focused almost exclusively on the exchange. However, the administration was severely hampered by a particular form of oversight given to

the legislature over the bureaucracy. The requirement that an agency cannot spend money received from a federal grant unless specifically approved by the legislature gave opponents another lever by which to attack the ACA. This resulted in an ironic situation in which conservative legislators said they needed more information before they would be willing to support an exchange, yet the administration was not allowed to use the available resources to conduct studies that would provide such information. Opponents were able to use this oversight power to block Governor Snyder from setting up a partnership exchange, something he did not otherwise need legislative approval to do.

State Context: Partisanship

Even though the concept of an exchange has historically been supported by conservatives, in the post-ACA political context it was very difficult for supporters of an exchange to convince enough Republicans in Michigan that this was a part of Obamacare they would like. As described in chapter two, politicians often find it in their electoral interest to oppose the other party, even with respect to issues over which they might generally agree (Lee 2009). Even if a conservative Republican could be convinced to support a state-based exchange while still opposing Obamacare as a whole, they feared it would be too difficult to convince their constituents of this nuance. This was especially true given the partisan context resulting from the 2010 election in which Republicans reclaimed the Governorship and the House, and won their largest majorities in 60 years largely by campaigning against President Obama and Obamacare.

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 this made it more difficult to gain

support from conservatives. The conservative wing of the Republican Party was unsure of Governor Snyder given that he won office because of his status as an outsider. Efforts at bipartisanship were met with suspicion by 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, “Bipartisanship 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. When the Senate passed SB 693 in November 2011, it would be three full years before a member of the Senate would be up for re-election. As a result, Senators 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. 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 was even more conservative than the Senate during the 2011-2012 sessions. 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 approve the level 1 establishment grant to create a partnership exchange in the hopes that he would be more willing to support their proposals. 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.

Strategic Actors: Interest Groups

The debate over a health insurance exchange in Michigan was a battle between two camps of interest groups. 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. These groups historically have a close relationship with legislators and bureaucrats. 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.

Why did the seemingly more powerful interest groups lose to a decentralized network of conservative organizations? First, it is important to recall from the review of the interest group literature in chapter two that the evidence is mixed that all the resources devoted to lobbying actually affect policy outcomes. As stated earlier, those trying to block legislation have a strong advantage over those trying to create something new. Supporters need to work their proposal through a gauntlet of veto points, whereas opponents need to only succeed once. As a result,

simply comparing the type and amount of resources committed by groups on both sides of the debate is misleading. The burden was on supporters of an exchange, meaning that even a decentralized network of Tea Party groups could potentially defeat an exchange.

Second, the resources of the traditionally powerful groups may not have mattered as much given the nature of the issue. The Hall and Deardorff (2006) model of legislative subsidy suggests that stakeholders lobby their allies to help them achieve mutual goals. However, they indicates that the nature of lobbying changes from supporting allies to trying to convince undecided legislators if three criteria are met: 1) a specific matter is to be decided by a public vote, 2) enough legislators' preferences are perceived as weak so that 3) the outcome of the vote is thought to be in doubt. All three conditions were met in the debate over an insurance exchange in Michigan, further strengthening the position of opposition groups.

The broad coalition of stakeholders supporting an exchange was expected to give Republican legislators the cover they needed on the issue. It seemed to have worked in the Senate where S.B. 693 passed with 50% of Republicans voting in favor. The tide turned in the fall of 2011 when the Tea Party began practicing "focused activism." Armed with reports and talking points produced by the Mackinac Center – which itself was spreading the arguments made by national groups such as CATO and ALEC – Tea Party leaders used the internet to mobilize its members.

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 large numbers, but was comprised of 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 to change views. As one insurance 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. They felt a responsibility to be loud given what they perceived as the high stakes. When asked whether the Obama or Snyder administrations could have done anything that would have won their support of health reform, one prominent 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). They 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). It would have been very difficult for these legislators to support an exchange given the Tea Party’s large presence on the issue. Interest groups on the other side of the issue could have promised to support Republican

legislators who bucked the Tea Party on this issue, but seemed unwilling to do so to a sufficient extent. For example, representatives of Blue Cross Blue Shield of Michigan, the company with the largest share of the state's insurance market, explained that although they preferred state control, they were preparing along parallel paths to be ready either way. They had other important issues coming before the legislature soon and did not want to expend all their political capital on the exchange. This gave the Tea Party and conservative groups a greater opening to block the exchange bill.

Strategic Actors: Policymakers

The judgment and decisions of individual policymakers seem to have mattered in some cases, even beyond explanations of interest group influence or partisanship. For example, many Republicans in Rick Snyder's position likely would have opposed the exchange had they been governor. In that case, legislation would not have come so close and the debate would have been decided much earlier. Similarly, if the Democrats who were absent for the November 2012 House Health Policy Committee had showed up and voted with their caucus, SB 693 may have made it out of committee. Insiders say there were enough votes for it pass on the House floor, meaning it would have gone to Governor Snyder's desk and become law.

Summary

In chapter one I argued that a governor's support is a necessary, but not sufficient condition for a state to choose to create an exchange. The Michigan case supports this claim. An exchange likely would not have happened without Governor Rick Snyder's backing.

However, his support was not enough to win approval from the legislature. Partisanship was a major reason, though the primary division was within the Republican caucus, not between Republicans and Democrats.

A major reason for this split among Republicans was the strength of the Tea Party in Michigan. The Tea Party was largely responsible for Republicans taking control of the House in the 2010 elections, creating a climate hostile to Obamacare. Supporters of an exchange tried to convince Republicans that they could support state control of an exchange while still opposing the ACA. The Tea Party mobilized aggressively against this idea, arguing that creating an exchange legitimized the ACA undermined the lawsuit. When Tea Party leaders asked members to show up to legislative hearings in large numbers, they did. This made it difficult for Republicans on the House Health Policy Committee to vote for an exchange.

Unlike Idaho, where strong Tea Party opposition was overcome largely because of pockets of expertise in the Republican caucus, Michigan's lawmakers lacked experience and political clout. Term limits meant that the key leaders in each chamber had only been in office for a very short period of time. The year-round legislative calendar meant that those who had been in office longer were full-time politicians and had little recent experience working in health care. In other words, Michigan's institutional design created a dynamic that made it more difficult for natural leaders to emerge who could shepherd exchange legislation through the contentious battle.

The inter-governmental context complicated efforts to create an exchange. SB 693 would never have received a vote in the House Health Policy Committee had HHS not extended deadlines in November 2012. However, flexibility on the part of federal officials gave

credibility to arguments by Tea Party opponents that the Obama administration lacked the will and the capacity to create an exchange in dozens of states, and that the whole effort would fail if enough states resisted.

Chapter 5 - Mississippi

Introduction

Mississippi is the only state to have a proposal for a state-run exchange rejected by HHS. This was a fascinating outcome considering how badly the Obama administration wanted Republican-led states to run their own exchanges, as well as given that Republican leaders in Mississippi such as former Governor Haley Barbour had been trying to create an exchange for many years. In 2011, a bill to create an exchange even passed both chambers of the legislature before dying in a conference committee.

At first glance it may not seem surprising that Mississippi, a deeply red state, opted not to implement a major component of Obamacare. Barack Obama lost the state by 13 percentage points in 2008 and by 12 points in 2012 (MS Secretary of State 2008, MS Secretary of State 2012). Both U.S. Senators have been Republican since 1989, and both voted against the ACA. In 2010, the four-person congressional delegation was split between Democrats and Republicans, though one Democrat joined the two Republicans to vote against the law. Republicans have won five of the last six gubernatorial elections and in 2011 took full control of the legislature for the first time since the post-civil war Reconstruction Era. The Tea Party and the very conservative wing of the party is largely credited with this takeover, making it difficult for Governor Bryant and legislative leaders to support any component of the ACA.

Despite this partisan climate, two unique institutional features opened the door to the possibility of a state-based exchange. First, the Mississippi constitution in 1890 purposely created a weak governor out of fear that newly freed and enfranchised former slaves would elect one of their own to office (Wright 2006). The legislature was given strong oversight powers and many executive branch officials are independently elected rather than appointed. Insurance commissioner Mike Chaney believed that as an elected official he did not need the governor's approval to lead the Insurance Department's efforts to create an exchange. Second, an earlier change to the statute governing the state's high risk pool gave Mike Chaney broad authority over any state or federal insurance program in the state. He tried to use this authority to set up an exchange despite protests from Governor Phil Bryant.

The Mississippi story is largely one of conflict between two parts of the state's executive branch. The legislature was not a factor beyond mid-2011. At some points the major division was partisan; but ultimately the major split was between Republicans. Interest groups also played an important role, with Tea Party and conservative leaders opposing an exchange while most stakeholders worked with Chaney's Insurance Department supporting its establishment. This chapter follows the same chronological outline as chapter three's 50-state overview to examine how all these factors came together to lead to Mississippi defaulting to a federally facilitated exchange (see Appendix D for a timeline of key events in Mississippi).

Table 11 – Mississippi’s Political and Demographic Context

Political Environment

- 2012 presidential election: Republican Mitt Romney (56%)
- Governor
 - 2003-2011: Haley Barbour (R)
 - 2012-present: Phil Bryant (R)
 - Yes term limits
- Mississippi House of Representatives
 - 2007-2011: Democrat majority, margin of 22
 - 2011-present: Republican majority, margin of 5
 - No term limits
- Mississippi Senate
 - 2007-2011: Democrats won a majority in the 2007 election, but enough Republicans switched parties to give Republican a majority of 2 seats
 - 2011-present: Republican majority, margin of 9
 - No term limits

Demographic & Health Status

- Total population: 2,907,000
- Distribution of Population by Federal Poverty Level
 - Under 100%: 27%
 - 100% - 138%: 9%
 - 139% - 399%: 43%
 - 400%: 22%
- Distribution of Health Insurance Coverage
 - Employer: 45%
 - Other private: 4%
 - Medicaid: 20%
 - Medicare: 13%
 - Other public: 2%
 - Uninsured: 16%

Health Reform

- Joined lawsuit against the ACA
- Federal exchange
- Not expanding Medicaid

1) March 2010 – December 2010

In the initial months after the passage of the Affordable Care Act, leaders in Mississippi debated whether the state would join the lawsuit and began exploring the extent to which they would participate in the law's implementation. Few major decisions were made during this period, though the continuation of previous debates and the shifting of political dynamics would shape the process going forward.

Haley Barbour Supports an Exchange

The debate in Mississippi over the creation of an insurance exchange predates the passage of the Affordable Care Act. Governor Haley Barbour's administration believed that the largest group of uninsured Mississippians was employees of small businesses (Interviews 2012-2014). As a result, he tried multiple times to create an exchange particularly focused on small businesses. In fact, a conservative pundit later wrote that "No Republican governor has been a greater fan of exchanges over the past few years than the most politically powerful of them all – Mississippi's Haley Barbour," (Donmenech 2011). Barbour explains that he learned of the idea from the Heritage Foundation and began working on it in 2007 after fellow Republican Mitt Romney had created an exchange in Massachusetts (Interview January 2014). Ed Haislmaier and other leaders from the Heritage Foundation visited the state and met with leaders to advocate for an exchange. Agents and brokers opposed the concept because they felt it stepped on their toes, but a wide variety of stakeholders were open to the idea (Interviews 2013-2014).

Two bills creating an exchange were introduced in the Senate in 2008, one by Democrat Hob Bryan, and one by Republican Eugene Clark. The Republican bill to create an exchange as

a not-for-profit corporation passed the Senate on a unanimous vote though was never brought up for a vote in the House. Democratic leadership in the House did not allow the bill to even come up for a hearing (MS SB 2833 2008). Governor Barbour highlighted this issue in his 2009 state of the state speech before a joint session of the legislature:

Last year I proposed the creation of a Mississippi Health Insurance Exchange to help small businesses and their employees get private health insurance. The Senate passed that bill fifty-two to nothing. The House did not consider it last year, and I hope you will join us this year in an effort to significantly increase the number of Mississippians with private health insurance (Barbour 2009).

A bill introduced in 2009 met the same fate, being passed with near unanimous support in the Senate but never receiving a vote in the House (MS SB 2668 2009). Stakeholders do not remember the exchange being a controversial topic, but understood the position of the House leadership to be simple partisan politics: they opposed it because Republicans introduced it and Governor Barbour supported it (Interviews January 2014). A bill to create a legislative study committee to examine the issue passed both chambers the next year in April 2010, just weeks after President Obama had signed the ACA into law.

Governor Barbour's advocating for an exchange did not mean that he supported the ACA. He argues that the version of an exchange he proposed was very different than an ACA exchange. "I got the bill introduced to create an exchange that was totally voluntary. No mandation at all. It was not subsidized. The purpose was to create a vehicle that the state, or a state-sponsored non-profit, could set up and manage, and that would create an administrative platform for small businesses to not only shop for insurance for their employees, but to get purchasing power to create a significant pool," (Interview January 2014). He strongly opposed the ACA (Shiner 2009) and pushed for the state to join the lawsuit even though Democratic

Attorney General Jim Hood refused. Hood is independently elected and felt he did not have to comply with the governor, to which a spokesperson for Governor Barbour responded that “The Attorney General is welcome to represent the people of Mississippi or the Governor will do that for him,” (Hood 2010). Governor Barbour joined the suit on May 14th.

Even as one arm of the Mississippi government was on the lawsuit to overturn the ACA, another was in the early stages of preparing to implement the law. On September 30, 2010, the Insurance Department received a planning grant from CMS of \$1 million to conduct market analysis and develop a stakeholder engagement process to make decisions about what type of exchange would be created in Mississippi. The efforts were led by Insurance Commissioner Mike Chaney, though with general support from Governor Barbour who saw this as an opportunity to use federal dollars to build the type of exchange he had been trying to create for three years. As an aide to Governor Barbour described, “We’re going to continue down the path of the exchange that we’re doing right now because we’ve been doing it, and if the federal government has a problem with it, well, then they can come down here. And if at that point they don’t feel like we need the grant money, then we’ll cross that bridge when we get to it,” (Interview March 2012).

Shifting Political Climate

Mississippi holds elections in the year before presidential elections, making it one of only 13 states in the country to not hold gubernatorial and legislative elections in 2010 (NGA 2011). Even still, the rise of the Tea Party and the rightward shift in other states and in the congressional midterm elections had important implications for Mississippi politics, particularly in the state

Senate. Although Democrats won a 28-24 majority in the previous election in 2007, by January 2011 enough Senators switched parties to give Republicans control of the chamber (Donatelli 2010). This change did not matter as much as it might have in other states given the institutional design feature that it is the Lieutenant Governor that assigns committee chairmanships, not the Senate Pro Tempore as in most other states. In other words, Democrats held a majority of the Senate's seats after the 2007 election, but Republican Lieutenant Governor Phil Bryant already controlled the agenda. Although the functional composition of the legislature did not change much given that the legislators who switched parties tended to vote with Republicans even when they were Democrats, these shifts signaled the ascendancy of Republicans in Jackson and the growing role of the Tea Party in state politics. Both forces shaped the partisan nature of the debate over implementing the ACA that would soon follow.

2) January 2011 – November 2011

2011 marked an important turning point in the debate over whether or not to create an exchange in three ways. First, differing versions of authorizing legislation passed the House and Senate, though leaders from the two chambers failed to reach agreement and the bills died in a conference committee. This would be the last time the legislature would weigh in on the issue. Second, Insurance Commissioner Mike Chaney, with the support of Governor Barbour, decided to use the high risk pool as the vehicle through which to create an exchange. Third, the elections in November 2011 would determine who would be making decisions during the crucial implementation years of 2012 and 2013.

2011 Legislative Session

Four bills were introduced in the early days of the 2011 legislative session to create an exchange – three in the House and one in the Senate. One exchange bill emerged from each chamber in early February, with the House approving HB 1220 by a vote of 82-36 (MS HB 1220 2011) and the Senate passing SB 2992 44-7 (MS SB 2992). The Senate passed an amended version of HB 1220 one month later by a vote of 49-0, meaning versions of the same bill had passed both chambers and would become law if the chambers and Governor approved the compromise reached by a conference committee (MS HB 1220 2011). These votes reveal bi-partisan support in 2011 for the concept of an exchange, with 91% of Democrats and 60% of Republicans voting for their chamber’s version of HB 1220 (Table 8, in chapter 3). These votes also reveal the extent to which exchange politics would shift in subsequent years. Some of the people who would later become the most vocal opponents of creating an exchange are on record voting for these bills. Senator Chris McDaniel, who in 2014 would emerge as a Tea Party challenger to U.S. Senator Thad Cochran and would introduce bills to ban the state from creating an exchange, is perhaps the most notable example (MS SB 2464 2014).

Despite bi-partisan support for the concept of an exchange, HB 1220 failed to make it out of conference committee. The major differences between the two chambers dealt with governance. Democrats in the House preferred creating an exchange as a state agency, whereas Republicans in the Senate preferred that the exchange operate as a non-profit entity disconnected from state government. Conference committee proceedings are not open to the public and so it is difficult to know exactly what happened. A leader at the conservative think tank The Mississippi Center for Public Policy attributes the decision simply to “Mississippi’s desire to uphold the U.S. Constitution,” (MCPP 2012). Informants explain that Republicans had greater leverage given

Governor Barbour's support for a non-profit exchange but Democrats were unwilling to compromise. Some speculate that Democrats were not entirely convinced that a loosely regulated exchange run by Republicans in Jackson would be better than a more tightly regulated exchange run by Democrats in D.C., and so were willing to let these negotiations fail (Interviews 2012-2014).

Mississippi High Risk Pool

One reason Republicans were willing to let HB 1220 die without a compromise was because they believed they could create a non-profit exchange within the state's high risk pool. This backup plan was possible because of an unrelated change to the risk pool statute in 2009 which gave the Mississippi Comprehensive Health Insurance Risk Pool Association (MCHIRPA) broad authority to help "citizens of the state who desire to obtain or continue health insurance coverage under any state or federal program designed to enable persons to obtain or maintain health insurance coverage," (MS SB 2842 2009) This language was added in response to the state's experience with the Trade Adjustment Assistance Reform Act (TAARA) Congress passed in 2002. TAARA provided premium assistance to workers losing their job because their company went to another country. No insurers offered plans to this population in Mississippi, and when the high risk pool tried to step in it was prevented by a restrictive statute limiting its activity beyond a narrow set of parameters. An official involved with the High Risk Pool explains that the broader authority added in 2009 was "so that if the state came along and asked us to do something else we wouldn't have to keep telling governors that we couldn't do it...This

wasn't done with an exchange in mind. It was just simply to say that if the state wants something done, then this organization has the authority," (Interview January 2014).

Some people questioned whether MCHIRPA indeed had the authority to create the state's insurance exchange based on the 2009 legislation. There was talk of a lawsuit, though no formal challenge materialized (Interviews 2012-2014). Governor Barbour was supportive of using the high risk pool, in part because it would ensure the exchange would be operated outside of government as a non-profit entity. He turned exchange planning over to Insurance Commissioner Mike Chaney who has rule-making authority and regulatory oversight over the risk pool. A conservative opponent of the exchange believes that "Some people later felt they had been duped and hadn't known they were opening the door to a state-based exchange" when they expanded the high risk pool's authority in 2009 (Interview January 2014).

The Insurance Department applied for a level 1 establishment grant within a month of being designated in charge of exchange planning.¹⁷ On August 12, 2011 HHS announced that Mississippi would be awarded \$20 million, making it among the first states to receive such a grant. The grant opened the Barbour administration to criticism that it was accepting Obamacare money at the same that it was challenging the law in court. An aide to Governor Barbour described that "The Governor's perspective was that this is grant money, and the taxpayers of Mississippi have already paid for it through taxes, and we deserve our share of the pie... We shouldn't reject [the grants] because of some ideology that's out there with some conservative Republicans, or conservatives, or think tanks, or whatever you want to say," (Interview March 2012). Republican U.S. Senator Thad Cochran offered his support, saying "I am proud of Governor Barbour's work to craft an insurance exchange program tailored to improve access to

¹⁷ See Chapter three for an explanation of the grants available to states.

healthcare in our state,” (Gillette 2011). Republican Insurance Commissioner Mike Chaney explained his view that “There are portions in that act that are good parts, and that happens to be the exchange. It’s not a Republican idea. It’s not a Democratic idea. It is a universal idea and it has been around a long time.” While acknowledging the broader political dynamics, Chaney explained “It appears that I am swimming upstream against the trend of other southern states, but here is the problem: other southern states did not have the statutory law that I had in place,” (Chaney 2012).

An important question was how much flexibility the Obama administration would actually allow Mississippi in establishing its exchange. Unlike the exchanges described in the ACA, the bills Governor Barbour backed in 2008-2011 were focused only on small businesses and not the individual market, included no individual or employer mandates, and provided no subsidies to consumers. An aide to Governor Barbour anticipated conflict, explaining that the grant application submitted in the summer of 2011 was consistent with the type of exchange he had supported in the past. “You’re never quite sure how it’s going to fall out with HHS. But in his mind it was that we’re going to continue down this path. The application that we turned in for the money, it was written like we were doing the exchange before – so we got the money based on the concept that we were touting all along. It’s not like we changed what we were doing for HHS and then resubmitted the grant,” (Interview March 2012). An official at the Insurance Department explained their strategy of being “super nice and cooperative now in the hopes that we might have more leverage later,” but at the same time they would “do now, ask for forgiveness later,” (Interview October 2012).

One of the first things the Insurance Department (MID) did with the money was go on an outreach tour to connect with stakeholders across the state and educate them on the exchange.

An official in the department describes a week in the summer of 2011 in which they met with leaders in 13 cities. “They were well attended generally. We got a lot of good feedback from people. People seemed to generally be in favor of the exchange concept. They were definitely in favor of the state operating it rather than the federal government,” (Interview November 2011). On October 18th, Commissioner Chaney announced a formal process by which stakeholders would participate in developing the state’s exchange. An advisory board consisting of 11 people would meet throughout 2012 to help make the major decisions. The board would include consumers, advocates, small businesses, relevant state government agencies, a federally recognized tribe, public health experts, providers, large employers, insurers, agents and brokers. An MID press release explained that the number of seats on the board was expanded to 13 due to “overwhelming positive response” (MS Insurance Dept 2012a). The first meeting was scheduled for January 2012, meaning it would be after the state’s elections and after the start of the new legislative session.

2011 Elections

The 2011 gubernatorial and legislative elections were landmark events in Mississippi politics for two reasons. First, Haley Barbour was term-limited from running again and so a new governor was elected. As mentioned earlier, Mississippi’s governor is comparatively weak, with limited formal powers to shape policy. Many people describe Haley Barbour as being more successful at using his informal powers of prestige, influence, connections, and money than any previous governor in Mississippi history (Interviews 2012-2014). Before being governor he was a founding member of what has been described as the most powerful lobbying firm in

Washington D.C., Chairman of the Republican National Committee, and Director of Ronald Reagan's White House Office of Political Affairs (BGR 2012). Barbour's popularity and power solidified after his handling of the state's response to Hurricane Katrina in 2005 (Dao 2006).

Lieutenant Governor Phil Bryant won the 2011 Republican primary and general gubernatorial elections convincingly, but it remained an open question whether the increased clout of the governor's office would carry-over or recede as Haley Barbour left office. An important new dynamic was Bryant's relationship with the Tea Party. The Mississippi Tea Party officially endorsed Bryant, with Chairman Roy Nicholson proclaiming that "We are granting Phil Bryant full right and title to claim to be America's first Tea Party governor!" (Hess 2011). However, the endorsement did not come until October 31st, long after the more meaningful Republican primary, so it was unclear how beholden to this group Bryant would feel and whether the Tea Party would influence his stance on controversial policy issues such as an exchange.

Second, Republicans won control of both chambers of the legislature in November 2011, as well as every state-wide office except Attorney General. Republicans already controlled the Senate due to legislators switching parties in 2010, and this was the first time since Reconstruction that Republicans took control of the House. Insurance Commissioner Mike Chaney was also re-elected, running unopposed in the Republican primary and winning 62% of the vote in the general election (MS Secretary of State 2011).

The results of these elections were important for shaping who would be making the major decisions on implementing the ACA over the next four years, though health reform actually played very little part in these elections. One reason is that Republican candidates for the key state-wide offices, Phil Bryant and Mike Chaney, faced weak candidates. There was very little

about Chaney's approach to the ACA for a Democrat to attack since the state was one of the national leaders in working on an exchange. A former advisor to Haley Barbour also explained that "Democrats did not make a big deal out of [the ACA] because they're anti-abortion as well and didn't want to go down that road. Honestly, they couldn't have won an election if they had talked too much about it," (Interview March 2012).

Bryant regularly criticized Obamacare on the campaign trail, though he gave no indication that he opposed the exchange to the point that he would ultimately block the state's application. Many people remember Bryant saying he would allow the creation of an exchange begun under Haley Barbour to continue (Interviews 2012-2014). Haley Barbour points out that Bryant served in the powerful position of Lieutenant Governor and did nothing to stop each of the exchange bills advanced during Barbour's second term. "When I say the Senate passed my exchange legislation at least three consecutive years, that was with him presiding," (Interview January 2014). Even still, the people working on the creation of an exchange understood that elections have consequences. As one official described, "We have a whole other dynamic that is going to go into place in about a month. It's impossible to predict what's going to happen," (Interview November 2011).

3) November 2011 – June 2012

Writing about Mississippi's exchange debate in 2012, conservative blogger B. Keith Plunkett argued that "it doesn't matter what positions Barbour had taken in the past, this is Bryant's baby now," (Plunkett 2012). With the expectation that Governor Bryant would either support his efforts or at least stay out of the way, insurance commissioner Mike Chaney

continued the process of setting up the state's insurance exchange under the authority of the state's high risk pool. The exchange advisory board did the most important work during this period, giving interest groups an opportunity to shape the exchange's implementation, as well as become invested in its development.

Exchange Advisory Board

The Insurance Department contracted with the consulting firm Leavitt Partners to facilitate the work of the exchange advisory board. The firm is led by Mike Leavitt, who was the governor of Utah before working as the secretary of the Department of Health and Human Services under George W. Bush. News leaked in mid-2012 that Mitt Romney had chosen Leavitt to lead the transition team should he win the presidency (Pear 2012). Leavitt Partners also included people who had worked at the conservative organization The Heritage Foundation which had supported the concept of an exchange many years earlier. Mike Leavitt spent much of 2011 and early 2012 trying to convince state-level Republicans to move forward with an exchange. He explained that "I understand why some of my fellow conservatives oppose the formation of insurance exchanges, but continued inaction risks an Obama-style federal exchange being foisted upon a state," (Pear 2013).

Members of the advisory board describe the process established by Leavitt Partners as orderly and transparent, allowing a wide variety of stakeholders to participate. The full board met monthly throughout 2012, with agenda items following a three-stage process. An issue would be introduced in the first month, presented more thoroughly in the second month, and

decided in the third month. In the meantime, each of the ten subcommittees met to study the issues and make recommendations to the full board.

One board member says there was “much more consensus than I expected, largely because it was a good process.” In particular, this person expected controversy around the determination of essential health benefits, with insurers pushing for bare-bones plans and providers and hospitals wanting everything covered. Instead, tension was minimal as all sides worked to find common ground (Interview January 2014). Another board member describes a similar experience and adds that “it wasn’t for a lack of discussion. Everyone gave input, but it was measured. People wanted it to work and so they were trying to be reasonable,” (Interview January 2014).

Not everyone involved was initially convinced that the state should run an exchange. Agents and brokers were among those who did not support an exchange but decided that if it was going to happen they wanted to be at the table shaping it. Each of the state’s major insurers took the same approach, contributing to the exchange’s development though remaining undecided on whether they would offer plans on the exchange. On the other side of the spectrum were consumer advocates who considered opposing a Republican-run state-based exchange in Mississippi in favor of a stronger exchange run by the Obama administration. According to one advocate, they ultimately supported Chaney’s efforts because “the Department of Insurance walked the talk,” (Interview January 2014). Stakeholders from a wide variety of perspectives say they felt heard and that the final decisions reflected the input they had given (Interviews January 2014).

Participants of Mississippi's exchange advisory board hoped that contracting with Leavitt's firm would legitimize the exchange for Republicans opposed to the ACA. One conservative leader thinks this may have worked with establishment Republicans, but not with the Tea Party. "They could care less whether Leavitt was a Republican...It does not play well that we are sending lots of money to some consultant in Utah to come set up our exchange here in Mississippi," (Interview January 2014). National conservative groups fed a suspicion for Leavitt Partners. Michael Cannon of the Cato Institute said "It is strange to see Mr. Leavitt, a former Republican governor and former secretary of health and human services, helping and encouraging states to carry out this law for which Republicans have so much antipathy." Twila Brase of the Citizens' Council for Health Freedom, which worked to stop exchanges in other states, similarly stated that "Mike Leavitt is an enabler of Obamacare. He has taken advantage of Obamacare to expand his own business, instead of helping governors resist a federal takeover of health care," (Pear 2012).

The Tea Party in Mississippi did not start playing an important role in this debate until mid-2012. An official at the insurance department explained in November 2011 that the Tea Party did not have much influence over policymaking in Mississippi (Interview November 2011). No one from the Tea Party attended the early advisory board meetings. At least if they did, they did not make their presence felt in any way. This would soon change in the wake of the Supreme Court ruling that the ACA was upheld as constitutional.

4) July 2012 – October 2013

There was uncertainty in June 2012 about what the upcoming ruling would mean for an exchange in Mississippi. The advisory board worked under the assumption that the law would survive and that they had tight deadlines to meet in order to submit a blueprint application in November. Some members wanted to continue building an exchange even if the law was struck down, though it is unclear that all stakeholders would have remained committed without the threat of a federal exchange. This high level of uncertainty was difficult for those involved, but was accepted as part of this process. As an official at the insurance department described, “We’re used to adversity at this point. We’ve been doing this for a year and a half since the passage of the ACA. There’s no use trying to predict tomorrow. We know today what the law is. If it’s changed or our state takes a different approach, then we’ll adapt accordingly,” (Interview November 2011).

It was also unclear whether Barack Obama would be re-elected that fall and what a Romney presidency could mean for the fate of the ACA, though none of this affected the expectation in Mississippi that November 16th was the deadline for the insurance department to submit an exchange blueprint application. The certainty that came with the Supreme Court’s decision set in motion the three major events during this time period that would determine whether Mississippi would have a state-run exchange: 1) local Tea Party groups seem to have awakened to the issue and increase the intensity of their opposition, 2) the insurance department submitted its application for HHS’s approval, and 3) Governor Bryant intervened and convinced HHS to reject the state’s proposal.

Tea Party Mobilizes

The minutes of the July 11, 2012 meeting of the exchange advisory board include one sentence mentioning that Richard Wilbourn of the Mississippi Tea Party was allowed to speak. It says simply that “Mr. Wilbourn thanked Mr. Sisk (of the Mississippi Insurance Department) for allowing him the opportunity to address the Advisory Board, and proceeded to urge MID and the Advisory Board not to continue with establishing a state-based exchange,” (MS Insurance Dept 2012b). Attendees of this meeting paint a much more dramatic picture of this event and describe it as an important turning point Mississippi’s exchange debate.

One board member describes noticing a particularly strong security presence in the lobby of the Woolfolk Building in downtown Jackson when he showed up for the July 11th meeting. He figured there must be another higher profile meeting happening that morning as well, but was surprised when he realized the crowd was there for the exchange meeting (Interview January 2014). Few members of the public had come to any of the previous meetings, but participants estimate that starting in July there were 20-30 people in attendance. The media must have been tipped off that they would be coming, because TV cameras were present for the first time.

The group presented itself as the Mississippi Tea Party and insisted they be given an opportunity to speak. This is the first time anyone from the public had asked to participate and so the board had to develop a protocol for public comments. It decided that one person was allowed to speak per organization. Board members describe respectful conversations with the Tea Party members after the meeting. One board member told them he is sympathetic to their arguments, but feels they are going about this the wrong. “They tried to sound smart but ended up looking bad.” Another participant reflected that “They were nice folks and we tried to

explain to them why we were doing this and that the consequence of their position would be greater federal control, but they didn't see that" (Interviews January 2014).

Although participants in the advisory board describe a change in atmosphere once the Tea Party members started attending, there is no evidence this led to any substantive change in direction. The committees and subcommittees continued to meet, the website continued to be built, and the Insurance Department continued to prepare the state's blueprint application. The Tea Party did not weigh in on any of the specifics of an exchange and so did not influence the details of its development. There is a bigger picture, however, with attendance at these meetings as one part of a broader series of developments by which the Tea Party gained momentum in mid-2012. The Supreme Court ruling was a galvanizing moment in which Tea Party members realized the ACA was likely to survive and they were running out of opportunities to block its implementation (Interviews January 2014). In addition to attending more advisory board meetings, a core group of Tea Party leaders living near Jackson met with Governor Bryant, encouraging him to oppose an exchange.

The Mississippi Center for Public Policy (MCPPE) played an important role in facilitating the growing Tea Party opposition. MCPPE wrote the reports and published the data that Tea Party members would use in their arguments. MCPPE also brought national leaders to Jackson to speak on why states should oppose an exchange, making a strong statement that this was the position conservatives should adopt. For example, Michael Cannon of the Cato Institute spoke at the MCPPE Liberty Luncheon on July 12, 2012, the day after the Tea Party group first attended the exchange advisory board meeting (MississippiPolicy 2012a). The MCPPE uploaded to youtube.com a brief encounter between Cannon and Insurance Commissioner Mike Chaney in which Cannon argued that the best way to flip votes in Congress to repeal Obamacare is for

enough states to resist implementation. Chaney was put on the defensive, responding that “I came here today as a guest to listen to you, not to debate you. You have TV cameras rolling so you can get your point out...but unless Romney is elected, everything you have said is moot to a certain degree,” (MississippiPolicy 2012b).

Another example of a national conservative leader visiting the state was Ed Haiselmier of the Heritage Foundation in January 2013, at the height of tension between Commissioner Chaney and Governor Bryant. In addition to testifying before a legislative panel on Medicaid expansion, Haiselmaier did radio and TV interviews, and met personally with Governor Bryant. He acknowledged that Heritage supported the concept of an exchange years earlier, but argued that an Obamacare exchange is something entirely different. He further described that states will have to spend money on both the exchange and Medicaid expansion, but will get blamed when neither works (Interviews January 2014; Hess 2013).

By late 2012, the Mississippi Tea Party movement had the same the conditions that allowed their counterparts to succeed in blocking exchanges in other states, including a core of energized people committed to grassroots activism, a conservative organization supplying data and reports, and a governor willing to listen. The major difference in Mississippi was that the decisions were not being made by the legislature or the governor, but by an independently elected insurance commissioner and an advisory board of stakeholders supporting a state-based exchange. House Insurance Committee Chair Gary Chism speculated that the legislature could remove Chaney’s authority to run an exchange through the high risk pool or could simply vote down a state-based exchange, though neither idea was seriously pursued (Hess 2013). Although the Tea Party was gaining momentum, it seemed to lack any levers of influence to stop the creation of an exchange. An opportunity soon developed.

At the July 11th advisory board meeting the Tea Party attended, Aaron Sisk of the Insurance Department mentioned that they were waiting to move forward on a couple particular issues until the Personnel Services Contract Review Board approved certain contracts with vendors (MS Insurance Dept 2012b). Perhaps this mention triggered the idea among Tea Party leaders in attendance to investigate how such contracts were approved. A recent report by the Mississippi Center for Public Policy had already mentioned the Review Board as one of the administrative hurdles the Insurance Department had to pass over in order to hire consultants and IT vendors to do the work of building an exchange (MCPD 2012). Preventing contracts from being approved would make it much more difficult for the Insurance Department to move forward.

The Personnel Services Contract Review Board is a relatively obscure panel of five people appointed by the Governor. Its purpose is to “set forth rules and regulations, along with other pertinent information, that agencies should follow in the procurement of personnel services” for any contract in excess of \$100,000 (Mississippi State Personnel Board 2012). The Review Board’s website lists the dates and times of future meetings, but provides no information about upcoming agenda items (Mississippi State Personnel Board 2013). In other words, it is not easy for members of the public to know how to follow and attempt to influence Review Board decisions.

Jameson Taylor of the MCPD explains that the Tea Party started showing up at Review Board meetings and going through the exchange contracts under consideration around August 2012. As an example of what he describes as government over-spending, Taylor recalls one contract charging the state \$2000 for rotating pictures in the web site’s banner, something he says that IT people tell him takes a half hour to complete and is virtually free (Interview January

2014). A member of the exchange advisory board's subcommittee that oversaw contracts describes the Tea Party presence at the state's Review Board meeting as unprecedented and notes that many of the contracts were held up as a result of this scrutiny (Interview January 2014). Another person describes that "Once they had been to a couple meetings and saw that contracts were delayed, that gave them impetus to go to more meetings and see what influence they could have," (Interview January 2014).

Even as they were succeeding in holding up contracts, the Tea Party felt that it did not have the power to ultimately stop the creation of an exchange. Mike Chaney had independent authority through the high risk pool and the White House was highlighting Mississippi's progress in national reports (White House 2012). At this point, the most some Tea Party members were hoping for was that the process would be more transparent (Interviews January 2014). However, many people on both sides of the debate believe that Governor Bryant took particular notice of the Tea Party's success in blocking the exchange's contracts. Bryant's opposition to Obamacare and the exchanges in general were known, but it was unclear how he would react to Mike Chaney's application to create an exchange. He ultimately decided to oppose Chaney, triggering an inter-branch and inter-governmental feud lasting more than three months.

Bryant Opposes Exchange, Feds Reject Application

Dispute the increased opposition, members of the exchange advisory board felt good about their progress (Interviews 2013-2014). One person says they heard that only two or three other states were as far along. Another said "We were basically ready, sitting on go. We had

even already done lots of the testing and had really worked through lots of the details of the site,” (Interviews January 2014). The site, www.onemississippi.com, went live in July and an advertising campaign was under way by the fall. T-shirts were printed and an informational booth was set up at the state fair. Commercials featuring Mike Chaney ran on TV and on the jumbotrons at college football games in September.

Mike Chaney announced Days after Barack Obama’s re-election on November 6th that the Insurance Department’s exchange blueprint was ready to be submitted, but that he was waiting until he could present the details to Governor Bryant. Even so, he noted that as an independently elected commissioner of insurance, “I can submit the blueprint without the governor’s approval,” (Harrison 2012). The two men bumped into each other in a restroom on November 11th and Chaney confronted Bryant, asking why he had not returned his phone calls. Bryant reportedly explained that he had been on a hunting trip out of cellphone range. In Chaney’s words, “The governor asked me, ‘What authority do you have to do this?’ And I said, ‘Phil, what authority do you have to stop me?’” (Epstein 2012). Bryant invited Chaney to meet the next day at the Governor’s Mansion where he explained that Republican governors have decided to unite in opposition to the exchanges “because they will change the rules and control everything. You cannot trust them,” (Epstein 2012). The Republican Governor’s Association had just met in Las Vegas, with much of the meeting focus on opposing the implementation of Obamacare (Myers 2012). Phil Bryant was among the Republican governors writing a letter calling on the Obama administration to extend deadlines and revise expectations (Vestal 2012).

Despite these conversations with Governor Bryant, Chaney submitted the Insurance Department’s declaration letter even before Secretary Sebelius extended the November 16th deadline. He put out a statement asserting that “As an elected official and the chief officer of

the Department of Insurance, I am authorized by state law to submit this Exchange Declaration Letter on behalf of the State of Mississippi,” (Mississippi Insurance Department 2012c). Bryant immediately responded with a press release calling the exchange “a gateway to full implementation of ObamaCare in Mississippi,” and that “This is one more step toward the largest entitlement program expansions in American history,” (Bryant 2012a). This statement put Bryant in line with the state’s Tea Party who had recently vowed to make opposing “the Chaney/Obamacare Health Insurance Exchange” a top priority in 2013 (Pender 2012).

Bryant wrote Secretary Kathleen Sebelius eleven days later to formally register his opposition to Chaney’s proposal, saying that “I feel compelled to notify you of my complete disagreement with this move. I am disappointed with the submission of that letter, and I am exploring my options,” (Bryant 2012b). On January 4th, Chaney wrote Bryant directly saying “Phil, there is simply no legitimate reason to impede the development of a state-based exchange in this point in time.” Acknowledging Bryant’s argument that the state will not actually have much control over the exchange, Chaney wrote that “I am confident that this is not the correct view to take on the subject,” (Pettus 2013a).

On January 15th, Mississippi’s Attorney General Jim Hood issued a seven-page report stating that the Insurance Department “is vested with authority to submit the application to establish a health insurance exchange,” and that “Our office has found no statute which would allow the governor to override a decision of MID or the commissioner,” (Pettus 2013a). Chaney celebrated this decision, saying “We are very encouraged. Now everything will rest with HHS. The ball is in HHS’ court.” In response, Bryant’s spokesperson highlighted the fact that Attorney General Hood is a Democrat and stated that “Governor Bryant will continue to resist efforts to further implement Obamacare, including a health insurance exchange,” (AP 2013).

The exchange blueprint required the governor to sign a state's declaration letter, though this was a rule promulgated by HHS and not in the text of the ACA itself, so there was an expectation that HHS could work around a governor's opposition. The argument Chaney's lawyers made to HHS was that as an independently elected executive branch official, Chaney's signature actually satisfied this requirement (Interviews January 2014). One board member described that "As far as the advisory board was concerned, they didn't need Bryant's signature. It wasn't through his office or the legislature, so he didn't need to sign," (Interview January 2014). Another board member remembers being concerned, but figured that the Insurance Department must have already worked all this out with HHS (Interview January 2014). According to one person working with Chaney's office, "We believe the governor doesn't get to tell the commissioner what to do. We think HHS agreed. There was ongoing dialogue throughout 2012 that led us to believe they would approve this. We also hoped the governor would come around," (Interview January 2014). The uncertainty over the disagreement with Governor Bryant was significant enough that the Insurance Department stopped its advertising and outreach activities in early January 2013 (MississippiPolicy 2013). Around this time, former Governor Haley Barbour called Chaney to "just hang in there" in his efforts to establish a state-based exchange (Epstein 2012).

Jameson Taylor of the conservative Mississippi Center for Public Policy observed that because Chaney is independently elected, Bryant's only two options at this point were to: 1) convince the legislature to change the high risk pool statute that Chaney is using to build an exchange, or 2) block an exchange withholding Medicaid funds (Epstein 2012). The first option was unrealistic given that the legislative session had just begun and that HHS's decision would

be released shortly. Refusing to allow Medicaid to cooperate with the exchange seemed to be Bryant's only remaining path to stopping an exchange.

Three days after Attorney General Hood's report, Governor Bryant wrote another letter to Secretary Sebelius emphasizing that "In Mississippi, an attorney general's opinion is merely persuasive authority, not controlling law." Bryant went further in this letter than he had at any point to date. He argued that Chaney "lacks the necessary statutory and constitutional authority to establish and operate an exchange," and therefore HHS should consider any activity by the Insurance Department "null and void as a matter of state law." Acting on the idea Jameson Taylor articulated, he went on to write that "I am instructing the Mississippi Division of Medicaid not to assist or cooperate" with an exchange (Bryant 2013a). In other words, if HHS were to approve Chaney's application, Mississippi's exchange would be completely divorced from the state's Medicaid program. A lack of communication and coordination between the two programs would greatly complicate the establishment of a successful exchange. Members of the advisory board and others participating in the process describe being surprised by the governor's decision to use Medicaid this way, but still confident that their plans would move forward.

On February 7th, HHS informed Chaney by phone that it was rejecting his exchange application. The letter from Gary Cohen of CMS that arrived the next day attributed this decision to "the Mississippi Governor's stated intent to oppose implementation of a state-based exchange." The letter also explained that a state-based exchange is required to develop and document a coordination strategy with other agencies insurance affordability programs such as Medicaid. Cohen writes that "With a lack of support from your governor and no formal commitment to coordinate from other State agencies, we do not see a feasible pathway to

conditionally approving a State-based exchange in Mississippi for 2014,” (Mississippi Insurance Dept 2013).

Chaney held a press conference the afternoon he received the phone call in which he said he felt betrayed by the Obama administration over this decision. Describing the exchange planning process as “tap-dancing on a razor blade,” he said “we’ve been working earnestly with these people for years, and we haven’t waivered in anything that we’ve done.” He went on to explain that “The decision came from the very top; it came from the White House. It wasn’t HHS’s decision, they were on our side. I think they were mortified.” Re-emphasizing the betrayal he felt, he added, “They’ve told the nation they want state-based exchanges, but here they are turning somebody down that’s in the top three in terms of being prepared to operate an exchange.” When asked why the White House turned down the application, Chaney speculated that they were afraid of a lawsuit challenging the Insurance Department’s authority to operate the exchange and decided it would be better to implement a federal exchange than continue in the uncertainty that would result from ongoing litigation (MississippiPolicy 2013).

Governor Bryant released a statement later that day saying that HHS had not yet officially informed his office of its decision, but that “I have said repeatedly that the health insurance exchanges mandated by ObamaCare are not free-market exchanges...I firmly maintain my position that Mississippi will not willfully implement a mechanism that will compromise our state’s financial stability” (Bryant 2013b). The governor released no other statement on this issue after CMS’s decision was officially announced.

Tea Party leaders responded with appreciation for Governor Bryant. Leaders from the Mississippi Tea Party met with Governor Bryant in the capitol building shortly thereafter and

gave him a plaque honoring his “courageous and principled leadership in standing up for Mississippians constitutional rights” (TheMSTeaParty 2013a). The fact that Bryant took the meeting indicates that the Tea Party was not a nuisance for Bryant, but an important constituency. Janis Lane, President of the Central Mississippi Tea Party, put out a statement “applaud[ing] our Governor for his stand to protect the citizens and taxpayers of Mississippi against a federal government that is trying to usurp the rights of the citizens of this state.” Lane’s statement also attacked HHS Secretary Sebelius despite praising this decision, saying that “Kathleen Sebelius has revealed what many of us have known from the beginning – we cannot trust the federal government” (Mississippi PEP 2013).

Mike Chaney was publicly diplomatic in his statements about Governor Bryant’s opposition. In the February 7th press conference he said that “Phil and I are friends. I hope this will not impair our ability to work together in the future. Reasonable people can disagree about an issue” (MississippiPolicy 2013a). However, people who have spoken privately with Chaney say that “he has a chip on his shoulder over this.” One person said that “Chaney is pissed off at Bryant. He sees the Tea Party as largely responsible for railroading this process and no longer trusts Bryant” (Interviews January 2014).

Stakeholders involved in the debate over an exchange use words like shocked, disappointed, sad, and surprised to describe the Obama administration’s decision. One board member explained that “Through all this we really thought they would find a way. We had done a lot of work – A LOT of work - particularly in those final months. We had a very good blueprint that was certainly worthy of approval. Ultimately, I think HHS didn’t want to get in the middle of a dispute between a governor and an insurance commissioner,” (Interview January 2014). Even people who had been hoping for this outcome say they were surprised. One

opponent of an exchange said “I was shocked when the White House rejected our application. I would have assumed they would have approved the application and made the best of it and continue to pressure the governor to cooperate, and then fight Medicaid as a separate battle. I can’t explain that. It was definitely a surprise,” (Interview January 2014).

Many involved in the planning process believed the advisory board experience was productive even though the state did not end up operating its exchange. As one person described, “it had been beneficial to get all these people together” who normally do not communicate. But with no state-based exchange to operate, there was no reason to continue meeting. “It was like we all just shut down. No more emails, no more meetings. It just stopped. Many of the Insurance Department staff left shortly after, and so there was no continuity,” (Interview January 2014).

Although the advisory board stopped meeting, the story of Mississippi’s insurance exchange does not end in February 2013. The letter from CMS denying Chaney’s application for a state-run exchange encouraged him to apply to do an exchange in partnership with the federal government (MS Insurance Dept 2013). Chaney opposed this idea, saying that such an arrangement was “essentially the state doing the work, basically at our expense, to implement federal law. We’re not going to do that” (MississippiPolicy 2013a). The Obama administration provided a new possibility over the summer of 2013 in which the state could operate the small business SHOP exchange while allowing the federal government to operate the exchange for the individual market. Chaney took this option, using much of the work that had been done the year earlier as a foundation. There was little that Governor Bryant could do to stop Chaney because the SHOP exchange did not require any connection with Medicaid. “We clearly have authority to establish an exchange and operate a SHOP. I don’t need his approval” (Millman 2013).

Chaney submitted an application in August 2013, met with federal officials on September 18th, and was approved on October 1st (Pettus 2013b). Ultimately, Mississippi has the type of exchange Haley Barbour had pushed for six years earlier. Barbour explains that this outcome “suits me fine. Of the two, the small business exchange is far more important for Mississippi,” (Interview January 2014).

The summer of 2013 was also dominated by political tension over whether the state should expand Medicaid. Mississippi policymakers describe their Medicaid program as one of the most micro-managed in the country, effectively needing to be re-authorized on an annual basis (Interviews 2013-2014). Complicating the dynamics is that a super-majority of votes is needed each year, meaning that Republicans could not pass these bills on their own even though they controlled both chambers. Democrats attempted to force Republicans to consider the expansion, saying they would not support re-authorization unless an expansion bill was allowed to move forward. Republicans viewed this as a bluff and let Democrats protest. A special session was called in late June, with Democrats caving in the days before the July 1st deadline by which Medicaid would have expired. The existing program was allowed to continue for another year, but not without the ACA’s expanded eligibility and federal funding (Whitaker 2013).

The interest group breakdown was similar to that of the exchange, with historically powerful groups such as insurers, hospitals, providers, businesses, and consumers mostly united in support of both an exchange and the Tea Party and a handful of organizations opposed. In both debates, one of the major groups was seen as not playing as strong a role as many thought they should have, though it is unlikely that they could have changed the outcome. In both cases, the governor and legislative leadership ultimately sided with the Tea Party and opponents of implementing either component of Obamacare.

Early Results of Mississippi's Exchange

The early months of Mississippi's federally facilitated exchange did not go very well as the state reported some of the very lowest enrollment figures in the nation. In the first three weeks of open enrollment, only 35 Mississippians used the exchange to sign up for a plan (Boswell 2013). By November 1st the number of people that had selected a private plan increased to 800, with another 18,000 applying for Medicaid. This represents less than 4% of uninsured Mississippians (Anderson 2014). There are at least four reasons for this initial result.

The first is common to each of the other states with a federal exchange, as the exchange website healthcare.gov was riddled with IT problems. Second, states with a federally facilitated exchange were given much less money for outreach and enrollment assistance. This is particularly significant in Mississippi given that so much of the state lacks access to the internet and the internet literacy necessary to make a meaningful choice on the exchange. A 2013 report by the U.S. Census Bureau found that Mississippi had the lowest levels of connectivity in the nation, with 26.8% saying that have no access to an internet connection (U.S. Census Bureau 2013).

Third, so few insurers chose to offer plans in the exchange that not only would there be minimal competition, but 36 of the state's 82 counties were to be without any coverage. The state's largest insurer, Blue Cross Blue Shield of Mississippi, decided not to participate. Insurance Commissioner Mike Chaney worked hard to convince Humana and Magnolia Health Plan to expand their coverage so that at least one carrier would offer plans in each county. Chaney said that HHS had to bend federal deadlines to make this possible (Carter 2013).

Competition between the two insurance companies is only occurring in the three counties surrounding Jackson and in one county in the Delta (Anderson 2014).

Fourth, plans sold on Mississippi's exchange were expensive. The average cost for a bronze plan in Mississippi was \$342 per month, nearly \$100 more than the national average of \$249 a month (Anderson 2014). Similarly, the estimated cost of a mid-range plan was \$448 per month in Mississippi compared to \$328 nationally. The only states with higher premiums are Wyoming and Alaska. Mike Chaney attributes the high costs to expensive health conditions, a high cost of health care delivery, and a lack of competition on the exchange (Carter 2013).

It is impossible to know whether these results would have been different had the Mississippi Insurance Department been allowed to operate its exchange, though Mike Chaney and other people involved in the planning process make a compelling case for why their exchange would have fared better. Many people cite Kentucky's early successes as the best parallel, saying their exchange would have been as good, if not better (Interviews January 2014). First, they say that the state's IT was far along and would have been ready for open enrollment on October 1st (Interviews January 2014). A member of the exchange advisory board compared their process to the debacle that unfolded in Oregon in which their website failed to work throughout the entire six month open enrollment period despite receiving nearly \$300 million in grants and having dozens of state employees working on the exchange. "They even had a folk song written. I'm scratching my head. Here I am some yokel down in Mississippi wondering 'how can you not succeed with all those early adapter moneys and folk songs?' There is a tendency to put the cart before the horse. You can write yourself a bunch of folk songs for outreach before you make the thing work" (Interview January 2014). He felt confident that

Mississippi had been appropriately prudent in focusing on the IT and that the exchange would have succeed as a result.

Second, because of how the ACA is written, states running their own exchange have access to much larger amounts of money to support enrollment efforts than do states with a federally facilitated exchange. Two organizations had to split \$800,000 to conduct outreach: Oak Hill Missionary Baptist Church in northern Mississippi and University Medical Center (UMC) in Jackson. Consumer advocates view this as inadequate, with one person saying that “Oak Hill has the will but lacks the capacity, and UMC has the capacity and lacks the will” to successfully reach people throughout the entire state (Interview January 2014).

Third, former advisory board members feel confident that more carriers would have participated in an exchange run by Mississippi. Many describe Blue Cross Blue Shield of Mississippi as an active participant in the planning process and believe they would have joined, with smaller carriers following. When it became clear that Mississippi would have a federal exchange, BCBS decided to wait and see how things develop. Some speculate that BCBS will wait for a couple years and then offer plans that undercut current offerings. Others worry that insurers have been scared off by healthcare.gov’s troubled rollout and will be less likely to participate in the future (Interviews January 2014).

Fourth, Chaney and others believe that plans would have been more affordable on Mississippi’s exchange. Poor health conditions and the high costs of health care would still have driven rates up, but more plans participating in the exchange may have meant greater competition and lower prices (Interviews January 2014).

The best we can do is speculate what would have been different had Mississippi operated its own insurance exchange. This is very different from the debate that played out in the summer of 2013 over whether to expand Medicaid. Regardless of the state's decision to run the exchange or default to the federal government, Mississippians would have an exchange and access to premium subsidies either way. The state's decision to reject the expansion meant that many people who could have gained coverage will remain uninsured, and the state will turn down the large federal match.

Conclusion

Mississippi came closer than any other state to running a fully state-based exchange. The outcome may have been different if Democrats had supported one of Haley Barbour's pre-ACA exchange bills, if the 2011 conference committee could have reached a compromise, if Governor Barbour had not been term-limited out of office, if Governor Bryant had not decided to block the Insurance Department, and if the Obama administration had decided to approve Mike Chaney's application. A state-based exchange would not have even been an option in Mississippi if the insurance commissioner was appointed by the governor as in most other states and if the legislature had not recently expanded the scope of the state's high risk pool.

The case of Mississippi's insurance exchange is a great example of the need for a poly-theoretical approach to understanding policymaking. Specific theories from each perspective are useful for explaining an element of the decision-making process, though none sufficiently captures the many nuances of the debate. For example, partisanship may partially explain Governor Bryant's opposition, but it obscures how close the state came to creating an exchange

and that the main debate was ultimately not between Democrats and Republicans, but between two Republicans. In this section, I use the integrated framework from chapter two (Appendix B) to discuss how federalism, path dependence, institutional design, and partisanship explain the context in which interest groups and policymakers made decisions.

Federalism Context

An intergovernmental irony of the Mississippi case is that its exchange application was denied even though it had taken the exact course of action federal carrots and sticks were designed to incentivize. Stakeholders responded to the threat of federal takeover and the promise of money and flexibility by developing their own exchange.

Ultimately, the intergovernmental dynamic in Mississippi was complicated by a question federalism theory does not adequately address – who is authorized to represent the state in dealing with the federal government? This is an extremely important issue given that not everyone in a state agrees over how to respond to federal deadlines and incentives. The closest the literature comes to dealing with this is the work on administrative or bureaucratic federalism. The key insight here is that although Congress sets the terms of the intergovernmental relationship in statute, the negotiation continues throughout a law's implementation as a result of interactions between the bureaucracies of each level of government.

This played out differently in Mississippi than it did in other states, however, where the legislative process generally determined who in the state had decision-making authority. In Mississippi, the legislature was largely out of the picture and the federal government had to pick sides within the state's executive branch. Governor Haley Barbour supported joining the lawsuit

against the ACA while independently elected Attorney General Jim Hood refused. Similarly, Governor Phil Bryant and independently elected Insurance Commissioner Mike Chaney both argued that they had the constitutional and statutory authority to decide whether Mississippi would establish an exchange. Complicating this dynamic further is that in this case, the key actors in the federal government were also divided over how to respond. According to Commissioner Chaney, HHS wanted to approve the Insurance Department's application, but the White House instructed it not to. To some extent, the Obama administration sidestepped the question by deciding that even if Chaney did have authority to establish an exchange, Bryant also had authority to block its communication with Medicaid, and that such a situation was unsustainable.

State Context: Path Dependence

Although I agree with Brown's (2010) conclusion that path dependence is too shallow to be false but too ambiguous to explain much, the Mississippi case highlights the importance of focusing on each state's prior decisions and procedures, since "they select the groups whose views will be represented and they shape demands by changing the strategic environment in which the demands of groups are formulated" (Immergut 1992). Decisions dating back to Reconstruction in the 19th century played a role in shaping the balance of power.

Institutional design is closely related to the path dependence literature and is dealt with in the next section. Here, I highlight two prior decisions that played a large role in Mississippi's exchange debate. First, the issue would have been settled long before Governor Bryant came into office and the Tea Party grew in prominence if any of Haley Barbour's exchange bills had

passed. Legislation came the closest in 2012, as each chamber passed its own version of an exchange bill, but conference committee negotiators failed to agree on a compromise. Second, Mike Chaney never would have been able to submit his application had the legislature not decided for unrelated reasons in 2009 to expand the authority of the state's high risk pool to administer a broader range of insurance programs.

Race is another issue that has to be considered when examining policymaking in Mississippi. Nearly everyone interviewed suggested that race affects how everything is said and done, though. This is consistent with a literature highlighting the importance of race in America's welfare state (Lieberman 2001). Most people interviewed were hard pressed to identify specific ways in which it affected the exchange debate. Mississippi Congressman Bennie Thompson publicly accused Governor Bryant of rejecting Obamacare "just because a black man created it" (Cheney 2014). Conservatives are offended at the mention of race, believing it implied that the Tea Partiers who pushed Governor Bryant to oppose an exchange were racist, that they did not want white people's tax dollars to be redistributed so poor black people could benefit (Interviews 2013-2014). There are no clear instances of racially motivated decision-making, though it is striking that only one state in the deep south (Arkansas) is either creating an exchange or expanding Medicaid. At the very least, it can be said that Mississippi's history of racial tension has a path dependent dimension affecting how issues are framed and perceived. According to some stakeholders, this means that the key to convincing policymakers and the public to support an exchange is to emphasize that many of the people who would benefit would be white (Interviews 2013-2014). Even when this isn't said explicitly, it is implied by showing maps of where in the state potential enrollees live.

State Context: Institutional Design

Three aspects of Mississippi's institutions affected the process and outcome of its exchange debate. First, Mississippi's governor is historically weak compared to counterparts in other states, with the fact that the insurance commissioner is elected instead of appointed being one example. Governor Barbour used his informal powers and personal background to enhance his effectiveness, though it was unclear whether Phil Bryant would be able to continue this trend. The debate between Bryant and Mike Chaney needs to be seen in this context, with Bryant trying to assert his authority.

Second, the legislature was taken out of the decision largely because of a question of timing. After it failed to pass the conference committee bill in the spring of 2011, the legislature did not meet again until January 2012. By that point, the insurance commissioner was moving forward with his plans and there was little for the legislature to do. It could have asserted its role, but the newly elected Republican majority was not interested in doing anything related to Obamacare, particularly given their hope that the upcoming Supreme Court ruling and presidential election would spare them from needing to address the issue.

Another institutional design issue is that bureaucratic capacity had no effect on the final decision. Mississippi is generally considered a low-capacity state, though in this case it did not lack resources. However, the Department of Insurance was able to use federal grants to outsource planning activities to consultants and vendors with the required expertise, and appeared to be in a position to operate its own exchange.

State Context: Partisanship

Partisanship played an important role at different points in the debate over Mississippi's exchange. One key insight from this literature is that competing electoral incentives sometimes cause Republicans and Democrats to oppose each other, even over issues about which they generally agree (Lee 2009). For example, the state would have created an exchange as early as 2008 except that House Democrats were unwilling to support a health reform proposal Haley Barbour supported and Senate Republicans passed. On the other side, many accuse Phil Bryant of opposing an exchange simply because President Obama and Democrats supported the idea. The partisan dynamics that gave Republicans full control of the legislature for the first time since Reconstruction and overwhelmingly voted against Barack Obama in the 2008 and 2012 elections created a political climate hostile to Obamacare.

This point relates to an insight from the federalism literature, that although Republicans tend to prefer local control, intergovernmental disputes sometimes have a partisan edge such that leaders at each level support the actions of another level of government if it is led by a member of their party, and oppose actions led by a member of a different party (Keiser and Soss 1998; Yackee and Yackee 2009; Medof *et al.* 2011, Nicholson-Crotty 2012). As a result, policymakers on either side of the ideological spectrum and at either level of government will argue for a decentralized or centralized approach when it suits their policy and political goals (Barrilleaux *et al.* 2002; Nathan 2005; Conlan 2006; Adelman and Engel 2008; Shelly 2008; Doonan 2013). Supporters of an exchange in Mississippi thought that Republicans would participate given Governor Barbour's strong support and then Lieutenant Governor and gubernatorial candidate Phil Bryant's implied support. This turned out to be true in some cases, with Insurance Commissioner Mike Chaney working aggressively to create a state-based exchange, but not true

in others, with Governor Phil Bryant working aggressively to stop him. When asked about his evolution on the issue, Bryant responded that an ACA exchange is “totally different” than the type he had supported. “It was a web-based system where we hoped the private market, through competition, would provide lower rates. Democrats came in and said: We have a vehicle that came from the Republicans called an exchange, and let’s make that the central portal to expand Obamacare in the states, and if they don’t, they say you supported it before. That is patently untrue” (Bryant 2013c).

There are a number of limitations to using partisanship as an explanation for Mississippi’s exchange debate. First, the key debate was between two Republicans, not between Republicans and Democrats. Second, although polls showed that Obamacare as a whole was unpopular in Mississippi, there is no clear evidence of how Mississippians felt about an exchange. Health reform was not a major issue during the 2011 gubernatorial campaign and so it is unfair to describe this election as giving Governor Bryant a clear mandate to oppose all aspects of Obamacare. Members of the advisory board believed the general public would generally have been supportive if they understood the distinction between the exchange, Medicaid expansion, and the mandate (Interviews January 2014). Haley Barbour cited this as one of the main reasons he suspected Governor Bryant blocked the exchange, saying that “I think the Governor was afraid that a lot of people couldn’t differentiate that from expanding Medicaid,” (Interview January 2014).

Strategic Actors: Interest Groups

There was an expectation that state leaders would respond to pressure from the state's most powerful stakeholders, most of whom preferred that the state run the exchange. Even groups such as agents and brokers who had opposed the ACA and generally opposed the concept of an exchange worked with the Insurance Department to build the state's exchange. A notable absence from the exchange advisory board was any presence from the business community. Unlike in Michigan and Idaho, small business leaders and the chambers of commerce played a minor role. Even still, there is little reason to believe that the outcome would have been different had they been more actively involved.

The debate over an exchange in Mississippi ultimately did not take place in the legislature and was not a traditional lobbying story. Interest groups were actively involved in shaping policy through the exchange advisory board, but there was no need for traditional lobbying. Who would they lobby? In retrospect maybe interest groups supporting an exchange should have done more to try to convince the governor to support an exchange, but most stakeholders say they didn't think the governor's opinion mattered. They believed that the insurance commissioner had the authority to establish the exchange and figured that any issues between HHS, Governor Bryant, and the Insurance Department over this question had been worked out.

The Tea Party played no clear role in the early phases of the exchange debate but ultimately became an important influence. Tea Party organizations had no presence during the 2011 legislative session in which both chambers passed a bill to create an exchange. They did not start showing up to advisory board meetings until July 2012, and even then there is no

evidence that they had any effect on specific policy decisions until they started looking into the contracts the Insurance Department was negotiating with vendors. The ability to block contracts seemed to have emboldened Tea Party members, though even they did not expect there was much they could do by then to stop an exchange. When the decision came down to Bryant vs. Chaney, they encouraged the governor to block the Insurance Department's application and praised him for doing so.

The Tea Party in Mississippi matches Skocpol and Williamson's (2012) characterization as a movement with important bottom-up and top-down components. On the ground are groups of people sharing similar frustrations and organizing organically. In this sense there is no such thing as *the* Mississippi Tea Party; rather, it is a collection of decentralized clusters of people. A small core of 10-20 people living near Jackson are the most visible to state policymakers and sometimes are seen as representing the entire Tea Party, even if they have no formal endorsement from other groups throughout the state.

Although there is no centralized Tea Party structure to coordinate activities, the conservative organization The Mississippi Center for Public Policy (MCP) was looked to for guidance. MCP produced many of the reports that Tea Partiers would use in their advocacy. As an example of their close relationship, Jameson Taylor, Vice President of Policy at MCP was with Tea Party leaders when they met with Governor Bryant in February 2013. At the end of the meeting everyone gathered around the governor for a photo and one of the Tea Partiers can be heard on a Youtube video of the interaction saying "Jameson, you're part of us too, so put [the camera] down and get up here" (TheMSTeaParty 2013a). Taylor is guarded about this connection saying there is no formal relationship, though the chairman's annual report to the MS Tea Party organization in November 2013 highlights the importance of coordinating the work of

Tea Party groups throughout the state, and specifically mentions that “Jameson Taylor of MCPP has taken up that mission of bringing them together,” (Nicholson 2013).

At the same time, it is important not to overstate MCPP’s influence over the Tea Party. The organization has existed for decades, long before the Tea Party came into being. As Skocpol and Williamson (2012) describe, the arguments, reports, and coordinating activities done by conservative organizations such as MCPP, CATO, and Heritage would mean nothing if they were not tapping into a sentiment that existed independently within their target audience. It takes a high level of commitment to devote oneself to attending obscure meetings of the exchange advisory board and the Personnel Services Contract Review Board.

Strategic Actors: Policymakers

Another factor in the Mississippi case is the possibility that two people with the same partisan and electoral incentives can come to different conclusions and make different choices. Not every Republican elected as Mississippi’s insurance commissioner would have decided to push so aggressively to create a state-based insurance exchange. Similarly, not every Republican elected as governor would have opposed Commissioner Chaney’s application. Governor Otter of Idaho and Governor Snyder of Michigan are two possible examples. In fact, Haley Barbour says he would have supported Chaney’s application had he still been governor, despite Bryant’s policy and political reasons (Interview January 2014). The personal judgment of individual actors matters. Otherwise, Mississippi may be operating its own health insurance exchange.

Summary

Many factors came together to lead to Mississippi having a federally facilitated exchange despite coming so close to running its own. Insurance commissioner Mike Chaney used his authority as an independently elected official and over the High Risk Pool to attempt to create an exchange despite indecision by the legislature and a lack of support from newly elected governor Phil Bryant. Interest groups generally supported Chaney's efforts, with representatives from most relevant organizations serving on the exchange advisory board. The Tea Party and the conservative think tank The Mississippi Center for Public Policy were the most prominent critics. The political dynamics shifted once they became more active in their opposition. The pockets of legislative expertise that helped Idaho policymakers overcome Tea Party opposition never developed in Mississippi. One reason is that the Republican caucus did not have any leading voices on health policy issues. It would not have mattered anyway, as the decision-making process shifted from the legislative to the executive branch.

The defining moment in Mississippi's exchange debate is Governor Bryant's decision to oppose Commissioner Chaney's application despite having supported (or at least not opposing) an exchange in the past. Phil Bryant is the only governor in my sample to ultimately oppose an exchange. Had Bryant decided differently, HHS likely would have approved Chaney's application and the Insurance Department would have completed the work to have an exchange ready by the beginning of open enrollment on October 1, 2013.

Chapter 6 - Idaho

Introduction

Idaho is the only state in the nation led by a Republican governor and a Republican legislature that chose to run its health insurance exchange. Idaho is an unlikely candidate for such a distinction. By most measures it is one of the most conservative states in the country.¹⁸ The state has voted for the Republican nominee in every presidential election since 1964, including giving Barack Obama only 36% of the vote in 2008 and 32% in 2012. Since 1981, both U.S. senators have been Republicans. With one brief exception from 2009-2010, both of Idaho's U.S. representatives have been Republicans since 1995. State government is similarly dominated by Republicans. Idahoans have not elected a Democratic governor in two decades and have consistently elected large Republican majorities in both chambers of the legislature.

Most of Idaho's leaders opposed the Affordable Care Act. All four members of the state's congressional delegation voted against the law, including Democrat Walt Minnick. Even before President Obama signed the bill into law in March 2010, Idaho was the first state in the nation to enact legislation opposing the ACA (CBS News 2010). Idaho was among the first states to sue the federal government over the constitutionality of the ACA. The dominant interest groups in the state were nearly unanimous in their opposition to the ACA.

¹⁸ According to Gallup State of the States (2010). Idaho is second only to Mississippi in terms of the percentage of residents who describe their political views as conservative. <http://www.gallup.com/poll/125066/State-States.aspx>. See also Shor, and McCarty 2011.

Table 12– Idaho’s Political and Demographic Context

Political Environment

- 2012 presidential election: Mitt Romney (65%)
- Governor
 - 2007-present: C.L. “Butch” Otter (R)
 - No term limits
- Idaho House of Representatives
 - 2011-2012: Republican majority of 44
 - 2013-present: Republican majority of 44
 - No term limits
- Idaho Senate
 - 2011-2012: Republican majority of 21
 - 2013-present: Republican majority of 23
 - No term limits

Demographics & Health Status

- Total population: 1,580,000
- Distribution of Population by Federal Poverty Level
 - Under 100%: 19%
 - 100% - 138%: 10%
 - 139% - 399%: 45%
 - 400%: 27%
- Distribution of Health Insurance Coverage
 - Employer: 47%
 - Other private: 7%
 - Medicaid: 14%
 - Medicare: 15%
 - Uninsured: 16%

Health Reform

- Joined lawsuit against the ACA
- State-based exchange, relying on national website for first year
- Not expanding Medicaid

Three years later, many of the same leaders who had opposed the ACA pushed for the state to take control over the implementation of an insurance exchange. Why did Idaho choose to create its own exchange? What happened between March 2010 when the state's leaders were united against the ACA and March 2013 when Governor C.L. "Butch" Otter successfully pushed for the creation of a state-based insurance exchange? There were many twists along the way, including the rejection of federal grants, nullification bills, a veto, and an executive order. Ultimately, the issue split the Republican caucus with enough joining the Democrats to support an exchange. Prominent interest groups worked hard to support state control, though not without strong opposition from the Tea Party and conservative groups. One of the most important reasons this opposition was overcome was that pockets of expertise had developed in the legislature in which prominent legislators with health policy experience took a leadership role in supporting an exchange. Following the same outline as chapter three's 50-state overview, this chapter chronicles Idaho's decision-making process through four time periods. I conclude by drawing on the theoretical lessons from Chapter two to sort through the various factors contributing to this decision (see Appendix E for a timeline of key events in Idaho).

1) March 2010 – December 2010

The initial months of the ACA's implementation in Idaho were marked by sharp opposition to the law. The events of this period laid the foundation for the debate that would follow in subsequent years, including the passage of the Idaho Health Freedom Act, the multi-state lawsuit against the ACA's mandates, the growth of the Tea Party, and the creation of the conservative think tank the Idaho Freedom Foundation. Yet even in a period notable for hostility

towards the reform, the Otter Administration took steps behind the scenes to begin implementing an exchange.

Idaho Health Freedom Act

The state's response to the Affordable Care Act began before the ACA was even signed into law. In his state of the state speech on January 11, 2010, Governor Otter spoke in opposition to "the so-called health care 'reform' bills being promoted by the President's party in Congress." He warned that an expansion of Medicaid would cost the state half a billion dollars and thanked the Idaho congressional delegation for "fighting against this wholesale assault on our self-determination" (Otter 2010).

Republicans in the legislature were similarly opposed. On January 19th, Representatives Jim Clark, Raul Labrador, and Lynn Luker introduced House Bill 391, which they named the Idaho Health Freedom Act. In the words of a lobbyist for a major business organization, the act was a pre-emptive measure "to tell the federal government that we'll stay in charge of our health care and you stay out of it," (Interview May 2013). It so happened that the likelihood of the ACA's passage was seriously jeopardized later that same day as Massachusetts Republican Scott Brown won the special election to fill Ted Kennedy's seat in the U.S. Senate. As a result, Democrats no longer had a filibuster-proof majority and many considered health reform dead (see chapter three).

The Idaho Health Freedom Act was based on model legislation developed by the American Legislative Exchange Council (ALEC) (News on 6 2010). HB 391 stated that the U.S. Constitution's 9th and 10th amendments limit the role of the federal government in health care,

and established that “every person within the state of Idaho is and shall be free to choose or decline any mode of securing health care services without penalty or threat of penalty.” In other words, the bill asserted that the individual mandate being considered by Congress is not constitutional and would not be in effect in Idaho. No public official or agent of the state would be allowed to play any role in such a mandate. HB 391 also directed the state’s attorney general to respond promptly to any federal law that challenged the state’s role as defined in this bill (ID HB 391 2010).

The Republican leadership prioritized the Idaho Health Freedom Act, moving it quickly through the legislative process, even as the national reform remained in limbo. It was one of the first bills introduced in the session and only the second bill to receive a hearing by the House State Affairs Committee. The bill had to be amended to clarify that although the government would not be allowed to mandate that everyone purchase insurance, it would still be legal for the state to require that college and university students obtain coverage. Senator Monty Pearce, who ultimately voted for the Idaho Health Freedom Act, said the amended bill looks hypocritical in that it rails against a federal mandate but specifically protects one by the state. Representative Clark, one of the bill’s sponsors, responded that mandates may be good ideas sometimes, but that it is the state’s right to experiment. The committee report describing this debate contains an amusing typo, in which Representative Clark is quoted as saying that states like Idaho are “a lavioratory of ideas” (ID Senate State Affairs Committee 2010).

The bill passed the House completely along party lines and then passed the Senate with all but three Republicans voting in favor. Governor Otter signed the bill on March 17th, four days before the ACA passed the U.S. House and a week before it passed the U.S. Senate and was signed into law by President Obama. Governor Otter felt the issue was important enough for his

first public bill signing ceremony of the 2010 session. In the press conference that followed, Governor Otter spoke strongly against the federal health reform. Ironically using many of the same arguments he would later use to defend his support of a state-based health insurance exchange, Governor Otter stated that HB 391 was important because it asserted the sovereignty of the state (Hurst 2010a).

The passage of the Idaho Health Freedom Act was a significant opening shot in the battle over the ACA's implementation in Idaho. Governor Otter and the legislature staked a position in strong opposition to the reform and in support of the joint lawsuit that Attorney General Wasden filed minutes after President Obama signed the ACA into law. Interest groups had their first opportunity to weigh in on what the law would mean for Idaho, with the American Association for Retired Persons (AARP) testifying against the bill, the Idaho Farm Bureau testifying in favor, and the Idaho Republican Central Committee passing a parallel resolution against the ACA (ID Senate State Affairs Committee 2010).

One of the most important developments was the growing role of the Idaho Freedom Foundation (IFF). Formed in 2009, the IFF is a non-profit organization led by Wayne Hoffman, a former journalist and staff member to Idaho politicians. Hoffman describes the passage of the Idaho Health Freedom Act as one of his group's earliest accomplishments (Russell 2010). In just a few short years, the IFF would be considered one of the most influential and controversial groups in the state. It would play a lead role in the debate over the ACA's implementation in Idaho, making opposing the exchange and Medicaid two of its top legislative priorities.

2010 Elections and the Growth of the Tea Party

The Idaho Health Freedom Act was arguably unnecessary legislation. Attorney General Wasden did not need the legislature's permission to file a lawsuit and it would be up to the courts to decide whether the federal government had the authority to impose mandates, not state legislatures. Deputy Attorney General Jones had admitted to the Senate State Affairs Committee that federal law would likely trump the Idaho legislature on this issue. Yet, HB 391 was hugely important symbolically. 2010 was an election year, with the Republican primaries less than two months after the close of the legislative session at the end of March. Republican incumbents and challengers used their support of the Idaho Health Freedom Act to validate their conservative credentials.

The most prominent example is Raul Labrador Labrador who had been one of the sponsors of the Idaho Health Freedom Act and ran for the 1st district seat in the U.S. House on a platform that included repealing the ACA. Organizations such as Idaho Chooses Life specifically cited his work opposing health reform as the reason for their endorsement (Hurst 2010b). Labrador won a surprise victory in the May 2010 Republican primary, beating Vaughn Ward who had been one of the top ten candidates in the National Republican Congressional Committee's Young Guns recruiting program (Blake 2010).

Labrador's victory in the primary set up an interesting general election contest against Walt Minnick, who was among the most conservative Democrats in Congress and who had voted against the ACA (Hulse 2010). The race was complicated by the fact that in April 2010 the national Tea Party Express had endorsed Walt Minnick for re-election. This was the first election cycle since the inception of the Tea Party in 2009 and it was unclear what role they

would play. He was the only Democrat in the country to receive an endorsement from the Tea Party Express and his campaign worried it would hurt him with Democrats and moderates. Three months after trepidatiously accepting the endorsement in April 2010, Minnick rejected it in July (Stein 2010). By the fall, the Tea Party Express endorsed Labrador and was running ads accusing Minnick of becoming more liberal the longer he stays in Congress. Even though he voted just a few months earlier against the ACA, they lambasted him for refusing to support its repeal (Tea Party Express 2010). At the end of the summer, Labrador was losing by 30 points and had only \$69,000 in the bank compared to Minnick's \$1.1 million (Ames 2011). With the support of Tea Party groups across the state, Labrador beat Democrat Walt Minnick 51%-41% in the general election.

Labrador's success was an indication of the prominent role that the Tea Party could play in Idaho politics. By this point, the Tea Party was a decentralized but active network of organizations spread across the state. Pam Stout, leader of the Tea Party organization in Sandpoint in northern Idaho was described in the New York Times as being "the hub of a rapidly expanding and highly viral network" (Barstow 2010). Skocpol and Williamson's (2012) survey of the Tea Party in 2011 finds that Idaho is one of only seven states to have as many as 4-6 Tea Party organizations per million residents but not have a single city with more than 500 registered members. One online directory of Tea Party organizations lists 13 groups throughout the state (Tea Party 911 2013), while another lists 15 (Gem State Tea Party 2013).

Labrador's victory was also seen by some as an indication of how Idahoans felt about the health reform law. Opposing the ACA would not be enough to prevent attacks from conservatives and the Tea Party. Candidates needed to demonstrate the intensity of their dislike for the law, including pushing for its repeal. Campaigning on a platform of opposing the

implementation of Obamacare in Idaho, Governor Otter was re-elected and Republicans retained large majorities in the 2010 elections, winning 80% of the seats in the Senate and 74% of the seats in the House. Though the partisan margins remained similar, the legislature moved further to the right, with a handful of seats in Republican districts going to the most conservative candidate rather than a moderate. The legislature that would be considering the ACA's implementation during the crucial years of 2011 and 2012 was even more conservative than the legislature that passed the Idaho Health Freedom Act.

Workgroups and Planning Grants

As legislators pushed for the ACA's repeal, work was being done behind the scenes to prepare for its implementation. Two agencies played a lead role in this process: the Department of Insurance focused on the exchanges, while the Department of Health and Welfare focused on the Medicaid expansion. An official at the Department of Insurance describes the dilemma faced by the department:

All of us key decision makers in Idaho did not want the ACA passed. There were a lot of credible reasons as to why it did not need to be passed. Our congressional delegation and local legislators all agree that this wasn't the right choice to make health care available to more people. At the same time, we probably didn't have a better idea, but we had a better idea how we could do it in Idaho, with the help of federal dollars, to get this turned around in Idaho (Interview May 2013).

The dilemma was all the more pronounced given that Governor Otter and Insurance Commissioner Bill Deal had already created a health insurance exchange on a smaller scale. Shortly after taking office in 2007, Governor Otter had convened a task force to improve the

affordability and accessibility of health care in Idaho. One of the recommendations was to establish a website on which consumers could compare the products of the three main insurance companies. Legislation was not sought, but in subsequent months this was added to the Department of Insurance web site.

An insurance department official explains that he and the Otter administration were not opposed to an exchange in principle, but saw Obamacare's version as overly cumbersome (Interview May 2013). Even so, their initial reaction was to explore what it would mean to build their own exchange so that they did not have to give up control to the federal government. On September 30, 2010, the Department of Insurance was one of 48 states awarded a planning grant by the Centers for Medicare and Medicaid Services (CMS). The state received \$1 million to accomplish ten tasks, including "engage stakeholders and create strategies for continued engagement," "evaluate existing government and non-government structures for opportunities to integrate these structures to support an exchange," "create recommendations for governance structures," and "identify needed enabling legislation and regulations" (CMS 2014).

Although primarily focused on Medicaid, the Department of Health and Welfare played an important role in the planning for an exchange. In 2009, the department had begun implementing a new Medicaid eligibility system for the first time in 20 years. As one official described it, the new Medicaid system would have to connect with whatever exchange was created, whether by the state or the federal government. "It didn't matter which kind of exchange it was; we have a new friend in town we need to work with," (Interview October 2013).

Officials in both agencies describe the difficulty of preparing for the ACA's implementation given the state's political climate, particularly with a governor and legislature so firmly opposed to the law. One Medicaid official explained:

We were trying to figure out how to do this without upsetting anybody and make them think we're going against anybody. Our approach is saying that this is the law of the land, what do you expect us to do? If we don't meet the law and timelines, there are consequences funding-wise, especially for Medicaid. You can't say we don't have a choice – we have to connect to an exchange (Interview October 2013).

Compounding the challenge was that leaders in the agencies felt they were not getting enough direction from the Obama administration. It is not that they wanted federal involvement, but they feared they would have to retrace their steps once CMS issued regulations. Another bureaucrat described that “We went pretty fast to try and get this moved, and I think federal agencies were scrambling to try and catch up and do it in a way that is meaningful to states... It got pretty old pretty quickly to continually be told ‘we'll get back to you’ by CMS,” (Interview October 2013).

In December 2010, Governor Otter followed through with a commitment in the state's planning grant to engage stakeholders on the ACA's implementation. He issued an executive order calling for the creation of the Idaho Health Care Council, comprised of agency officials and stakeholders appointed by the governor. The three workgroups that were created became an important forum for stakeholders to voice their opinions on the ACA. Ultimately, the seeds for the creation of a state-based exchange were sown in these meetings.

This was a delicate balancing act for the Otter administration. The Idaho Health Freedom Act passed earlier in 2010 said that no state official was to play any role in implementing or

enforcing a federal mandate. Some argued that bureaucrats were breaking this law by doing any work to prepare for the creation of an exchange and expansion of Medicaid. Settling this question would be one of the primary issues of the upcoming legislative session.

2) January 2011 – October 2011

The ACA had been signed into law by President Obama just two weeks before the close of Idaho's 2010 legislative session, meaning that 2011 was the first opportunity for the legislature to fully respond to the requirements of implementing health reform. Governor Otter's state of the state speech to open the session on January 10th struck a strong but balanced tone. He railed against "the exorbitant costs being imposed on us by Obamacare," and said he was working aggressively to eliminate the law either through the courts or through Congress. He specifically mentioned nullification as an option the state should consider. At the same time, he said that "we are responsibly preparing for watershed changes that may be on the way" (Otter 2011a). The 2011 legislative session was marked by tension between those pushing for nullification and those pushing for a state role in implementing the ACA.

Nullification

Nullification, the idea that a state can declare a particular federal law null and void within their borders, had some momentum as a response to the ACA. In the closing months of 2010 and the opening months of 2011, nullification legislation was introduced in at least 13 states. A bill was introduced in Idaho with Governor Otter's support. The Attorney General's office, the same

office that was in the midst of suing the federal government over the ACA, responded that “there is no right to pick and choose which federal laws a state will follow.” Wayne Hoffman of the Idaho Freedom Foundation worked with legislators on the nullification bill and the Tea Party mobilized large groups to committee hearings. They used many of the arguments that would later be made against doing an exchange, such as that Obamacare put the country on a dangerous path towards socialism and that REAL ID set a precedent that the federal government would delay enforcement of a mandate if enough states resisted. The House approved HB 117 mostly along party lines, but the bill was defeated by the Senate State Affairs Committee after a volatile meeting. Audience members yelled out of turn and a Tea Party group stood outside the Senate auditorium calling each senator voting no a coward as they walked out of the room (AP 2011d).

The fight over nullification was not dead, as two more bills were introduced that session. One of them, House Bill 298, passed the House with similar margins as the previous bill and then made it through the Senate on a vote of 24-11. The goal of this bill was not to nullify the ACA, but to say that nobody in the state would be allowed to do anything related to its implementation. One Senate leader who voted against the original nullification bill but voted for HB 298 and would ultimately support a state-based exchange explained the bill this way:

What we said to the opponents was, look, we’ll take the governor’s bill and take out the heavy-handed, we know it’s not going anywhere, crap. We did not insert any new language, we just pulled out the obvious stuff and sent [Governor Otter] his bill, which was nullification-lite. It says we’re not nullifying it, it’s still law, but you can’t force us to do it. The state of Idaho isn’t going to do it; you’re going to have to do it (Interview April 2013).

Two weeks later, Governor Otter vetoed HB 298, his only veto of the 2011 legislative session. The same Senator described being stunned, wanting to say to Governor Otter “What do

you mean we can't do this? This is your bill! It's your bill, less the nullification stuff!" (Interview April 2013). The veto message explained that "No one has opposed Obamacare more vehemently than me," before going on to reiterate his support for the previous year's Idaho Health Freedom Act and the multi-state lawsuit of which Idaho was a part. The first explanation he gives for his veto is that it would eliminate the possibility that Idaho would be able to create a health insurance exchange. He clarifies that he does not want to implement Obamacare, but that he also does not want to cede control to the federal government should all the avenues of opposition prove fruitless. He goes on to write that "I see value in evaluating an Idaho Health Insurance Exchange and have been an advocate for doing so before the concept was co-opted by the national government" (Otter 2011b).

On the same day as his veto, Governor Otter issued Executive Order 2011-03 (2011) to accomplish many of the same objectives as HB 298, but still preserving the option of creating an exchange. State agencies were prevented from working on any aspect of implementing the ACA except planning for an exchange. One of Governor Otter's advisers explained that "Our office felt that the legislature didn't understand how deeply their bill would affect our state. The ACA has a lot of other parts the legislature's bill would have made too much difficult," (Interview June 2011). In addition to wanting to preserve the option of doing an exchange, Medicaid officials described wanting to take advantage of ACA grants to support upgrades to the state's eligibility system that were being done even before the ACA entered the picture (Interview October 2013).

Governor Otter was trying to walk a fine line between opposing the ACA and maintaining the option of state control of an exchange. Many conservatives wished he had gone further in his opposition, but were pleased with his executive order. The press release from the

governor's office about the executive order included supportive quotes from people who would be his most ardent opponents on the exchange two years later. Wayne Hoffman of the Idaho Freedom Foundation is described as having "worked closely with legislative sponsors of House Bill 298," but saw the executive order as "an important step in the right direction for Idaho and for freedom." Senator Russ Fulcher, who would challenge Otter for the Republican nomination for governor in 2014 largely over their difference on the exchange was described as "welcoming" the executive order, and saying "I'm just thankful to have the Governor's support on the issue" (Otter 2011c).

Grant Money Rejected

Governor Otter's veto and executive order brought the issue of an insurance exchange to the forefront. It would be another eight months before the legislature reconvened in January 2012. In the meantime, the executive branch tried to continue planning for the creation of a state-based exchange in case the legislature ultimately moved in that direction. However, in addition to being restricted by the Idaho Health Freedom Act of 2010, state agencies were not allowed to spend any money that the legislature had not appropriated.

A leader in the Department of Insurance explains that the timing of federal grants is complicated by the state's calendar. When the legislature is not in session, agencies are allowed to spend federal grant money if they have the governor's approval. When the legislature is back in session, it can refuse to appropriate this money going forward. If the agency wants to continue these activities, it has to pay for it from its own budget (Interview June 2011). State agencies needed approval during the 2011 session in order to spend the \$1 million exchange

planning grant received the previous fall, as well as a \$1 million grant to reform insurance rate review. An advisor to Governor Otter explains the careful way in which this request was framed to the legislature. “We explained why we wanted the money for planning, not really for implementation.” (Interview June 2011).

The appropriations bill passed the Senate 20-15, but was not even voted on in the House (ID SB 1158 2011). Opponents argued that the money was “bait” and that the state would be trapped into implementing the ACA if it accepted federal grants (Murphy 2011a). Instead, the legislature appropriated \$500,000 to support planning activities for the exchange and rate review. Supporters of an exchange were frustrated that not only would they only have a quarter of the money had they been allowed to spend the federal grants, but it would now come out of the state’s budget (Interviews 2013-2014).

This episode was also an important moment for key actors. First, Wayne Hoffman of the Idaho Freedom Foundation was largely given credit for making conservatives aware of the opportunity to resist Obamacare by blocking the appropriation of grant money, and then convincing them to take this step. This success was seen as another example of Hoffman’s growing influence in state politics and strengthened his stature going into subsequent sessions (Interviews 2011-2013).

Second, the failure to pass the Department of Insurance budget was seen as a major blow to Director Bill Deal. One member of the House explains that “After the 2011 session, Deal continued to be an important contact with CCIIO, but took a backseat to the governor’s office and the business community as far as driving this bill. I think that he didn’t want to have his history be a determining factor,” (Interview December 2011). Deal had served in the House for

more than 25 years, having left the House after a failed bid to become speaker during the 2007 session. As a result, he had a complicated history with some of the people whose support he needed to create an exchange. As one legislator describes, “He was then rapidly moved from the House and was made the director of the Department of Insurance. This kind of protected him because House leaders Denney and Moyle would have had him sit on the back bench and just kind of play with him,” (Interview December 2011).

With limited money and political support, there was little state bureaucrats could do to prepare for the creation of exchange throughout 2011. They attempted to keep up with the federal timeline as much as possible, but largely shifted their focus to getting ready for the 2012 session. One Department of Insurance official explained that “We need legislation in place in the 2012 session...in order to meet the January 2013 deadline. Our goal is to have legislation out there on January 2012” so that the House and Senate can move quickly to consider their bill once in session (Interview June 2011).

3) November 2011 – June 2012

Three important events took place in Idaho during the period between when the U.S. Supreme Court announced in November 2011 that it would hear the ACA case and when it ruled in June 2012. The first was the 2012 legislative session in which no action was taken on an exchange. Second was the coming together a coalition of interest groups supporting state control of an exchange. Third were the primary elections held on May 15th. The last two significantly altered the political landscape for the 2013 session in which legislation would pass to create an exchange.

2012 Session

In the weeks leading up to the 2012 session, many supporters of a state-based exchange were optimistic that enabling legislation could pass. In the words of one House Democrat, “My guess is there will be two bills we’ll have to deal with this year. One will be to do the statutory changes necessary for the exchange to exist. The other is an appropriations bill. Both of those will give opportunity for the nullifiers to rant and rave, carry flags, and throw bombs, and that kind of stuff. My feeling now is that there is enough understanding about what a state exchange versus a federal exchange means to businesses in the state of Idaho that they both might pass, actually,” (Interview December 2011).

However, no exchange bills were even introduced during the 2012 session, let alone passed. Governor Otter told legislators he supported the concept of a state-run exchange, but he did little behind the scenes to push them to pass legislation. Wayne Hoffman of the Idaho Freedom Foundation takes credit for this, saying that “A lot of that was our doing, putting the political pieces in place to stop the governor from being able to wrap his arms around that politically,” (Interview April 2013). Others agree that the Idaho Freedom Foundation played an important role, but cite House Speaker Lawrence Denney as the most important player.

Speaker Denney strongly opposed all aspects of the ACA, including the creation of a state-based insurance exchange. He worked behind the scenes to ensure that if a bill was introduced, it would not receive a hearing in committee. Interest group leaders closely watched to see if Representative Janice McGeachin, Chair of the House Health and Welfare Committee, would follow Speaker Denney or if she would let a bill to move forward. Shortly before the start

of the session, she announced on an Idaho Falls radio show that she was against an exchange and would not allow legislation to proceed (Interviews 2012-2013).

Supporters of an exchange pressed Speaker Denney to at least allow the bill to come up for a vote. A lobbyist for one of the state's insurance companies believes that Denney was nervous that an exchange bill would probably pass if he gave it a hearing. Supporters of an exchange felt they had enough votes for a bill to pass the Senate and that they were close in the House. This person explains a series of frustrating encounters:

I have never beaten my head against a wall so many times because I would go see Lawrence Denney because he would say 'if you can do this, come back and talk and we'll see about giving it a hearing.' I would then go do that and then he would move the goal post." He asked us to assure him that the majority of Republicans in the house would vote for it. We went out and we did that. We went back to him again and again and nothing. He strung it out. He knew exactly what he was doing. He kept stringing it out and stringing it out until there was no time left. Nothing happened (Interview May 2013).

An advisor to Governor Otter explains that it would have been futile to push against House leadership over an exchange, as well as detrimental to the rest of his legislative agenda (Interview May 2013). Without a strong commitment from Governor Otter, there was little that supporters of an exchange could do to overcome opposition by Speaker Denney and Representative McGeachin. Even if they had succeeded in getting a hearing, it is unclear that enough Republicans would have joined the Democrats to pass a bill. Many hoped that the issue would go away as a result of the upcoming Supreme Court ruling and the upcoming presidential election (Interviews 2012-2013). Against these odds, legislation was never introduced.

Industry Coalition Develops

Interest groups began to take a two year approach to winning support for a state-based exchange when they realized legislation was not going to pass. Their strategy for the end of the 2012 session in March was to plant seeds and strengthen their coalition for next year's session (Interviews 2013). Two of Idaho's most powerful interest groups played a central role in this process, the Idaho Association of Commerce and Industry (IACI) and the Boise Metro Chamber of Commerce. Both organizations are influential because they represent a large number of Idaho's businesses, including groups with the greatest interest in an exchange such as providers and small business owners.

By 2012, both IACI and the Boise Metro Chamber had gone through a comprehensive internal process and determined that there was strong consensus in favor of a state-run exchange. Someone involved in IACI's process describes that, "We don't have the ability in a small state like Idaho to call someone up in D.C. and resolve a problem promptly. We do have that opportunity in the state of Idaho. If we have a problem we can call the Department of Insurance and get a resolution in a hurry." This person adds that "Our view was that if we're going to do this, we're better off at least having the state have some level of control in the process," (Interview May 2013).

Leaders from these groups were frustrated by the arguments made by conservative organizations they often align with. As one person from the Boise Metro Chamber described:

To be frank, I was highly disappointed in the CATO Institute and those folks...From a business perspective we have to do this regardless. They said that one way to get around this is to de-certify the licensing of all of our insurance companies in Idaho. That is a joke. The other way is to resist paying your taxes. That's a joke too. If you want to stay in business, the IRS doesn't give a damn what you're doing from that perspective; if you're not paying your taxes you'll get shut down. They were offering nothing except

settling on a philosophical argument. We don't have that option; we have to conform (Interview May 2013).

Not every interest was in favor of a state-run exchange. One of the most prominent opponents was the Idaho Farm Bureau (IFB). Claiming to represent 64,000 Idahoan families in the agricultural industry, the Farm Bureau was one of the only groups to go on record in 2010 supporting the Idaho Health Freedom and in 2011 supporting the nullification bills. One of the organization's leaders acknowledges the tension over maintaining state control, saying "I think it seems strange to people why we took this position. Generally, we are all in favor of the government most local doing the job. If the county can do it, then the country should do it. We don't want the federal government involved. It seems a little counter-intuitive that we'd be taking that position," (Interview May 2013). The organization's position was decided at the 2011 Annual Convention held in Coeur D'Alene. Senators Russ Fulcher and Dean Cameron were invited to debate the pros and cons of a state-run insurance exchange, following which IFB members discussed the issue extensively and decided to "resist Obamacare in every possible way," including the exchange (Interview May 2013). The bottom-up nature of this process may have contributed to the Farm Bureau taking a different position than other industry groups that tended to have a more top-down decision-making process.

The interest group dynamic in Idaho was largely established by the time the Supreme Court ruled on June 28, 2012. Most of the traditionally powerful groups were in favor of an exchange. On the other side were a handful of industry opponents, such as the Idaho Farm Bureau, and ideology-driven groups such as the Tea Party and the Idaho Freedom Foundation.

2012 Republican Primaries

The other major turning point during this period was the Republican Party primary elections held on May 15th. Three factors made this election unique. First, the caucus for the presidential campaign had already been held two months earlier. With the next gubernatorial election not until 2014, there was little on the ballot besides state legislative races. Second, this was the first election held since redistricting which placed a number of incumbents against each other, leading many to retire. Third, this was the first time the state had a closed primary. In the past there was an open primary, though Republicans accused Democrats of crossing over and helping elect weak candidates (Wright 2012). More than one-third of Idaho's residents identify themselves as independents, meaning that the primary would likely be dominated by the very most conservative people in the state (Russell 2012a).

These conditions created a perfect storm for infighting within the Republican Party that had important consequences for the debate over an exchange. House Speaker Lawrence Denney and House Majority Mike Moyle worked in an unprecedented way to strengthen control over their caucus. They funneled money from the House leadership political action committee (PAC) – the Victory Fund PAC – to a separate PAC targeting a handful of incumbent Republicans. One of the people targeted was another member of the House leadership team, Representative Ken Roberts. Moyle said Roberts had lied to him and threatened to defeat him. “My goal is to make Ken's life miserable because he's making my life miserable” (Russell 2012b). Roberts says this was not true, calling Denney's and Moyle's actions “disingenuous and highly disappointing” (Russell 2012c). Ironically, as a member of the House Leadership, Roberts is the Treasurer of the Victory Fund that was being used to try to defeat him. Another target was Senator Dean Cameron, the co-chair of the powerful Joint Finance and Appropriations Committee (JFAC) and

a strong supporter of a state-run exchange. None of the candidates targeted by Denney and Moyle were defeated, severely weakening their leadership in the House going into the 2013 legislative session.

According to Tea Party leaders, another narrative of the 2012 primaries was that insurers and other interest groups spent large amounts of money to support advocates of a state-based exchange (Interviews 2012-2013). There is limited evidence that this was the case. In fact, it was the Idaho Farm Bureau that was the largest spender in races for the House, the chamber seen as most important for determining the outcome of the exchange debate. Blue Cross of Idaho was the 15th largest spender at an amount one-third of the Idaho Farm Bureau's. Select Health was 17th and the Idaho Hospital Association was 19th. There was a very similar dynamic in Senate races (Follow the Money 2012).

One piece of evidence supporting the claim by Tea Party leaders is that IACI, a strong supporter of the exchange, was the third largest spender in the state in terms of independent expenditures. They spent a total of \$89,613 – quite a bit of money for Idaho politics – independently supporting candidates across the state, in addition to contributions made directly to each campaign. Yet, this was approximately the same amount as IACI had spent in the previous election cycle, before exchanges were on the legislative agenda (Follow the Money 2012).

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It was unclear at the time what the primary election results would mean for the prospects of a state-run insurance exchange. Legislation had little chance of advancing as long as Lawrence Denney was Speaker. However, in the wake of the contentious primary season, there was talk that someone might challenge him in the upcoming session. The Supreme Court's decision in June and the national election results in November meant that the issue was still very much alive as legislators reconvened for the 2013 session. Infighting within the Republican Party would culminate in March 2013 with the passage of HB 248 creating an insurance exchange.

2013 Organizational Session

Re-elected and newly elected legislators meet every other December to select their leaders for the next two years. The organizational session is often a formality in which the previous officers are re-elected. Occasionally there are heated contests to fill open positions, but it is unprecedented for a current leader to be challenged by a member of his party. As legislators met in December 2012 to prepare for the upcoming 2013 session, many Republicans were upset with Speaker Denney and House Majority Moyle for trying to defeat incumbents in the previous primary. Many did not like Denney and Moyle's style, describing them as vindictive, closed, and holding on to grudges. Representative Scott Bedke of Oakley saw an opening and decided to make a run at the Speakership (Interviews 2013).

Bedke conducted a highly personalized campaign to win enough support within the Republican caucus. Redistricting and retirements in 2012 meant that more than a third of the

legislature would be new in 2013. As Denney and Moyle were making enemies of Republican incumbents, Bedke focused on helping Republicans running for open seats. Many of these Republican freshmen explain that he personally drove out to their remote corner of the state to give his support (Interviews 2013). Bedke contributed between \$200 and \$1,250 to the campaigns of all but one of the 23 newly elected House Republicans (Follow the Money 2012). This was not enough money to swing an election for most candidates, but it was a symbol of involvement and support. Denney's Victory Fund PAC contributed to all but five of the newly elected House Republicans, meaning that Bedke had contributed to four more new legislators than had Denney. The vote for speaker was a closed ballot, but many interviewed say it was close enough that four people may have made the difference (Interviews 2013).

Interest groups had a lot at stake in the speaker's race, though none got involved publicly. A leader of a business organization compared lobbying about the leadership race to "playing with fire," (Interview May 2013). Another industry representative explained that "There is one sacred area that lobbyists will not engage in, and that is the politics of leadership," (Interview May 2013). In other words, the most important moment in the 2013 legislative session had no direct engagement from interest groups.

Scott Bedke's election as Speaker meant that the idea of creating a state-run insurance exchange would be allowed to progress. It is ironic that the most important turning point in the debate over an exchange had nothing directly to do with the politics of health reform. Speaker Bedke did not initially indicate whether he would support an exchange, but made it clear he would allow bills to be introduced, hearings to be held, and votes to be called on controversial issues. A member of the House explained that "There was a different leadership style and culture, leading to a different feel in the House," (Interview May 2013).

Speaker Bedke ultimately decided to support an exchange. A Republican Senator who supported an exchange said that “It changed the whole dynamic. If [an exchange] was going to get hung up, it would probably be in the House, which is where the opposition to that type of thing had been the strongest in the past,” (Interview May 2013). Another Republican Senator describes Speaker Bedke’s evolution on an exchange, saying that:

At least he wanted to give the bill an opportunity to be heard. In fact, even to speaker Bedke’s credit, he spent literally hours learning about the pros and cons, and learning about the issues. He became very knowledgeable. With that knowledge, he decided that the decision to have a state-based exchange was preferable compared to the federal exchange. He became a proponent.

Bedke’s support was particularly consequential because he had the power to decide which committee an exchange bill would be sent to, who chaired the committee, and which members sat on the committee. Representative Janice McGeachin had retired the previous year, meaning that the position of Chair of the House Health and Welfare Committee was open. Bedke appointed Fred Wood, a practicing physician who was one of the people representing the legislature on Governor Otter’s task force and who was a big proponent of an Idaho exchange. Tea Party leaders and even supporters of an exchange suggest that it appears Bedke stacked the Health and Welfare Committee to pass exchange legislative, noting that along with the Democrats, he already had enough votes to get the bill out of committee (Interviews 2013). As supporters of an exchange would soon find out, this did not ensure that a bill would ultimately make it out of the House and be signed into law.

Governor Otter Deliberates

With Lawrence Denney no longer blocking legislation, Governor Otter was free to support a state-based exchange. The only reason this was still a possibility in December 2012 was because HHS had pushed the previous deadline of November 16th back a month. Senate leadership met with Governor Otter in mid-November, shortly after the deadline extension, but before Scott Bedke had become the new speaker. They were concerned with whether the governor had the right to create an exchange on his own in the absence of legislation. Senate leaders saw this as a separation of powers issue even more important than an exchange, saying that “We wanted to make sure we had a pattern in place that says the legislature, as hard as it is to wrestle with these issues, should have to,” (Interview April 2013). They consulted with a private law firm to explore their options in case the Governor acted on his own. One person summarized the November meeting saying “He made us a – I don’t know if the word is a promise – but I certainly left that meeting confident that he was not going to issue an executive order to make a decision without including us,” (Interview May 2013).

Governor Otter went through a surprisingly involved deliberation over the exchange considering that he had supported the concept the year before. In December, he told the leadership teams from both chambers that he had not yet decided what to do. He read from a recent press release by Governor Chris Christie explaining why he had vetoed legislation in New Jersey. Legislative leaders told him that they would not advance legislation if he was not going to support it. One person in the room explains that “I honestly left that meeting thinking that he’s not going to do this,” (Interview April 2013).

Another meeting was scheduled for the following week, just days before the new HHS deadline to declare a state's intention to create an exchange. All four members of the Senate leadership were in attendance, but Speaker Bedke was the only leader from the House. Governor Otter announced that he was going to support a state-based exchange. Senator Majority Leader Bart Davis referred to this moment during the Senate debate, quoting Governor Otter as saying that this was the second hardest decision he has made in public office, only behind his vote in Congress to oppose the Patriot Act (ID Senate Debate, February 21, 2013).

Governor Otter was under pressure from business interests supporting an exchange and far right Republicans who were opposed. An adviser explains that he went to a Republican Governor's Association meeting around this time and "He knew how everyone was feeling, that if we all don't do it, the whole thing would fall apart," (Interview May 2013). Interest group leaders praised the governor for his support. For example, a prominent insurance agent said "Otter put forth an enormous amount of courage, saying I know my party is against this and thinks I'm stupid, but I have to think about what's best for the state of Idaho. My opinion from talking to Otter, his staff, the Department of Insurance, the people I've talked to over the last two years, I really think he came down with the decision that the businesses and people he talked to didn't think he had a choice," (Interview May 2013). Another industry leader added that "By that time, the Supreme Court had ruled and Romney had lost. So the grand scenario for Republicans was not going to take place. Otter said we may not like it, but it's the law of the land of the land," (Interview My 2013).

Having decided to support an exchange, Governor Otter now faced a number of other challenges, including how to meet the Obama administration's deadline while the legislature was out of session for a few more weeks, how strongly to push the legislature, and what tactics to

employ. This moment was widely seen as a huge test of leadership for Governor Otter (Russell 2013a). The first challenge was easily overcome, as leaders at HHS were more than happy to cooperate with a Republican governor trying to create an exchange in a solidly red state. An adviser to Governor Otter explained that “It’s not that we gained a seat at the table, at this point we feel like we created the table. We really have gotten a lot of concessions from them and they really do want us to succeed. There are other states that don’t have that,” (Interview May 2013). In fact, this adviser explains that other Republican governors were asking him to advocate to HHS on their behalf, observing that he had a relationship they did not (Interview May 2013).

Governor Otter decided to put the full weight of his office behind a state-based exchange. He spoke strongly in favor of an exchange during his state of the state speech on the first day of the session in January 2013 (Otter 2013). The governor’s office took the lead in coordinating lobbying groups in favor of an exchange, as well as drafting legislation. David Hensley, Governor Otter’s Chief of Staff, personally introduced legislation before committees in either chamber. He and Tammy Perkins, the health adviser to Governor Otter, held regular breakfast and lunch meetings with legislators throughout the session to answer questions about an exchange.

Stakeholders on both sides of the debate stressed the importance of Governor Otter’s support. One opponent said “The fact that the governor supported an exchange in Idaho was key. If he hadn’t, the idea would have been dead on arrival,” (April 2013). Others noted that the amount of time dedicated to this issue by Hensley and Perkins indicated how high a priority this was for Governor Otter (Interviews 2013). An industry leader praised Hensley, saying that “He was brilliant at calmly explaining the merits of an exchange. He had an outstanding demeanor...I

thought he did a masterful job,” (Interview may 2013). Tea Party leaders were angry, calling him a traitor (Interviews 2013).

SB 1042 Introduced

An early strategic decision legislative leaders had to make was which chamber should consider the bill first. The legislative process in some states resembles Congress’ in which chambers work on similar legislation in parallel and resolve differences through a conference committee. By contrast, legislation in Idaho is typically considered one chamber at a time. In other words, the Senate does not consider a bill until after it has been approved by the House, and vice versa.

Many Senators strongly preferred that the process begin in the House since this was likely to be the more difficult chamber. They did not want to have to take a tough vote if they did not have to (Interviews 2013). Much to their frustration, Senate Pro Temp Brent Hill agreed to start the process in the Senate, hoping that a solid victory there would generate momentum going into the House debate. Also, turnover in the House was particularly high, with 30 of the 70 representatives being brand new. As one legislative leader explained, “This was a very hot and emotional issue. Starting in the Senate gave [new legislators] more time for the learning curve,” (Interview May 2013).

Senate Bill 1042 was introduced on January 30th in the Senate Commerce and Human Resources Committee, the Senate committee that typically handles insurance legislation. Senators note that unlike in the House where the Speaker has significant discretion over committee assignments, Senators get to select their committees according to seniority. As a

result, it was not possible for Senate leaders to stack the committee in favor of an exchange. However, it did help that two members of the committee, Senators Dean Cameron and John Goedde are both insurance agents during the rest of the year the legislature is not in session. A fellow Senator on the committee explains, “They had the background information to answer the technical questions,” and played a leadership role behind the scenes (Interview May 2013).

Senator John Tippetts anticipated a large crowd and a heated debate at the bill’s committee hearing on February 5th. He would not be able to accommodate everyone that came to testify, but wanted to make sure everyone felt heard. He gave each person three minutes to speak, except Governor Otter’s chief of staff to introduce the bill and Wayne Hoffman of the Idaho Freedom Foundation to oppose it, who were given ten minutes. Testimony alternated between supporters and opponents, and so it was not obvious which side had more support. Supporters tended to be from industry, praising the advantages of local control. Opponents tended to be private citizens, warning about a government takeover of health care. One person testified that by supporting an exchange, the governor was accepting full ownership of the ACA, and that in Idaho the law would now be known as “Ottercare” (Russell 2013b).

At the conclusion of the meeting, Senator Tippetts thanked everyone for holding a civil debate. He explained that the meeting would continue two days later so more people would have an opportunity to speak. On February 7th, the legislative auditorium was once again packed. This time, Tea Party members wore bright pink pieces of duct tape on their lapels. A senator on the committee explains that “Our rules are clear that people are not allowed to bring signs or wear pins that have a message, but they wanted the committee to know that most people in attendance were opposed to an exchange, and this was a creative way of doing this,” (Interview May 2013). Despite a strong showing and aggressive testimony by the Tea Party, the committee

passed SB 1042 by a vote of 8-1. The only no vote came from a Democrat who supported the concept of an exchange but wanted more legislative oversight. Governor Otter put out a statement saying that he was proud of Senate Republicans for voting unanimously in favor of state control of the exchange (Russell 2013d).

A few days later, SB 1042 appeared on the Senate docket for a floor debate and vote. Without explanation, the debate was pushed back. As the bill came up for a debate again, the same thing happened. After nearly a week of delays it was reported that the reason was that a group of 16 House freshmen were about to introduce their own exchange bill (Popkey 2013). The typical legislative process was now being turned on its head.

The Freshmen 16

As SB 1042 made its way through the Senate, a number of House Republicans expressed frustration over the choice they would soon need to make. They did not like Obamacare, but wanted state control of the exchange, including strong legislative oversight. SB 1042 gave control of Idaho's exchange to an independent board of directors that did not include any legislators or people appointed by the legislature (ID SB 1042 2013). One freshman Republican explains that "I felt like a fish out of water flopping all around, because one second I'm going, 'ya, this part makes sense. Maybe we'll do this and not be complicit, but then I'd think 'no, I don't want this to happen,' and I was flip flopping all over the place. And it was not a very comfortable feeling," (Interview April 2013).

Representative Luke Malek had similar feelings and began having informal conversations with fellow freshmen Republicans in the hallway. He organized a meeting in

which options were discussed. They decided to write a trailer bill to the Senate bill, meaning that their bill would only become law if SB 1042 also became law. Legislation was drafted by the next morning and they went to Speaker Bedke and Governor Otter that afternoon. On the morning of the third day, 16 freshmen Republicans held a press conference announcing their plans (Interviews 2013).

Members of the freshmen 16 say the speaker and governor were very receptive because head counts made it clear that SB 1042 would not pass the House. These freshmen were a lifeline towards winning enough support (Interviews 2013). Not all Republicans were as receptive. House Republican Brent Crane called Luke Malek to the Capital Building late one night. When Malek arrived, U.S. Congressman and former state legislator Raul Labrador was there to confront him. Labrador reportedly made threats to try and convince him to back off on the exchange (Interviews 2013).

It is interesting that Luke Malek only organized freshmen, and not all House Republicans supporting an exchange. One member of the Freshmen 16 explains that none of the freshmen had been around for the previous fights over the Idaho Health Care Freedom Act and thus did not have the same entrenched positions as other legislators (Interview May 2013). Another notes, “The freshmen found ourselves in a unique position as the new girl at the dance and no one is asking us to dance. So we got together to watch each other’s backs. The people we could trust the most were the people in our same shoes,” (Interview December 2013).

People on both sides of the debate over an exchange cite the press conference on February 13th by 16 House Freshmen as an important turning point. An official at the Department of Insurance says “That group of 16 was a momentum changer without any

question,” (Interview May 2013). A leader at the Idaho Farm Bureau, one of the few industry groups opposed to an exchange, explains that “The odds were stacked up against us, but we felt we had a chance until the gang of 16...That’s what changed everything. Until that moment, we thought many of those freshmen were in play,” (Interview May 2013).

Senate Passes SB 1042

It took a few days for Senate leaders to decide how to react to the freshmen 16. SB 1042 had already passed the Senate Commerce and Human Resources Committee but had not been voted on by the full body. It was determined that the Senate would try to pass SB 1042 and then consider the trailer bill if it passed the House. One Senate leader explained that House leaders appealed to the Senate saying “This is about trust; that you run the original bill over to us and we’ll send you the trailer bill. Once you pass the trailer bill, then we’ll take up the other one,” (Interview April 2013).

The Senate began debating unusually early on February 21st, with an announcement from leadership that they would continue until everyone said everything they wanted to say (Russell 2013e). The prayer by the Senate Chaplain that morning asked that Senators be “inspired with good visions” and “guided through each quandary” (Senate Debate February 21, 2013). The debate was a marathon session lasting more than six hours. Unlike in Congressional debates where statements are generally made before empty chambers, the vast majority of Idaho’s Senators remained for the entire debate. Before the meeting, Senate Pro Temp Brent Hill told the caucus that he would be sitting in the chair presiding over the chamber and would not tolerate incivility (Interviews 2013). The debate was passionate, but remarkably respectful. One

opponent of an exchange who did not like the outcome expressed that “It was probably some of the greatest debate we have ever seen in recent memory of Idaho politics...People entered the chamber as friends and left as friends,” (Interview April 2013).

Arguments were generally framed in terms of ideology or the benefits of local control. Insurance agents such as Senator Cameron and Senator Goedde argued that an exchange run by Idaho could keep user fees low and ensure that fewer insurance mandates would be included. Senator Hagerdorn used a unique analogy to explain why he supported an exchange even though he opposed Obamacare. “Our choice is a federal exchange or a state exchange. I can’t ride this pig if it’s a federal exchange. I can ride it with spurs on if it’s a state exchange. I select the one that I have at least the ability to spur once in a while.” Senator Cameron and Senator Davis both argued that if the Obama administration is able to set up exchanges in most states, then they are just one push of a button away from establishing a single-payer system. Senator Fulcher disagreed, saying that complying with Obamacare to any degree put the state on a path towards a single-payer system. He used coded language referencing Mormon scripture that “In my heart and in my mind¹⁹, I know where this leads, and there is no turning back once we do it.”

The rhetoric turned a bit more heated by the fourth hour. Senator Rice declared the ACA unconstitutional, regardless of the Supreme Court’s ruling, saying that “John Roberts is a Supreme Court Justice and needs to act like it!” Senator Pearce appealed to the state’s culture of independence and resistance, saying “Liberty is the right to choose. Freedom is the result of a choice...Come on folks, this is Idaho!” Senator McKenzie referenced a Russian author writing in a concentration camp during World War II. The author was quoted as saying “We didn’t love

¹⁹ More than one-third of Idaho’s legislators are Mormon and would likely have recognized this reference. Doctrine and Covenants 8:2 is a verse of Mormon scripture in which Joseph Smith says the Lord explained to him how the Holy Ghost reveals truth. “Behold, I will tell you in your mind and in your heart, by the Holy Ghost, which shall come upon you and which shall dwell in your heart.”

freedom enough” before then and that “we deserved what happened afterward.” Senator McKenzie concluded, “I will not be complicit in the federal government taking control. This echoed a comment made on Twitter earlier by Senator Sheryl Nuxoll who compared the role of insurance companies in an exchange to “the Jews boarding the trains to concentration camps” because she believed it made abortion more accessible (Russell 2013f).

At the end of the long debate, the Senate voted 23-12 to pass SB 1042. Senators on both sides say that no one changed their minds as a result of the debate, with the final vote exactly as they had predicted at the outset. However, it was not clear what would happen next, including whether the House would pass both SB 1042 and the trailer bill, and whether the Senate would then pass the trailer bill.

HB 248 Introduced in the House

A hearing on the House freshmen’s trailer bill, HB 179, was originally scheduled for February 22nd, the day after the Senate debate and vote. Without public explanation, the bill was removed from the agenda of the House Health and Welfare Committee. Behind the scenes, there were concerns from House members about the agreement between the leaders of the two chambers over the trailer bill process. The trailer bill technically could not be passed until after the bill it trailed had passed. In other words, the House would first have to approve SB 1042 before considering the trailer bill, and then would have to rely on the Senate to win enough votes to pass the trailer bill. This left House freshmen vulnerable to the possibility that the bill passed by the Senate would become law while the changes they wanted would not. The solution was for an entirely new bill to be drafted, incorporating elements from the governor’s bill as well as the

increased legislative oversight demanded by the 16 House freshmen. Senate leaders agreed to this plan, but were frustrated that it meant they would have to debate exchange legislation once again (Interviews 2013).

Interest groups on both sides of the debate were mobilized in high gear by the time HB 248 was introduced on March 4th. In addition to coordinating large groups to show up at the legislative hearings, like when they wore pink duct tape to the Senate committee hearing, Tea Party leaders attacked legislators in their home districts. The local Republican Party organization in some counties held votes of no confidence for their freshmen House members who supported an exchange. One interest group leader describes these as “huge, awful meetings that were shouting matches in which the police was almost called they were so unruly. They absolutely demeaned these legislators in front of all these people...It’s pretty ugly at the precinct level,” (Interview May 2013).

A Republican legislative leader tried to put the Tea Party opposition in perspective, comparing it to the public outcry over a bill that would have removed the sales tax exemption for Girl Scout cookies. “If you take the amount of email I received in a given week on the girl scouts sales tax exemption, and compare it to the total number of emails I received the whole year on the state-based exchange, the girls scout cookies sales tax exemption was substantially more. What you have is a very loud, obnoxious, but small group of opponents.”

On the other side, the industry coalition coordinated by Governor Otter’s office, known as The Idaho Health Exchange Alliance, now included more than 400 businesses. The Idaho Association of Health Plans provided money for the Alliance to hire a private public relations firm to do grassroots work. The Alliance ran radio ads with Governor Otter advocating for state

control of the exchange. A website called KeepitinIdaho.com was developed to showcase the strength of the coalition and included a long list of businesses and individuals supporting an exchange.

An adviser to Governor Otter explains that “All the legislators were hearing from the far right; they were inundated from the far right. If you’re only hearing from the far right you wonder where everyone else is and figure no one cares. So the goal of the Alliance was to get other people involved and get them to speak up,” (Interview May 2013). Describing the effects of the industry coalition on the debate, one legislative leader says “I think it was huge. It gave people courage. I’m not saying they wouldn’t have done it anyway, but it certainly helped buoy up our courage.” This person goes on to explain that IACI and the Chamber Alliance were the two most important industry allies. “When you have got your business groups as a whole supporting this, that helps. We tout ourselves as a pro-business state. How do you vote against something that the majority of your businesses support?” (Interview May 2013).

On Thursday March 7th, interests groups on both sides packed the legislative auditorium – which had been named after Abraham Lincoln since the Senate Commerce and Human Resources Committee held its hearing on SB 1042 a month earlier. The hearing on HB 248 began at 7:03 a.m. to give as much time for testimony as possible. Governor Otter’s chief of staff introduced the bill followed from opposing arguments by Wayne Hoffman of the Idaho Freedom Foundation. Twelve people testified in favor of HB 248, including many of the leaders of the industry coalition. Twenty-six people testified against the law, including at least fifteen who identified themselves as member of the Tea Party or have an online presence as a member of the Tea Party. Two were members of anti-abortion groups and two were leaders in their county Republican Party organizations. These were very large numbers for an Idaho legislative

committee. By comparison, a combined total of 13 people testified regarding one of the 16 pieces of legislation considered at the previous five meetings of the House Health and Welfare Committee (Idaho House Health and Welfare 2013).

The main argument put forward by Tea Party leaders was that HB 248 was a false choice. In the words of one person who testified against the bill, “We’ve only got two choices, a state-run or a federally run exchange. Which do you want? That’s a lie. The third, fourth, and fifth choice is nullification. There’s do nothing and let the 2010 Idaho Health Freedom Act prevail (Interview May 2013). Another opponent told legislators that REAL ID was an example of an instance in which the federal government backed off of requirements because so many states refused to comply (Interview May 2013). Despite such heated arguments, the committee passed HB 248 on a voice vote. Only Representative Vander Woude asked that his opposition be included in the record (Idaho House Health and Welfare Committee 2013).

HB 248 Passes House and Senate

Interest groups lobbied aggressively in the week between the House Health and Welfare Committee hearing on March 7th and the debate on the House floor on March 13th. Anticipating that the Senate vote on HB 248 might be similar to the previous vote on SB 1042, opponents saw this as their last best chance to beat an exchange. The debate was very similar to the one held weeks earlier in the Senate. Most House members remained in the chamber for the duration of the seven hour debate. The tone was mostly civil, though things did get heated at times. The House gallery was filled with opponents of an exchange, including the state Republican Party Chairman who reportedly led applause when opponents spoke. One legislator believed “This

was very inappropriate; very out of line; very unprofessional. He later did send an email to all the legislators, at least the Republicans, sort of apologizing. It was more of an ‘If I wasn’t supposed to do that, I’m sorry,’ but he’s not really admitting that he did anything wrong,” (Interview April 2013).

The split within the Republican caucus meant the House was effectively divided into three factions, Republicans who supported an exchange, Republicans who opposed an exchange, and Democrats. This put the Democratic caucus in the unusual position of being the deciding votes even though they only had 13 seats. An interest group leader explains that although most people expected the Democrats to support a state-based exchange, it was not a foregone conclusion. “We didn’t know until the day before what they were going to do,” (Interview May 2013). Some wanted to use the situation as leverage on education bills they supported. House Minority Leader John Rusche reportedly talked his caucus out of using the exchange debate this way because the two issues were unrelated and unlinked in people’s minds. They also did not want to risk being the reason a state exchange was not created. As one member of the caucus explains, “very few were actually willing to shoot the hostage,” (Interview September 2013).

Interest group leaders and Republican supporters of an exchange praise the approach taken by Representative Rusche and the Democrats. One House Republican describes that “They did not say one word throughout the whole debate. They were very wise in understanding that this was a party-specific argument. They knew where they were and that they wouldn’t be changing minds,” (Interview May 2013). In fact, they knew that they might make it harder for Republicans to support an exchange if the issue was closely identified with Democrats rather than Governor Otter and other Republicans (Interviews 2013).

When the roll call was finally taken, HB 248 passed 41-29 (Idaho House of Representatives 2013). Two of the freshmen 16 ended up voting no, meaning that there were ultimately more Republicans (29) voting against the bill than voting for it (28). Democrats made up the difference, with all 13 voting in favor.

The Senate then moved quickly on SB 248 so it could be passed by the end of the session less than three weeks away. Senator Tippetts began the hearing on March 19th by referencing the criticism that he erred by not disclosing a conflict of interest as a member of IACI's board of directors. He acknowledged that IACI is a primary supporter of an exchange, but explained that his relationship did not constitute a conflict of interest. He also explained that the Attorney General's office agreed there was no conflict (Idaho Senate Commerce and Human Resources Committee 2013).

Once again, David Hensley introduced the bill on behalf of the governor and Wayne Hoffman spoke first for the opponents. Many of the same people that testified to the Senate on SB 1042 and to the House on HB 248 testified again. For example, Tea Party leader Chad Inman warned that "Lies will come out and will continue to be told." He added that he does not blame the committee "because they are under a lot of pressure from lobbyists and the governor" (Idaho Senate Commerce and Human Resources Committee 2013). Senator Sheryl Nuxoll, most known in this debate for comparing an exchange to the holocaust, took the unusual step of testifying against a bill before a committee in the other chamber. She cited her Catholic faith and warned that an exchange would increase access to emergency contraception that was on par with abortion. She was followed by Christine Tiddens of the Catholic Charities of Idaho who disagreed, saying that the Diocese of Idaho supported HB 248 and creating an exchange. The committee passed HB 248 by a vote of 8-1. The only no vote once again came from Democrat

Brandon Durst even though this bill seemed to address the criticisms he raised when voting against SB 1042 (Idaho Senate Commerce and Human Resources Committee 2013).

The full Senate voted two days later to pass HB 248. The roll call was the exact same as for SB 1042, with 23 in favor and 12 opposed. Nobody expected a different outcome, but that hardly meant that the debate was a quick formality. The session started with Republican Senator Dean Mortimer objecting to the unanimous consent to waive the full reading of the bill, meaning that everyone had to sit and listen as the Senate's secretary took ten minutes to read all six pages of the bill (Russell 2013g). The debate lasted more than three hours, with critics making many of the same attacks against the exchange and supporters giving many of the same defenses as during the previous debate.

Near the end of the debate, Senate Pro Temp Brent Hill said that "Many will criticize your choice here today, either way you vote, because the choices we have stink. But the critics are wrong if they question what's in your heart, and I thank you for what I see in your hearts. I'm proud of you." Though the debate was once again remarkably civil and their preferences prevailed, legislators privately described this as their most frustrating session and the most divided they had ever seen the legislature (Interviews 2013).

Governor Otter released a statement shortly after the vote saying "I appreciate the legislature's support enabling me to do what I believe is right for our citizens. Of course we share objections to Obamacare, but as responsible elected officials we are also committed to constructively working to the best possible outcomes for Idaho. I'm grateful for that collaboration" (Hill 2013). Governor Otter signed HB 248 into law one week later on March 28th.

Post-Session

In the closing days of the 2013 session, House Minority Leader John Rusche introduced a bill to expand Medicaid. The idea was effectively dead on arrival for two reasons. First, Governor Otter indicated in his state of the state speech three months earlier that he would not support Medicaid expansion this year. Without his support, legislation was not likely to proceed. Second, many Republican supporters of the exchange privately expressed that they were burnt out on discussing the Affordable Care Act. The exchange debate had dominated the session for so long that there was not time to consider Medicaid. As a result, Idaho has the distinction of being the only state during the ACA's first full year of implementation (2014) to have chosen a state run exchange but rejected the Medicaid expansion (Jones, Singer, and Ayanian 2014).

However, one of the consequences of having taken so long to decide to run its exchange is that Idaho's policymakers did not have enough time to develop the IT before open enrollment in October 2013. Governor Otter appointed 19 people to the exchange's board of directors on April 10th, just two weeks after HB 248 was signed into law. These appointments did not need immediate Senate confirmation because they were made after the legislative session had concluded, if only by a matter of days. The board included a wide range of people, such as consumer advocates, providers, insurers, agents, and legislators.

An agreement was struck with the federal government that the board of Idaho's exchange would retain some policymaking authority, but the state would rely on the federal website healthcare.gov for the first year. One state official describes Idaho not as a federal exchange or a fully autonomous state exchange, but a "supported state exchange," (Interview October 2013). Opponents of an exchange cite this as evidence that they were right all along, that Idaho would

not really have that much control over its exchange. The Wall Street Journal criticized Idaho for having fought so intensely for control only to give it back to the federal government (Dooren 2013). Wayne Hoffman says “The whole thing would be laughable if it wasn’t such a disgrace,” (Interview October 2013).

This intergovernmental dynamic created confusing situations for Idahoans during the first weeks of open enrollment in October 2012. One official describes that when the federal website did not work, consumers would phone the Idaho call center located in Boise. The staff of 10 people was not able to do much other than refer people to healthcare.gov and give them the phone number for the federal call center. When people then called the federal call center, they were told that Idaho was running its own exchange and so they should call the Idaho call center (Interview October 2013). If they did call back, it was to complain that one side was either uninformed or lying.

Supporters of an exchange explain that they do not regret passing HB 248. One member of the board explains that “There is a big difference between using the federal government as a sub-contractor and having the feds run the exchange,” (Interview September 2013). Other members of the board point out that the state is eligible for a lot more grant money for outreach than are states that defaulted to the federal government, and that Idaho’s user fee is 1.5% compared to 3.5% in federally facilitated exchange states. They also point to the fact that Idaho has the fifth highest enrollment in the country in terms of percent of potential exchange population that have signed up at 38% (KFF 2014c).

This arrangement with the federal government may be a win-win situation for Idaho policymakers. They are able to control aspects of the exchange they care about such as the level

of regulation, user fees, and plan management, without having to focus as much energy on the development of IT. Others see it as a lose-lose situation in that state leaders have been blamed for the troubled rollout of healthcare.gov although they had little input on its development and no ability to fix its problems. The truth is probably in the middle and will only become clear with time.

Conclusion

Many factors led to Idaho deciding to create an exchange. The debate was largely driven by party dynamics, but is hardly explained by partisanship alone. Instead, it is important to understand the important role that interest groups played, as well as the extent to which path dependence, institutional design, and partisanship shaped the state context, and key decisions by the Obama administration shaped the inter-governmental context. In this section I examine Idaho's decision to create an exchange through each of the theoretical lenses discussed in chapter two.

Federalism Context

Idaho's decision-making process most closely matched expectations federal policymakers had about how conservative states would respond. Idaho Republicans voiced their opposition to the Affordable Care Act by passing the Idaho Health Freedom Act in 2010, a nullification bill in 2011, and joining the lawsuit that was decided by the Supreme Court in 2012. However, once these oppositional tactics had run their course, the Republican governor and Republican-led

legislature decided it preferred state control of the insurance exchange. This is exactly the reaction the Obama administration was hoping for when it extended the deadline in June 2012 for the Level 2 Establishment Grant and the deadlines in November and December 2012 for declaring intention to create an exchange. However, Idaho was one of only three states to create an exchange after these deadline extensions.

Philosophical differences about the role of each level of government played a major role in the debate over an insurance exchange. Advocates on both sides had a preference for local control. However, opponents did not believe that Idaho would have much autonomy even if it created an exchange. Wayne Hoffman of the Idaho Freedom Foundation described the ACA's intergovernmental dynamic as "a form of phony federalism." He believed that the federal government is giving states the illusion of control, while setting the rules and guidelines nationally (Interview April 2013). This is a valid argument to a certain point. Unlike with Medicaid or CHIP, the state has limited discretion to shape the program and handle funds. It determines the essential health benefits, but only within the constraints of HHS regulations. It acts merely as an in-between for residents, insurance companies, and the federal government. The argument is exaggerated in that states do have significant discretion over the type of exchange created and how it is governed. The strong level of support among Idaho's industries suggests they believed the state would retain control in important ways.

Opponents argued that in addition to nullification, states could block federal law. If enough states resisted the ACA, they believed the entire law would collapse under its own weight. Supporters of an exchange did not agree, with one Senate leader saying that the difference between REAL ID and the ACA was "like comparing apples to helicopters. This is

the President's legacy bill," (Interview April 2013). The implication was that President Obama would not back down.

The policy-making process was also shaped by practical realities of federalism in practice. Officials at HHS focused most of their energy on the executive branch, working particularly closely with bureaucrats at the Department of Health and Welfare and the Department of Insurance. HHS Secretary Kathleen Sebelius met personally with Governor Otter on multiple occasions, saying she would do whatever she could within the law to help him succeed (Interviews 2012-2013).

Officials at the Idaho Department of Insurance describe that the relationship with HHS grew particularly strong after Governor decided he would push for a state-based exchange in the 2013 session. HHS was excited that at least one fully Republican-led state might create an exchange. According to one bureaucrat, "Once Governor Otter made the decision that Idaho should have a state-based exchange, we began to have very good support from CCIIO. We were assigned a couple of very knowledgeable helpers that are working with us today. That was a real change as far as I could interpret it," (Interview May 2013).

By contrast, the Obama administration was limited in its ability to work with Idaho's legislative branch. Unlike state agencies which have designated people as contacts for the federal government, there are so many important players that it is difficult to know who to negotiate with in the legislature. Each state has its own unique political culture and set of personalities, making it particularly difficult for the Obama administration to know how to intercede. Instead, it primarily chose to rely on a state's executive branch, while also being available to answer questions should state legislators reach out.

Wayne Hoffman regularly challenged senators and representatives to call HHS and get responses to his arguments, including how much control Idaho policymakers would actually have, how much data collection will be done, and what will happen with the data that is collected. He told legislators that “If proponents are correct and there is flexibility to not do these nefarious things, then great...If however, I am correct that there is no flexibility and HHS is just going to tell you to take a flying, you know, jump off a cliff, then better. You have just learned that there is no point in doing an insurance exchange whatsoever,” (Interview April 2013).

Some legislators did call HHS directly. One Republican leader describes hearing about an incident that occurred when Scott Bedke was deciding whether to support an exchange. “He decided, I’m the Speaker of the Idaho House of Representatives. I’m going to call and see if Secretary Sebelius will take my call. She didn’t, but he did speak with one of her chief deputies. My impression of his impression is that this is a big deal to the administration,” (Interview April 2013). This leader describes having multiple phone calls with federal officials. “every conversation that I’ve had with people at HHS is that they really wanted as many Republican-led states do this as possible, and they would bend over backwards,” (Interview April 2013). Senator John Tippets, Chair of the Senate Commerce and Human Resources Committee that considered exchange legislation, also spoke to HHS officials on multiple occasions. During the floor debate for SB 1042 on February 21st, a question was raised that he did not know the answer to. Later in the debate he explained that he called HHS during one of the breaks in the debate to receive clarification (Idaho Senate Debate February 21, 2013).

State Context: Path Dependence

Opponents of a state-based insurance exchange tried to pro-actively create path dependent forces to entrench their position and make it harder for supporters to create an exchange later. In 2010 they passed the Idaho Health Freedom Act in opposition to the ACA. In 2011 they passed nullification bills saying that the ACA was not valid in Idaho. The strongest bills did not pass or were vetoed by Governor Otter, but he did sign an executive order saying that state agencies were not allowed to implement any part of the ACA without his prior approval. Although these events did shape the political climate and the options later available to policymakers, none ultimately prevented Governor Otter from supporting a state-based insurance exchange or the House and Senate from passing enabling legislation.

Two unrelated events made helped create conditions making it possible for the exchange debate to proceed. The first was redistricting in 2010 which redrew the state's legislative boundaries. A significant number of legislators decided to retire rather than run in their new districts. As a result, turnover was greater than usual in the 2012 election, leading to 41 of the state's 105 legislators being new. These freshmen were not in the legislature in 2010 and 2011, and thus felt less restricted by the Idaho Health Freedom Act and the attempts at nullification. A group of these freshmen went on to play a particularly important role in reviving exchange legislation when it seemed that it could not pass the House.

The second important event was Scott Bedke's ousting of Lawrence Denney as the Speaker of the House. Denney's opposition made it impossible for an exchange bill to even receive a hearing in the House prior to 2013. Bedke's ascension to the speakership not only meant that a bill could be introduced, but that it would be considered by a committee predisposed

to support state control. The new committee chair appointed by Bedke was one of the legislature's leading proponents of an exchange. Bedke's promise of an open and non-confrontational leadership style also made it possible for the 16 House freshmen to approach him with changes they would like to see to SB 1042.

Another issue affected the exchange debate in path dependent ways, though in this case, the concern was that the decision could establish a precedent that constrained options in future debates. In the weeks leading up to the 2013 session, legislative leaders were nervous that Governor Otter might try to create an exchange by executive order. It was not the policy outcome that concerned them, since most supported creating an exchange. They worried that it would establish a dangerous precedent in which the governor could set policy without consulting the legislature. This is very similar to concern felt by legislators in New Mexico. Except in this case, the governor gave assurances that he would not move forward on his own. In some ways this might have been seen as giving up leverage since he no longer had the threat of executive order to entice the legislature to act. However, unlike in New Mexico, the governor and the legislature wanted the same type of exchange and thus Governor Otter did not really have much leverage anyway. In fact, promising not to act independently increased the urgency of the legislative debate. This was their only chance; if they did not pass legislation, the state would have a federal exchange.

State Context: Institutional Design

The design of Idaho's institutions strengthened the governor's ability to advance exchange legislation in two ways. First, Governor Otter used his ability to have David Hensley,

his chief of staff, introduce the exchange legislation in each committee hearing. This is a simple power not available to governors in every state. A bill needs a floor sponsor from the House and Senate in order to be considered by the full body of each chamber, but can be introduced in committee by someone else. The vast majority of bills are carried in committee by the same person who becomes the floor sponsor. In 2013, there were 345 bills introduced in the House and 200 introduced in the Senate.²⁰ The only time David Hensley introduced a bill was for the insurance exchange.²¹ Having his chief of staff introduce the bills instead sent a powerful message to legislators that this was a high priority for Governor Otter.

Second, Idaho's institutional design created ripe conditions for pockets of expertise to develop on health policy. The short legislative sessions and low pay mean that most legislators have a profession that they return to the rest of the year. The lack of term limits means that on average, the leadership of the Idaho legislature has been in office for ten years. As a result, legislators have developed knowledge of the legislative process and deep relationships. The fact that most legislators do not have any staff support increases the degree to which they rely on colleagues they believe have developed expertise on an issue.

It so happened that many of the people in key decision-making positions worked in the health care industry. Fred Wood, Chair of the House Health and Welfare Committee, is a physician and Medical Director at the Cassia Regional Medical Center. House Minority Leader John Rusche is a retired physician who worked for many years in the health insurance industry. Five members of the legislature are insurance brokers, including Senator Dean Cameron, Co-

²⁰ A full directory of bills introduced in 2013 is available at: <http://legislature.idaho.gov/legislation/2013/minidata.htm>

²¹ To verify this point I searched the minutes of every meeting held in 2013 of the nine standing Senate Committees, the 13 standing House Committees, and the Joint Finance and Appropriations Committee. Available at <http://legislature.idaho.gov/sessioninfo/2013/standingcommittees/committeeminutes.htm>

Chair of the powerful Joint Finance and Appropriations Committee; Senator John Goedde, Chair of the Senate Education Committee; and Representative Gary Collins, Chair of the House Revenue and Taxation Committee. Each of these people is a main source of information for the rest of the legislature on issues dealing with health insurance and became an important leader on the exchange.

State Contest: Partisanship

It is hard to find a state in which the Republican opposition to the ACA was stronger than in Idaho. It was the first state in the nation to pass legislation opposing the ACA. It was one of the original states to join the lawsuits against the individual mandate and the Medicaid expansion. The Legislature passed bills in 2011 declaring the ACA null and void within the borders of Idaho. Even so, the main division over the ACA was not between Democrats and Republicans, but within the Republican Party. In fact, exchange legislation passed largely because enough Republicans were willing to vote with Democrats.

Democrats faced a dilemma of how to respond. It is not often that House Democrats make up the deciding votes, and many wanted the caucus to use their position as leverage for increased spending on education. Instead, House Minority Leader John Rusche convinced them to stand back and let Republicans fight this battle amongst themselves. People in a wide range of positions, including House and Senate Republicans, an advisor to Governor Otter, and officials in the state's bureaucracies all describe this as a wise strategy that played an important role in smoothing the way for the passage of exchange legislation.

Strategic Actors: Interest Groups

Interest groups played a key role on both sides of the debate over whether or not to create an insurance exchange in Idaho. Most legislators and interest group leaders agreed that this became one of the most important issues of the session. A House leader estimated that “In the 2013 session, more than half, maybe three-fourths of the full-time lobbyists were working on this issue – mostly in favor,” (Interview May 2013). The industry coalition was very important for creating conditions in which enough Republicans could support an exchange.

Much of the work done by interest groups is reminiscent of Hall and Deardorff’s (2006) theory of lobbying as legislative subsidy. They observe a phenomenon that interest groups tend to spend the most time with legislators who agree with them, and argue that this is because they are doing much of the work these legislators are too resource-poor to do. Many legislators describe interest group involvement in these terms. As one legislator said, “The value of having other resources is that they can do a lot of that research for you. There was a group set up supporting the exchange. They did a lot of the research and that was helpful. Those that were opposed had their arguments, and the Idaho Freedom Foundation did a lot of research and provided that to us. On both sides it was helpful to hear the arguments. You could read the information from one side and then the other,” (Interview May 2013).

In addition to providing research for Republican legislators opposed to an exchange, the Idaho Freedom Foundation was an important source of information for the Tea Party. The Foundation maintained a website called The Idaho Reporter to provide “market-oriented coverage of state government (Idaho Reporter 2014). Wayne Hoffman describes the Idaho Freedom Foundation as “ammo suppliers” for the Tea Party. “We provide ammunition. We

provide information. We provide details and research. It's available to the general public of course, but one of the biggest consumers of this information are people in the Tea Party who believe in limited government as we do," (Interview April 2013).

Hoffman's group also filled a leadership void in the Tea Party. The decentralized nature of the Tea Party movement, combined with the size and sparseness of the state, meant that it was difficult for the Tea Party to organize and clearly articulate a message. The Idaho Freedom Foundation became the *de facto* leader of the opposition, playing a lead role in the passage of the Idaho Health Freedom Act in 2010, the blocking of grant money and the passage of nullification bills in 2011, and the fact that no exchange legislation was introduced in 2012.

In addition to supporting allies, interest groups also did a large amount of what some refer to as "traditional lobbying." One insurance industry lobbyist said they spent much of the summer of 2013 meeting as many of the Republicans campaigning for open seats as possible. This person adds that "It paid off tremendously for me as most of them were elected and I knew them by the time the session started," (Interview May 2013). An insurance agent said that he went to every committee hearing dealing with an exchange, testified before both chambers, and emailed every legislator 3-4 times per week (Interview May 2013).

Many industry groups also have political action committees that get involved in elections. Tea Party members accuse the insurance industry of buying the exchange through their contributions in the previous election. One Tea Party leader argued that "Our lawmakers are not rich. When you push around a couple hundred bucks in front of their noses and say 'let's go fishing,' or 'let's go to dinner,' – loyalty is easily and cheaply bought. 1042 and 248 are examples of exactly how cheap," (Interview May 2013).

However, analysis of campaign finance data reveals there is no clear pattern between the money legislators received in 2012 and how they voted on HB 248 in 2013 (Follow the Money 2012). Even so, the lobbyist for one insurance company said that “We let it be known to legislators that the exchange was our number one issue.” Speaking of the House freshmen who voted for an exchange, this person added “I have told them they have my undying loyalty and support for whatever it is they need for their campaign,” (Interview May 2013). This person clarified that there was not a *quid pro quo* relationship in which votes were bought, but an acknowledgment that they were willing to help legislators who were being threatened. House members describe these interactions in similarly soft terms, but also point out that insurance companies gave them campaign donations shortly after the legislative session (Interviews 2013).

State Context: Policymakers

It is important to appreciate the extent to which individual preferences matter. In part, this explains why it was important that Scott Bedke replaced Lawrence Denney as Speaker of the House. Both are strong conservatives in safe seats, but they differ in leadership style and over whether Idaho should run its insurance exchange.

Similarly, Butch Otter did not have to support an insurance exchange. This was hardly the path of least resistance or the popular position within the national or state Republican Party. His support of an exchange became one of the primary campaign points used by Senator Russ Fulcher in an effort to defeat Governor Otter in the 2014 primaries. Many other people in his position, facing the exact same incentives, likely would have decided not to push for the creation of an exchange.

Summary

Governor Otter's support in 2013 was a necessary, but not sufficient, condition for the creation of an exchange. His ability to advance exchange legislation was significantly strengthened by the high level of support from most industry groups. Conservative organizations, such as the Idaho Freedom Foundation and the Tea Party groups, aggressively worked to defeat the implementation of any aspect of Obamacare. They succeeded in 2010, 2011, and 2012, but not in 2013 because the intergovernmental context had changed and because of pockets of insurance expertise in the legislature. Key individuals in each chamber had an important combination of knowledge of the legislative process, a deep understanding of health insurance, and strong political clout. Institutional design and path dependence both strengthened the development and influence of these pockets of expertise, as well as the strategic options available to policymakers and interest groups.

None of this would have mattered if the Obama administration stuck to its original deadlines. Although the extended deadlines meant that Idaho had enough time to decide to create an exchange, it ironically meant that the state did not have enough time to actually create an exchange. The state retained decision-making authority over some policy issues, but gave up on the federal website healthcare.gov for the first year of operation. It remains to be seen whether this will be a good outcome for Idaho.

Chapter 7 - New Mexico

Introduction

New Mexico and Idaho were the last two states to decide to create a health insurance exchange. Coincidentally, Governor Susana Martinez signed New Mexico's legislation on the same day as Governor Butch Otter signed Idaho's - March 28, 2013. Idaho's decision was surprising given that it is one of the most conservative states in the country and the only state led entirely by Republicans to choose this path (see chapter six). The surprise in New Mexico was that it took this long and almost did not happen.

When the Affordable Care Act was signed into law in March 2010, the political climate in New Mexico seemed favorable to implementing reform. Barack Obama was popular, having won 57% of the vote in 2008 against John McCain of neighboring Arizona (NM Secretary of State 2012). All five members of the state's congressional delegation were Democrats, and all but one voted for the ACA (U.S. Senate Vote #396 2010; U.S. House Roll Call #165 2010). Democrats had controlled both chambers of the legislature for more than two decades and held 64% of seats in each chamber (NCSL 2010b). Democrat Bill Richardson was in his fourth and final year of a second term as governor largely defined by advancing health reform. In fact, the state had already done similar versions of reforms included in the ACA, such as establishing a medical loss ratio of 85% and allowing children to stay on their parents plan until age 25.

Republicans had been trying for many years to create an insurance exchange for small businesses (Interviews 2013).

Table 13 - New Mexico's Political and Demographic Context

Political Environment

- 2012 presidential election: Barack Obama (53%)
- Governor
 - 2003-2010: Bill Richardson (D)
 - 2011-present: Susana Martinez (R)
 - Yes term limits
- New Mexico House of Representatives
 - 2011-2012: Democratic majority of 4
 - 2013-present: Democratic majority of 8
 - No term limits
- New Mexico Senate
 - 2011-2012: Democratic majority of 12
 - 2013-present: Democratic majority of 7
 - No term limits

Demographics & Health Status

- Total population: 2,048,000
- Distribution of Population by Federal Poverty Level
 - Under 100%: 27%
 - 100% - 138%: 8%
 - 139% - 399%: 36%
 - 400%: 30%
- Distribution of Health Insurance Coverage
 - Employer: 38%
 - Other private: 5%
 - Medicaid: 21%
 - Medicare: 15%
 - Uninsured: 21%

Health Reform

- Did not join lawsuit against the ACA
- State-based exchange, relying on national website for first year
- Expanding Medicaid

Why did it take three years for the state to decide to create an exchange despite these seemingly favorable conditions? The first part of the answer is that the state's political climate shifted in the November 2010 elections. Republican Susana Martinez was elected governor with 54% of the vote and the Democratic majority in the New Mexico House of Representatives shrinking to four seats (NM Secretary of State 2012). Governor Martinez was open to the idea of an exchange, but vetoed the bill passed in 2011 by Democrats in the legislature.

The second part of the answer as to why it took so long for New Mexico to decide to create an exchange has to do with institutional design and timing. The legislature only meets for 60 calendar days every other year. There is a 30-day session in even-numbered years, but the legislature is limited to passing the budget and is generally not able to create new programs. As a result, the New Mexico legislature only had two 60-day windows to act during the ACA's four-year implementation period. After Governor Martinez vetoed an exchange bill in March 2011, the legislature would not have another opportunity to weigh in until January 2013.

The New Mexico story is largely one of internal conflict. The federal government was a relatively minor player in this case. Unlike the other states in my sample where the primary division was within the Republican Party, here the tension was between Republican governor Susana Martinez and Democrats in the legislature.

Interest groups played a role, though with a very different dynamic than in other case study states. In Idaho, Michigan, and Mississippi, consumer advocates united with insurers, agents, and small business organizations behind a single proposal, deciding state control of a weakly regulated exchange was better than defaulting to the federal government. In New Mexico, there was broad consensus in favor of creating a state-based exchange, but vigorous

disagreement about the type of exchange to create, including the composition of the board and its regulatory authority. Governor Martinez wanted to use an organization created in the 1990s as the foundation on which to build what her staff described as a market-oriented exchange reminiscent of Utah's. Industry leaders generally sided with Governor Martinez, aggressively pushing for seats on the board of directors and for a clearinghouse model in which any qualifying plan would be allowed to participate. The lack of a strong Tea Party presence in New Mexico gave consumer groups greater latitude to push for what they saw as a more favorable model of an exchange.

Democrats ultimately won the legislative fight, though ironically, the exchange that was created closely resembles Governor Martinez's preferences. This chapter traces the evolution of the debate in New Mexico, following the same chronological outline as the other case study chapters. It concludes by drawing on the integrated framework discussed in chapter two to highlight key patterns (see Appendix F for a timeline of key events in New Mexico).

1) March 2010 – December 2010

Governor Bill Richardson (D) responded enthusiastically throughout 2010 to the ACA's passage. As he prepared to leave office, he laid the foundation for whoever succeeded him in 2011 to follow through with its implementation. Grants were sought and work groups convened, with particular attention paid to the creation of a state-based health insurance exchange. This was largely an extension of work that had been going on for many years, as the proposal to create an insurance exchange in New Mexico predates the passage of the ACA. In order to understand the political dynamics that would surround these efforts over the next three years, it is

important to place them in context of the debate over health reform in New Mexico that had begun at least three years earlier.

Health Reform in New Mexico

The first exchange bills were introduced in 2007 and 2008, largely at the urging of J.R. Damson, a radiologist from Santa Fe who was the Republican nominee for governor in 2006. He explains that he did not feel his party had a plan for health care. “After looking at the Massachusetts program and what the Heritage Foundation had done...I worked with the people from Heritage at that time, and then I introduced it to some of the legislators here” (Interview September 2013). Republican support for a small business insurance exchange increased in 2008 when House Minority Leader Tom Taylor, House Minority Whip Keith Gardner, and staff member Matt Kennicott visited Utah to learn about the new exchange being developed in Utah (Interviews September 2013). Gardner and Kennicott would ultimately play major roles in the debate over an exchange as key advisors to Governor Susana Martinez. Their vision of an ideal exchange was developed during this period.

Democrats did not support the exchange bills of 2007 and 2008, not necessarily out of opposition to the concept of an exchange, but because they were hoping for a more comprehensive reform. Governor Bill Richardson was planning on running for president and wanted to pass a bill leading to universal coverage. His original proposal contained many of the elements that would later be included in the ACA, such as an individual mandate, an employer mandate, and low-cost government-subsidized insurance plans (NM Health Care Reform Leadership Team 2010). Compared to Governor Richardson’s proposal, Democrats and

consumer advocates saw the small business exchange as a way for Republicans to weaken more significant proposals. To Democrats, an exchange was simply a way to sell insurance, doing very little to expand coverage (Interviews 2013-2014). One Democratic Senator described it as “a glorified brokerage for insurance companies,” (Interview September 2014).

The roots of this concern extended back even further, to the debate over health reform during the early years of the Clinton presidency. The exchange bills supported by Republicans in 2007 were built on the governance structure of the New Mexico Health Insurance Alliance, a non-profit in operation since 1994 with a board of directors dominated by insurance companies (NM HB 1045, 2007; NM SB 976, 2007). Just as an exchange was viewed as the Republican alternative to comprehensive reform, the Alliance was seen in 1994 as the conservative answer to “New Mexicare,” a proposal in 1993 which would have created a single-payer health care system. The legislature rejected New Mexicare and instead created the Alliance in the face of aggressive lobbying from small businesses and the insurance industry (Ortiz y Pino 1993, Quick 1994). Carol Miller, a New Mexican public health expert who had served on President Clinton’s health reform task force described the New Mexico Health Insurance Alliance as “a total waste of time. The whole point of health care reform is that we have to get the insurance companies out of health care, not make it more convenient for them to be in it...The five insurers represented on the board will write the plans and help set the rates. The small business alliance is an insurer’s pipe dream” (Peterson 1994).

It is ironic then that insurers were not particularly excited in 2008 about proposals to use the Alliance to create an exchange. As the head of government affairs for one of the major insurers describes, “There were a lot of good points to that bill and we generally supported what [Damron] was trying to do. But we thought that the way it was structured was duplicative of the

Alliance, but also just in general of what insurance carriers are supposed to do anyway. Anytime there are duplicative efforts, there are duplicative costs. That was our take back then” (Interview September 2013). Their position shifted somewhat with the passage of the ACA in 2010. They were not enthusiastic about the idea of an exchange, but if one was going to be created, the Alliance was seen as a good model because it ensured they would play a leading role in its operation (Interviews 2013-2014).

The partisan politics surrounding an exchange also shifted with the passage of the ACA. An advisor to Governor Martinez explained that “Some Republicans at that point were hesitant because they saw it as a mandate from Obama. Those of us who had been working on it awhile knew it wasn’t; that this was actually a pretty decent idea” (Interview September 2013). At the same time, Democrats who had been reluctant to support an exchange were now fully supportive (Interviews 2013-2014). The legislature would not meet again until January 2011 when a new governor would take office, but stakeholders used the time until then to study options and seek consensus over what type of exchange bill to introduce.

Exchange Planning Under Richardson

The task force convened by Governor Richardson issued a report on July 1, 2010 recommending that New Mexico should opt to establish its own exchange rather than using a federally operated exchange, and that it should be an active purchaser. The report stated that “While some states have developed exchanges that merely serve as a market organization and distribution center for health care plans, it is recommended that New Mexico develop a strong exchange that promotes competition between plans based on quality and price in a way that is

transparent to consumers” (NM Health Care Reform Leadership Team 2010). A legislative task force made similar recommendations later in the year (Armstrong 2010).

In July, Governor Richardson created the New Mexico Office of Health Care Reform within the Human Services Department (NM Executive Order 2010-032). This office took the lead on planning activities, including receiving a \$1 million grant from the federal government to conduct stakeholder engagement. By the end of the year, the Office of Health Care Reform had commissioned 13 studies and spent \$600,000 of this planning grant (Coughlin 2012).

Many participants describe these work groups as valuable for bringing stakeholders together and making positions known. Businesses, insurers, and consumer advocates all participated. Although there was disagreement over whether the exchange should be an active purchaser or clearinghouse, it became clear that there was consensus in favor of maintaining state control (Interviews 2013-2014). Even so, not everyone agreed that these meetings were worthwhile. As one insurance broker described:

Richardson was a classic decision-maker by consensus. He didn't like decisions being made in vacuums. So he would create work groups and committees. It was absolutely exhausting and absolutely worthless. More work was done and put up on a shelf and never done anything with it than anything I've seen in my entire career...Nothing ever came out of any of them (Interview September 2013).

These meetings and reports occurred against the backdrop of uncertainty over who would replace Bill Richardson as governor. Had Democratic Lieutenant Governor Diane Denish won as many expected, the work group recommendations likely would have served as the foundation for the ACA's implementation. Instead, Martinez won with 53% of the vote. Many people involved in the campaign say that health reform was not a major issue in the 2010 gubernatorial

race. They remember Governor-Elect Martinez making generic statements opposing the ACA, but giving no indication of how she would approach the question of whether or not to build an exchange (Interviews 2013-2014).

On December 27, 2010, Richardson's Office of Health Care Reform prepared a transition plan for the incoming Martinez administration. One of the recommendations was to pass legislation in the 2011 session to create a quasi-governmental exchange with active purchaser powers, and with a board excluding anyone with a conflict of interest. The plan recommended moving the Office of Health Care Reform to the governor's office and hiring a director who reports directly to the governor (NM Office of Health Reform). As Governor, Susana Martinez did neither.

2) January 2011 – November 2011

The second implementation period was dominated by two events: the 2011 legislative session in which Governor Martinez vetoed legislation that would have created an active purchaser exchange and the interim period before the next legislative session in which her office took steps to create a different type of exchange.

2011 Legislative Session

Multiple exchange bills were introduced early in the 2011 session, all by Democrats and all with minimal input from the new governor. Representative Danice Picraux and Senator Feldman introduced parallel legislation in each chamber which would have created an active

purchaser exchange and a consumer-oriented board (NM HB 33, 2011; NM SB 38, 2011).

Senator George Muñoz introduced a less prescriptive bill that provided a framework, but let the exchange's board decide how it would operate (NM SB 370, 2011).

Two of the chief negotiators during the session were not legislators or industry leaders. Gail Evans of the New Mexico Center on Law and Poverty represented consumer advocates pushing for an active purchaser exchange and J.R. Damron was a prominent Republican pushing for a clearinghouse exchange. Legislators have limited staff compared to the governor and meet too infrequently to develop expertise on the nuances of issues. As a result, they found it advantageous to assign trusted allies to sort out the details of a policy debate. This is a good example of Hall and Deardorff's (2006) theory of lobbying as legislative subsidy. Rather than devoting resources to beating or convincing opponents, these interest group leaders focused their energy on supporting those they agreed with. The most important resource in this case was not money, but time and expertise.

Evans initially supported Rep. Picraux's bill, though it never made it out of the House. Muñoz's bill suffered the same fate in the Senate, making it through committee but never receiving a vote on the floor. The focus shifted to Senator Feldman's bill, which one Democrat described as initially "a very progressive bill" that was "much less than that" when it ultimately passed the Senate (Interview September 2013). The bill did not receive a vote on the Senate Floor until March 2nd, which is very late in the session for a bill to have a realistic chance of passage in a second chamber (NM 2011 Senate Roll Call #215).

The process in the House was even more contentious, with Republicans refusing to compromise. House Democrats needed every member to fall in line since the recent election had

dramatically shrunk the size of their majority. SB 38 passed the House Consumer and Public Affairs Committee by a party-line 3 to 2 vote on March 10th. A week later, it passed the House Appropriations and Finance Committee on a 10 to 8 vote also split along party lines (NM SB 38 2011). Supporters of the original bill say that the only good thing left after making its way through two chambers was a conflict of interest provision preventing insurers, brokers, and doctors from serving on the board of directors. The only reason it survived was because most people expected the Obama administration to include such a provision in its forthcoming regulations anyway (Interviews September 2013). Ultimately such a provision was not included, and Democrats would lose ground on this point in 2013. There were also concerns over how much an exchange would cost, but U.S. Senator Jeff Bingaman (D-NM) wrote each state legislator a letter attempting to re-assure them that the federal government would follow through with its promised share (Williams 2011).

By the time SB 38 made it to the House floor, leadership had commitments from enough conservative Democrats to ensure passage if the vote could be called at the right moment (Interviews September 2014). When it is in session, the New Mexico legislature technically meets 24 hours per day, each day of the week. By contrast, the legislatures in Idaho, Michigan, and Mississippi conduct business for a few hours per day when in session, adjourning until a set time the next business day. As a result, supportive interest groups played a role beyond the conventional lobbying work of convincing legislators, providing data to allies, and taking head counts – they helped the House leadership keep track of who was physically in the chamber at any given time (Interviews September 2013).

Democrats sensed their opportunity late in the evening of Friday March 18th, knowing they had 34 votes in favor and noticing that one Democrat and one Republican were excused.

With three Republicans absent because they were sick or otherwise unable to make it to the floor, a roll call was announced. SB 38 passed by three votes shortly after midnight on the morning of March 19th, the second to last day of the 2011 legislative session (NM 2011 Roll Call #3293). As one supporter described, “It was amazing how [Speaker Ben Luján] managed to finagle it to call it up at the precise moment when there were just enough votes in the room to pass it” (Interview September 2013).

It was not clear how Governor Martinez would react. A few weeks earlier, she said she was not sure she would be willing to sign any of the exchange bills introduced that session (Jennings 2011). After the bill passed, she took three weeks before finally deciding to veto it. She argued in her veto message that the bill was premature and that “legislators ignored my administration’s attempts to address the concerns I had with this particular piece of legislation” (Martinez 2011). The only concern she specified in this message was the cost of maintaining a self-sustaining exchange, though legislators say the biggest complaint they heard from her was over the composition of the board (Interviews 2013-2014). Senator Feldman, the original sponsor of the bill that passed, explained that “It wasn’t just a question of who gets to be on the board, but who gets to appoint the board. The governor wanted more power. We weren’t really that far apart. It was unfortunate that she vetoed it” (Interview September 2013).

A number of people interviewed attribute Governor Martinez’s decision to the people around her. Sometimes this explanation is given as a matter of fact disagreement over policy between people on different sides of the political spectrum. Her new chief of staff, Keith Gardner, was a strong supporter of creating an exchange modeled after Utah and testified against other types of exchange bills. He therefore encouraged Governor Martinez to veto any bill not resembling Utah’s.

Others are more cynical in their assessment. A Democratic legislator believes “the insurance industry got to her,” (Interview September 2013). One person who did not support the bill said that Governor Martinez was completely disorganized in the early months of her administration and did not understand what was in front of her (Interview September 2013). A supporter of the bill echoed this comment and added that the people she listened to most were more focused on politics than on policy (September 2013). Others shared this view, explaining that “Keith Gardner was not a friend to the advocacy groups supporting an exchange. It was very clear to me that it was going to get vetoed” (Interview September 2013) simply because it had the support of consumer groups. Another person added that “Keith Gardner understands enough to be dangerous” (Interview October 2013).

Multiple people attribute the decision to political operative Jay McCleskey, the person credited with “discovering” Susana Martinez and convincing her to run for governor. Emblematic of his power within the Martinez administration as the person running her political action committee SusanaPAC, McCleskey is often nicknamed “the 5th floor,” a play on the fact that New Mexico’s governor is regularly referred to as “the 4th floor” given its location on the top level of the capitol building (Interviews 2013). He was not publicly involved in the debate over an exchange, but was said to be an important advocate of the veto behind the scenes (Interviews 2013-2014).

Democrats in the legislature say there was no real discussion of attempting to over-ride her veto. One Representative explained, “We are wimps – and the math isn’t there,” (Interview September 2013). SB 38 had barely passed the House, making it very unlikely that enough votes could be secured to override the veto. There was little the legislature could do over the following nine months to work on implementing the ACA besides holding information-gathering interim

committee meetings. If any progress was going to be made, it was up to Governor Martinez and her administration.

Interim Session

Martinez was among the 29 Republican governors who signed a letter in July 2011 calling for the full repeal of the ACA (Olson 2011). Some of the media coverage surrounding Governor Martinez's veto portrayed her as an ideologue opposed to Obamacare. She was described in the same category as Bobby Jindal of Louisiana, Rick Scott of Florida, and Sam Brownback of Kansas who had returned federal grant dollars in protest and vowed not to implement the ACA.

Yet, interviews with key players reveal a different picture. Governor Martinez was taking, or at least allowing people in her administration to take, important steps towards creating an exchange. One adviser describes the summer of 2011 by saying that even though she had just vetoed the exchange bill, "The Office of Health Reform was still working on stakeholder meetings and planning activities. They were holding inter-agency meetings. The work was very much moving forward on a state-based exchange, regardless of what the narrative was outside the administration," (Interview September 2013).

One of the most important steps taken that summer was the appointment of Dan Derksen to lead the Office of Health Reform. Dr. Derksen was a Republican leading the New Mexico Medical Society and had recently been a Robert Wood Johnson Foundation Congressional Fellow in the Office of U.S. Senator Jeff Bingaman in D.C. (RWJF 2011, Jennings 2012). Appointed in August, Derksen moved quickly to put together an application for a level 1

establishment grant before the September 30th deadline. The application requested \$34 million, with most of it going to IT development. Governor Martinez wrote a letter of support to Secretary Kathleen Sebelius, saying “I am pleased to endorse” the grant application (NM Dept of Human Services). Derksen also made it known that he planned on applying for a much larger level 2 establishment grant by the March 2012 deadline (Interviews 2013-2014).

The reaction from supporters of an exchange was mixed. They interpreted the grant application as evidence that planning was moving forward again. One legislator describes that “When, Dr. Derksen set to work immediately and got one of the early grants, we were off and running. It looked very promising,” (Interview February 2014). A consumer advocate said they had expected nothing to happen, but that “When the agency got the grants, we thought ‘oh, maybe they are going to do an exchange. She vetoed the bill, but now they are getting money and doing shit,” (Interview September 2013).

At the same time, advocates did not like that the application was written under the premise that the state’s exchange would be established within the Health Insurance Alliance. They argued that using the Alliance would lead to an exchange controlled by insurers and the governor, rather than being favorable to consumers (Coughlin 2012). The fight during the 2011 session had been over this very issue, and many felt frustrated that the governor was circumventing the legislature (Interviews 2013-2014). But there was little they could do to oppose the governor. All indications were that she would soon sign an executive order to formally create the exchange as part of the Alliance (Interviews 2013-2014). The announcement in November 2011 that the U.S. Supreme Court would hear the case against the ACA changed the dynamic in ways that were at first subtle, but that would ultimately deepen the divide between the Republicans in the executive branch and the Democrats in the legislative branch.

3) November 2011 – June 2012

The legislature met for 30 days from January 17 – February 16, 2012, but the session was of no consequence in the debate over an exchange. The legislature is only allowed to consider two kinds of legislations in even numbered years: 1) bills reacting to a special message from the governor, and 2) bills directly connected to the budget. The governor sent no such message on the exchange and there was no precedent for passing this type of legislation in a budget session. One Democratic legislator explained that “We’ve tried that in the past, but it hasn’t worked,” (Interview September 2013). Some were frustrated that Governor Martinez had not made it possible to pass exchange legislation, but were not surprised given her administration’s position that it could create an exchange through the Alliance by executive order.

With the legislature out of the picture, the most important actions in late 2011 and early 2012 took place behind the scenes. Request for proposals (RFPs) were sent out so vendors could bid on different aspects of building the exchange IT. Firms were chosen and contracts were written, waiting for the signature of Human Services Department Secretary Sidonie Squier (Interviews 2013-2014). Dan Derksen of the Office of Health Reform was nearly ready to submit the state’s application for a level 2 establishment grant of more than \$100 million to pay for the first year of the exchange’s operation. CMS was consulted and indicated support for the grant as long as a legal framework was developed to create the exchange. Governor Martinez’s office went over multiple drafts of an executive order that would have met this requirement (Interviews 2013-2014). RFPs released in March 2012 indicated that the state planned on applying for a level two grant by July, implying the executive order would be signed by then.

Instead, Derksen resigned suddenly in late March, the grant application was never submitted, and progress stalled. The reason for Derksen's departure is disputed by those on either side of the debate. People within the Martinez administration say they wanted more time to review the grant before it was submitted and that this frustrated Derksen. The Governor's office released a statement praising him for moving "this administration forward in setting up a framework to establish a statewide health insurance exchange in the face of great uncertainty from the federal government" (Jennings 2012).

People outside the administration saw Derksen's departure as a worrisome sign. As one advocate said, "Dan was a very serious thinker about health care reform. The Office of Health Care Reform was in good hands. The fact that he left so suddenly, and it was sudden – we had a phone call scheduled for next week – that always raises questions" (Jennings 2012). A Democratic legislator said "It was almost like the guillotine dropped in March of 2012 when [Derksen] was dumped. The Governor's office announced that he left his position, but it was pretty clear that he was dumped," (Interview February 2014).

Many identify Human Services Secretary Sidonie Squier and Martinez advisor Jay McCleskey as the people behind Derksen's departure. One person closely involved described their view of what happened behind the scenes. When the executive order and the \$100 million grant application were ready to go, "I think the light went off in Squier's head that this was really going to happen. She was doing everything she could to block it, but it was moving forward," (Interview March 2014). The same week that the Supreme Court heard oral arguments on the ACA's case, Squier told Derksen to halt activity on the exchange. Derksen immediately resigned, saying that Squier and McCleskey were blocking progress and that he did not want to be held responsible when the exchange did not work (Interviews 2013-2014).

Derksen's resignation from the Office of Health Care Reform would not be the final chapter in the debate over an insurance exchange, but it was an important turning point. Planning activities within the Martinez administration completely stopped. The governor did not sign the executive order creating an exchange. The level 2 establishment grant application was never submitted. Martinez did nothing with the \$34 million level 1 grant that had already been received. Contracts with chosen vendors were not signed and no action was taken on the responses to new RFPs that had been issued. It appeared that the state would take no action on the exchange until after the Supreme Court ruling (Interviews 2013-2014).

There is no evidence that this shift was driven by interest groups. Many of the state's industry leaders opposed the ACA and hoped the Court would overturn the law, but they preferred state control of the exchange and wanted the state to be ready in case the law survived its challenges (Interviews 2013-2014). Instead, the most compelling explanation is partisanship. Martinez's advisers did not want to be associated with any aspect of Obamacare during this crucial period in which the law was being considered by the Supreme Court and a major part of the 2012 elections.

4) July 2012 – October 2013

In July 2012 the venue for the debate over an exchange shifted to the legislature's Interim Health and Human Services Committee. Interim committees have no formal powers, but are where much of the legislating takes place. The hope is that consensus on which issues to prioritize and which bills to support can be developed even before a session begins. The Interim Health and Human Services Committee met monthly from July to December 2012, with an

exchange being on the agenda more often than any other issue (NM Legislative Health and Human Services Interim Committee 2012).

Human Services Department Secretary Sidonie Squier testified at the July 9th meeting held in the city of Truth or Consequence just two weeks after the Supreme Court's ruling. She indicated that the administration was still planning on moving forward with creating an exchange through the Alliance and had hired Leavitt Partners to take the lead on planning efforts. When asked why the Department was not spending any of the \$34 million level 1 grant, particularly after RFPs had been sent out and contracts prepared, Squier responded that the contracts written by Dan Derksen were being re-written by Leavitt Partners because "the original request for proposals did not meet New Mexico's needs." The committee pushed back on this point, quoting her intention to create an exchange "designed by New Mexico." One member observed that Dr. Derksen was from New Mexico, had worked in New Mexico, and had worked in Congress for a New Mexican Senator, but that the Department was hiring a Utah consultant instead to set up the exchange. Squier replied that "Dr. Derksen had no experience working on an exchange and Leavitt does" (NM Legislative Health and Human Services Interim Committee 2012).

Another point of debate at the July meeting was whether an exchange could be established without legislation. The committee complained that the legislature was being excluded by the Martinez administration from its planning. Secretary Squier promised to communicate with legislators and conceded that legislation would probably be needed at some point to amend the statute governing the Alliance, even if the legal authority for the exchange was established by executive order (NM Legislative Health and Human Services Interim Committee 2012).

The issue came up again at the September 11th meeting held in Las Vegas, NM. Democrat Senator Dede Feldman asked the Attorney General's office to address whether Governor Martinez had the authority to create an exchange by executive order. Assistant Attorney General Mark Reynolds explained his office's opinion that "such action is likely to be unconstitutional" because it would violate the separation of powers provision of the New Mexico Constitution (NM Legislative Health and Human Services Interim Committee 2012). Reynolds' letter to the committee cited an incident from 1998 in which Governor Gary Johnson vetoed legislation to implement Clinton's welfare reform, and then used an executive order to implement the reform a different way. The legislature sued and the state Supreme Court found the Governor's actions to be unconstitutional. Reynolds concluded that the facts in this case "are analogous to the situation we would have should the Governor create a health insurance exchange by executive order" (Reynolds 2012).

Democrats reacted confidently to this opinion from the Attorney General's office. "We had already passed a bill that she had vetoed, so we already had her," said a House Democrat (Interview September 2013). With the help of the Center on Law and Poverty, Democrats hired a private law firm to prepare a lawsuit. One of the legislators involved in preparing the suit explained that "When we did that, Matt Kennicott and others [from the Martinez administration] reached out and said 'let's work together.' So they stopped what they were doing with the Alliance...The lawsuit never got filed; but it was ready at the drop of a hat," (Interview September 2013). Another legislator involved noted the potential for this plan to backfire, observing that "We did have a little bit of a gun pointed to her head, but we had an even bigger gun to our head. If we had sued it would have been delayed, and we wouldn't have had a state-based exchange anyway," (Interview February 2014). An adviser to Governor Martinez

described this period in more diplomatic terms, saying “The governor said she didn’t think we needed to have legislation, but in good faith I’m willing to talk and see what good ideas we can come up with. Maybe we’ll come up with something better,” (September 2013).

Two members of the Martinez administration spoke at the final interim committee meeting on November 27th in Santa Fe: Secretary Squier and Milton Sanchez, the new Director of the Office of Health Care Reform. They explained that the Obama administration had extended a key exchange deadline to December 14th and that New Mexico would submit a declaration letter and blueprint plan by that date. The committee voted to endorse an exchange bill, even though it would do so through the Alliance.

Senator Dede Feldman was the author of the bill Governor Martinez vetoed in 2011 but supported this new bill, saying “I thought that was good because I wanted a road to compromise,” (Interview September 2013). As the chair of the interim committee and the author of the exchange bill vetoed by Governor Martinez in 2011, her support carried a lot of weight. Foreshadowing the tensions that would erupt in the coming legislative session, not everyone agreed with her. A consumer advocate who wanted a strong exchange explained that this bill was awful, and that “now it was going to be hard for us to do anything because the Democratic leadership had endorsed a crappy exchange bill before the session even started,” (Interview September 2013).

The fact that Senator Feldman and Representative Picraux were retiring before the start of the session just weeks away injected further uncertainty into the debate. Democrats talked during the last interim committee meeting about who would carry the mantle in their place. They explain that almost by default it fell to Jerry Ortiz y Pino in the Senate and Mimi Stewart in

the House. This group appointed Gail Evans of the Center on Law and Poverty as their lead negotiator on an exchange. In the weeks leading up to the start of the 2013 legislative session, Evans met regularly with Matt Kennicott of the Human Services Department and Milton Sanchez of the Office of Health Care Reform (Interviews 2013-2014).

2013 Legislative Session

While the Martinez administration was engaged in negotiations with the legislature over an exchange, it was also deliberating internally over whether to expand Medicaid. In mid-January, Governor Martinez announced support for expansion. She explained in her State of the State speech on January 21, 2013 that “I wasn’t a supporter of ObamaCare. But under its mandate we had a choice whether to expand Medicaid using federal funds. We chose to expand Medicaid because it was the right thing to do for New Mexico” (Martinez 2014). It was also good politics. A poll three months earlier found that 52% of New Mexicans supported expansion compared to 33% who were opposed (AP 2012). As an incumbent governor, she was less likely to receive a serious primary challenge for the 2014 election. Now having expanded Medicaid, she had taken away a major attack Democratic challengers were likely to make. Expanding Medicaid also increased her leverage in the exchange debate, while also lowering its stakes. Fewer people would be affected by the exchange than by Medicaid, and Democrats would have a hard time portraying her as an ideologue on the exchange when she had just expanded Medicaid. At the same time, this did not lessen the intensity of the exchange debate. Both sides aggressively pushed for their model of an exchange to be adopted.

Four exchange bills were introduced in the early days of the 2013 legislative session, two in the House and two in the Senate. The main differences between them were whether the exchange would be an active purchaser or a clearinghouse, who could sit on the board of directors, and how many seats on the board would be appointed by the governor and the legislature. Negotiations between Gail Evans and the Martinez administration continued, with Democratic legislators and consumer advocates optimistic it would lead to compromise. By late January they believed that a deal had been reached and that the governor would support a compromise bill. One advocate explained that Gail Evans and Mimi Stewart “spent hours working with the fourth floor [i.e., the governor’s office], just working on that bill. It got watered down, but they felt it was acceptable.”

However, if there had in fact been an agreement, it would soon be off. Another consumer advocate describes that “Matt [Kennicott] comes to a meeting and at the very end, when we thought we were done, he has changes to the bill that he now wanted that completely changed the entire agreement...The language that he wanted was language that Keith Gardner was insisting on. It was very strong no active purchaser language,” (Interview September 2013). A House Democrat involved in the negotiations adds that “after working with us for three weeks, they killed the bill,” (Interview September 2013).

Representative Stewart went forward anyway with a bill reflecting what she understood to be the agreement with the Martinez administration. One consumer advocate described this as a smart move. “It wasn’t the perfect bill, but it was the bill we thought we could live with, including Matt Kennicott and all those folks we were negotiating with. It was everything we had all agreed to,” (Interview September 2013). House bill 168 narrowly made it through the House Health, Government, and Indian Affairs committee on a 6-5 vote (NM House Health,

Government & Indian Affairs Committee 2013) and then the House Judiciary Committee on a vote of 9-6 (NM House Judiciary Committee 2013). The bill then faced an uphill battle on the House floor, though not necessarily because of politics related to health reform. A number of legislators held a grudge against Representative Stewart for a role she had played the previous year in a fight over the education budget and refused to vote for any of her bills in 2013. They approached other Democrats who supported HB 168 and explained that “it’s not your message, it’s your messenger,” (Interview September 2013). The bill was defeated 30-39 (NM House Roll Call #3928). It may not have mattered anyway, as the governor’s office was telling supporters of an exchange that Governor Martinez would veto this bill. If they wanted New Mexico to retain control of its insurance exchange, the message was that they needed to defeat Stewart’s bill and find an alternative (Interviews 2013-2014).

In the meantime, two bills were making their way through the Senate. The Governor indicated she would support a bill written by Senator Benny Shendo. An adviser to Governor Martinez explained that “his bill wasn’t perfect, but a major selling point was that it wasn’t an active purchaser,” (Interview September 2013). Some were skeptical of Senator Shendo because he was only a few weeks into his first term in the legislature and had no prior experience in health policy. Still, his bill seemed to be the best path towards compromise with the governor.

A key turning point occurred in early March when Senator Jerry Ortiz y Pino merged his bill with Senator Shendo’s, dropping expectations of an active purchaser exchange in the process. Senator Ortiz y Pino was viewed by many in the legislature as a progressive champion and as the standard bearer on this issue since Dede Feldman’s retirement. His support for Senator Shendo’s bill split those pushing for a state-based exchange. The Center on Law and Poverty, Representative Stewart, and a handful of others still wanted an active purchaser

exchange. One consumer advocate explained that “Jerry’s role really doomed us. When he got behind a bad bill, I couldn’t get anybody’s attention because if Jerry think it’s OK – he’s like the most progressive guy in the building, you must just be real extreme,” (Interview September 2013). Senate leadership decided that “if Jerry’s OK with this, then we’re OK with this,” (Interview September 2013). The Center on Law and Poverty went as far as advocating against Senator Shendo’s bill, saying that New Mexico would be better off with a federally run exchange.

The merger between Senator Shendo and Senator Ortiz y Pino occurred with only ten days left in the session, putting great pressure on the final negotiations. One person involved explained that “It became clear that the governor didn’t have sticking points if the insurers would agree, so we knew we had to get the insurers...They had differences of opinion among them, so these were tedious meetings. The lobbyists kept having to run out and call their handlers,” (Interview February 2014). Insurers were united in their desire for opposing active purchaser language and for increasing their representation on the board. At the same time, they worried about a scenario in which insurers were included in the board, but not given enough seats for each of the major players. As one person described, “The thought was that we definitely want representation, but if it’s just one seat, it could be a bad thing because what if it is [our competitor]?” (Interview September 2013). Ultimately a compromise was reached with two seats going to the industry, with half of the board being appointed by the governor and half selected by the legislature. This was not as many seats as insurers wanted, but they decided it was better than having an active purchaser exchange or giving up control to the federal government. The insurance industry united behind SB 221 (Interviews September 2013).

The bill was then rushed through the Senate, passing the Corporations and Transportation Committee 8-2 on Friday March 8th, amended on the Senate floor Sunday March 10th, and passed 36-5 on Monday March 11th (NM Senate Corporations and Transportation Committee 2013, NM SB 221). House Democrats were divided over how to respond at this point. There were only five days left in the session, leading some to conclude that “We have to get something. It’s late in the session, so you have to get something on her desk or she’s going to do this by executive order or blame the Democrats” for a federal exchange (Interview September 2013). Even so, with House Republicans united behind Senator Shendo’s bill, it was clear it could pass if leadership could navigate the bill through the process on time. The bill was sent to a committee chaired by someone from the same city as Senator Shendo where it passed 11-0 on Thursday March 14th (NM House Health, Government & Indian Affairs Committee 2013). The bill was then approved by the full House by a vote of 61-7 on Friday March 15th, the next to last day of the session (NM Senate Roll Call #4237) The only “no” votes came from Democrats who supported the concept of an exchange but did not think this bill went far enough.

There was no serious talk within Governor Martinez’s office of vetoing SB 221. An adviser to Governor Martinez confirmed this point, comparing the legislative process in 2013 to the debate in 2011 when the key bill needed to be voted on after midnight to ensure passage. Referring to 2013, this adviser said that “Towards the end, surprisingly, I didn’t notice any political games being played. By the time we were done with this, everyone had given up so much, and everyone knew that everyone had given up so much, there were really no games. It was sort of, we need to get this done,” (Interview September 2013). And with that, New Mexico had decided to create its own health insurance exchange.

Early Results of the New Mexico Exchange

As the dust settled on a contentious three-year debate over whether New Mexico would run an insurance exchange and who would be put in charge, policymakers went to work to meet tight deadlines ahead of the beginning of open enrollment on October 1st. J.R. Damron, the 2006 Republican nominee for governor and the man largely credited with being the first to push for an exchange, was named Chair of the Board of Directors. Governor Martinez used her five appointments to select leaders from the insurance industry, small businesses, hospitals, and providers. Republican leadership in the House and Senate had one appointment each, which they used to select hospital leaders.

Supporters of a strong exchange feel that Democratic leadership in each chamber squandered their appointments, selecting people too closely aligned with insurers and hospitals (Interviews 2013-2014). One Democrat who supported the final compromise legislation said that “The irony was that one of the things we didn’t back down on was that the legislative leaders needed to appoint people – but they basically just appointed twins to who the governor appointed... We blew our appointments on hospitals,” (Interview February 2014). Another referenced Representative Mimi’s Stewart’s frustration with SB 221, saying “Mimi was very angry, saying it would have been better to have no bill at all. Now, looking at the composition of our exchange, I think she might have been right,” (Interview September 2013).

The disappointment was compounded by the fact that one of the first decisions the board made was to give up control to the federal government. Jon Kingsdale spoke at the first board meeting on April 29th about the challenges the board would face in building an exchange on time. Kingsdale is a Boston-based consultant who was one of the architects of the Massachusetts

exchange in 2006 and was working with many other states in establishing an exchange. He explained that the state would likely be ready to run the exchange by 2015, but it was too late to be ready for 2014's open enrollment just five months away (Warwick 2013).

Instead of trying to build both the individual and small-business exchange in such a short period of time, the Board decided to focus on the SHOP exchange and rely on the federal exchange for the individual market. One board member explained that the state already had significant experience with the small business market from nearly 20 years of running the Alliance, and so it made sense to focus energies there (Interview September 2013). The board of directors is trying to redirect money received as part of the initial level 1 grant and has since received two more level 1 grants totaling more than \$88 million dollars. A major focus for this money is building the IT so the state can take over from the federal government in 2015. Another major focus is enhancing outreach and enrollment activities to increase the number of people who sign up in the meantime (CMS 2014).

Supporters of a robust New Mexico exchange describe it as frustratingly ironic that the outcome of years of debate so closely matches what they had opposed from the beginning. They pushed aggressively and won a legislative fight for state control, but still defaulted to the federal government. New Mexico's exchange would at least initially be focused on small businesses and based on the Alliance, exactly as Keith Gardner and others within the Martinez administration had originally wanted. Progressive Democrats fought hard for control over who would serve on the board but were disappointed when their leadership mostly used this power to appoint industry representatives. Stakeholders interviewed after October 1st also express deep frustration over the many problems surrounding the rollout of the federal website healthcare.gov.

They lament that New Mexicans would not have been affected by the website's problems had state leaders acted sooner (Interviews 2013-2014).

Early results indicate that the first four months of New Mexico's exchange did not go well. New Mexico finished the first open enrollment period 41st in the nation in terms of enrollment in the exchange as a share of the potentially eligible population, at 17% (KFF 2014c). It is impossible to know what would have been different had Governor Martinez not vetoed enabling legislation in 2011 or Democrats in the legislature let her establish an exchange by executive order in 2012. Either path may have given state leaders enough time to build the individual market exchange. The troubled startup of an exchange in states such as Oregon and Maryland is a reminder that choosing to create an exchange would not have ensured success. However, the generally positive results in other states suggest that a successful exchange would have been possible.

Conclusion

Along with Idaho, New Mexico was the last state in the country to decide to build a health insurance exchange. Policymakers debated for nearly three years which path New Mexico should choose. However, also like Idaho, the state made the decision so late that it was impossible to develop the IT necessary to actually create an exchange in time for open enrollment on October 1, 2013.

The key elements leading to this outcome were Governor Martinez's continued support, the absence of a strong Tea Party, pockets of expertise within the legislature and strong support from the insurance industry. In this section, I draw on the multiple theoretical perspectives of the

integrated framework introduced in chapter two to highlight the factors that influenced each of these elements.

Federalism Context

Theories of intergovernmental relations discuss the carrots and sticks the federal government uses to incentivize state behavior. In the case of health insurance exchanges, the Obama administration promised flexibility and money to participating states, and threatened to take over control in resistant states. This proved to be an effective approach in New Mexico where no prominent interest group or leader on either side of the partisan aisle advocated resisting implementation and defaulting to the federal government. However, support for a broad goal does not by itself make legislation or an executive order politically feasible.

Before enacting legislation in March 2013, the state came close on two occasions to establishing legal authority to run an exchange. Had either of these attempts at creating an exchange succeeded, New Mexico likely would have been on track to establishing their individual exchange on time. The federalism context played a role in hampering progress in both instances. First, in March 2011 the legislature passed a bill that would have created an active purchaser exchange with a conflict of interest provision preventing insurers and other industry representatives from serving on the board. At this point, the exchange had not yet become the national partisan issue that it would later become, and so it would be a mistake to attribute Governor Martinez's veto simply to partisan polarization. She cited as two of her reasons that the Obama administration had not yet released regulations spelling out state-run exchange should operate and that the multi-state lawsuit challenging the ACA's constitutionality had not yet run

its course. She argued that creating an exchange in this context was premature. Whether or not this is true is debatable, but either way, the intergovernmental context gave her an argument for waiting.

The Martinez administration was in a tricky position in early 2012. Governor Martinez supported creating a market-oriented exchange and was on the verge of signing an executive order to do so using the Alliance. This would have given her and her advisers the type of exchange they wanted. By this point, national partisan polarization seems to have factored into her decision. She had not joined the lawsuit against the ACA, but was one of the Republican governors who signed a letter calling for its repeal. National conservative groups and national Republican Party leaders were putting greater pressure on governors and state legislators to resist implementing any component of the ACA. With the Supreme Court about to hear oral arguments in the ACA case in March 2012, Governor Martinez's advisers pushed for a more resistant stance. Dan Derksen was forced out of the Office of Health Care Reform and plans to sign an executive order and submit a level 2 planning grant were stalled.

The March 2012 episode is a good example of a phenomenon described in the literature in which leaders of one party oppose each other for political reasons, even over issues in which they generally agree (Keiser and Soss 1998; Lee 2009; Yackee and Yackee 2009; Medof *et al.* 2011, Nicholson-Crotty 2012), and even if it contradicts their usual preferences on federalism (Barrilleaux *et al.* 2002; Nathan 2005; Conlan 2006; Adelman and Engel 2008; Shelly 2008; Doonan 2013). The Martinez administration wanted to maintain control over the exchange, but was willing to set this preference aside for partisan reasons. What is interesting about New Mexico compared to other states, though, is that this period of inter-governmental partisanship

did not last long or persist as intensely. After the Supreme Court upheld the law and President Obama won re-election, the Martinez administration resumed work on creating an exchange.

Since no prominent voices in New Mexico were arguing against maintaining state control, the question was what type of exchange would be set up. The trajectory and outcome of this debate was shaped by the intra-state context resulting from path dependence, institutional design, and partisanship.

State Context: Path Dependence

Path dependent forces played an important role in the debate over an exchange in New Mexico, though not in deterministic ways. In other words, prior policy decisions significantly affected the range of options available to policymakers but did not pre-determine a particular outcome. Similarly, there is no evidence of path dependent policy feedback cycles in which prior decisions created new constituencies advocating for particular proposals.

The creation of the Health Insurance Alliance in 1994 was a particularly important event affecting the options available to policymakers twenty years later. The Alliance was established as a non-profit entity focused on small businesses and led by a board of directors comprised mostly of insurers and brokers. This closely matched the type of exchange the Martinez administration wanted to establish, giving it powerful leverage in negotiations with progressive legislators and consumer advocates. When they passed a bill creating an active purchaser exchange with a conflict of interest provision, Governor Martinez vetoed it, believing she could sign an executive order to build the exchange as part of the Alliance. That threat was still on the table in 2013 when most Democrats and consumer groups decided to support enabling legislation

even though they considered it to be dramatically watered-down. The state's history with the Alliance also enabled New Mexico's policymakers to maintain control over the small business exchange despite not having enough time to create the exchange for the individual market.

Interestingly, Governor Martinez's leverage was limited in path dependent ways. The New Mexico Supreme Court had decided in two separate cases in the 1990s that governors could not create policy after having vetoed legislation dealing with similar issues. These previous rulings gave credibility to threats from Democrats that they would sue if she created an exchange by executive order. Had Democrats followed through with their threatened lawsuit, the delays would have prevented the legislature from considering the issue and the state would have by default ceded control to the federal government. This was not the outcome Democrats were hoping for, but this threat was enough to convince Governor Martinez to resume negotiations.

State Context: Institutional Design

New Mexico's institutional design played a role in shaping the state's decision to create an insurance exchange in four ways. First, the infrequency of legislative sessions and the minimal legislative staff elevated the prominence of individual legislators with greater experience in health policy. The political science literature describes such legislators as pockets of expertise, noting that they get this status either because of their personal and professional experiences or because they have devoted significant time to the issue over the years (Burns *et al.* 2008). Most legislators in New Mexico know little about health policy and do not have the option of relying on staff to support them. Instead, they turn to other legislators who have

developed a reputation in this area. The lack of term limits in New Mexico meant that a handful of legislators had been in office and worked on health policy for many years.

Democratic Senator Mimi Feldman was seen as the leading authority on health reform until her retirement in December 2012 (Interviews 2013-2014). She was the lead author of the bill that the legislature passed in 2011 and played a major role in the run up to the 2013 session. Senator Jerry Ortiz y Pino is generally considered to have taken her place. His support of SB 221 to create a clearinghouse exchange killed any hope for active purchaser bills.

Similarly, the general lack of expertise in the legislature besides these pockets gave certain interest groups a greater role than they might have had otherwise. It is striking that the chief negotiator for the legislature throughout many of these three years was Gail Evans of the Center on Law and Poverty, not one of the legislators. The major reason for this is not necessarily the amount of staff support legislators receive in and of itself, or even the capacity of the state bureaucracy, but the difference in staff support available to legislators and the governor. Governor Martinez had a point person, Matt Kennicott, coordinating the work being done by many people within the governor's office, multiple state agencies, and in the Office of Health Care Reform. Each of these people worked full-time and year-round. By contrast, legislators had minimal support and were in session only a few months per year. Consumer groups like the Center on Law and Poverty helped legislators make up the gap in expertise and attention. Interest groups aligned with the governor, such as the insurance industry, did not need to play the same role because the same need did not exist.

Third, the contours of the debate were dramatically shaped by the timing of the legislative sessions. The legislature only had two 60-day windows to act between the ACA's

passage in March 2010 and the beginning of open enrollment in October 2013. The first of these, in January through March 2011 was so early that the full inter-governmental context was not yet clear. This session also came immediately after Governor Martinez took office and before many people felt that she had her legs under her (Interviews 2013-2014). Had legislators been able to negotiate with her more fully before the start of the session, they might have chosen to advance a more modest bill that would have won her approval. After Governor Martinez's veto of SB 38 in 2011, the legislature did not have a serious opportunity to weigh in until the run-up to the 2013 session. Until then, the Martinez administration was in full control of the process.

Fourth, the fact that New Mexico's legislative sessions run for 24 hours per day and seven per week gave House Democrats an opportunity to pass SB 38 in 2011 when it was unclear they had enough votes. They got around this by calling a roll call close to midnight on one of the last days of the session, at a moment when they knew exactly enough Republicans were absent that the bill would pass. This is more than just a quirky anecdote in the story of New Mexico's insurance exchange, but a key moment with path dependence implications. Had this bill not passed and then been vetoed by Governor Martinez, Democrats would have had no grounds on which to threaten a lawsuit nearly two years later. This would have freed the Martinez administration in 2012 to use an executive order to create an exchange through the Alliance as it wanted. In this scenario, an exchange may have been created in time that the state would not have had to rely on the federal web site for the first year.

Intra-State Context: Partisanship

New Mexico is an example of a state whose decision on an insurance exchange exactly matches predictions based on partisan control. We would expect that a state led by a Democratic legislature, electing a mostly Democratic congressional delegation, and twice electing Barack Obama would decide to comply with the ACA. We would also expect that the type of exchange created would be a compromise given that in 2010 Republicans won control of the executive branch and reduced Democratic majorities in the legislature. This is exactly what happened.

There were two times when it seemed that the Martinez administration might outright oppose an exchange for partisan reasons. Her veto in 2011 was often described in these terms by the national media. But she maintained that an exchange was still a good idea and took important steps throughout the year to make progress. In March 2012, her office halted planning activities for what appear to be partisan reasons. However, this was more driven by the increasingly polarized inter-governmental context than growing Republican opposition within the state.

There were no loud Republican voices within New Mexico calling for Governor Martinez to outright oppose an exchange, despite Republican gains in the 2010 elections. Democratic leadership had to use sneaky procedural tactics to pass a bill in 2011, but Republicans mostly stayed out of the fight. Republicans who did weigh in, such as former gubernatorial nominee J.R. Damron, continued to advocate for state control of the exchange. They wanted a different model than most Democrats supported, but not because of strident partisan polarization. Unlike Republicans in many other states, they remained consistent to the positions they had supported

years earlier before the ACA passed and President Obama became closely identified with the issue.

The partisan dynamics of the debate over Medicaid expansion paralleled and affected the debate over an exchange in interesting ways. New Mexico is the only state in my sample to both expand Medicaid and create an insurance exchange. Complying with the ACA seems like the safest political path for a Republican governor in a blue state that supports Medicaid expansion and re-elected President Obama by ten percentage points. The difference is that on the exchange, Governor Martinez negotiated for a compromise bill that more closely resembled a model conservatives favored. If a compromise position had been available on Medicaid, it is likely that she would have pushed for it.

Strategic Actors: Interest Groups

The New Mexico case provides mixed evidence for the importance of interest groups in state policymaking. On one hand, interest groups played a large role in the debate over an insurance exchange. Their initial opportunities to influence the process were the task forces convened by Governor Richardson. The result of these meetings was a clear consensus that most groups wanted to maintain control of the state's exchange. This high level of agreement contributed to momentum in the early days of the Martinez administration so that the debate was about what type of exchange to adopt, not whether or not to do an exchange at all.

After Governor Martinez's veto of SB 38 in 2011, interest groups played a prominent role in pushing for an active purchaser exchange. As described earlier, the role of consumer groups was enhanced by the lack of professionalization in the legislature. The Martinez

administration did not need the same kind of help from its allies, but had increased leverage because of support from the insurance industry. Insurers were actively involved because they felt they would have much more influence over the exchange's governance and operation if it was run in Santa Fe instead of Washington D.C. A simple example is that they would were able to get seats on the board of directors. Their support was seen as crucial to winning Governor Martinez's final approval of the bill that passed in 2013.

On the other hand, there is evidence that interest groups had limited influence. The Center on Law and Poverty, the most prominent consumer advocacy organization in the state, ended up on the losing side of the debate. It had been the chief negotiator for legislative Democrats and one of the drivers of the lawsuit that forced Governor Martinez to the table, yet ultimately opposed the bill that Democrats supported and the governor signed. Insurance companies were closely involved in the process, but leaders of other industries were not. Small business associations were notably missing from the debate, as were providers and hospitals.

The most striking absence was the lack of Tea Party mobilization. Skocpol and Williamson (2012) list New Mexico as one of the fifteen states in the nation with more than 4-6 Tea Party organizations per million people. However, the Tea Party played almost no role in the debate over whether or not to create an exchange in New Mexico. They did not show up to legislative meetings at anywhere near the levels seen in other states in my sample, nor were they active online. Nobody interviewed cited the Tea Party as a major force in the debate, with most people emphasizing that the Tea Party is not very strong in New Mexico politics (Interviews 2013-2014). The Tea Party is seen as having some strength in the southern part of the state, such as having multiple seats on the Rio Rancho City Council. However, population in this part of the

state is extremely sparse, making it difficult for groups to organize. Most people live too far from the capitol in Santa Fe to consistently influence the legislative process.

Further evidence of the Tea Party's weakness, or perhaps a contributing factor, is the lack of a strong conservative think tank organization. There is the Rio Grande Foundation led by Paul Gessing, but it does not have nearly the same level of influence in state politics as the Idaho Freedom Foundation, Michigan's Mackinac Center for Public Policy, and the Mississippi Center for Public Policy. It did not take an active role in arguing against an exchange. For example, the Rio Grande Foundation did not publish a single report or blog post during the 2013 legislative relevant to the exchange debate. This left a leadership and an information void weakening any attempt at Tea Party mobilization against an exchange.

Strategic Actors: Policymakers

Individual judgment, independent of partisanship and interest group influence, should not be discounted. There were a number of points in New Mexico's debate at which people with similar incentives and constraints may have made different decisions had they been in power. For example, a different Republican governor may have decided to sign SB 38 in 2011 rather than veto the bill, may have signed an executive order to create an exchange through the Alliance, or may have decided to concede and support an active purchaser exchange in 2013.

Similarly, a different Speaker of the House may have decided not to call the vote on SB 38 at midnight when he knew enough opponents were home sick that the bill would pass. As mentioned earlier, if he had not done this and Governor Martinez not vetoed the bill, the Democrats would not have had grounds on which to threaten a lawsuit in late 2012. This would

have limited the legislature's leverage and Governor Martinez likely would have bypassed them to create an exchange through the Alliance.

Senator Ortiz y Pino's support for Senator Shendo's bill in 2013 is another example of individual judgment affecting the outcome of the debate. The compromise bill may not have passed had Senator Ortiz y Pino joined Representative Stewart's opposition. In that case, Governor Martinez may have negotiated further and agreed to a bill with greater restrictions on who could serve on the board. Of course, it also may have meant that no bill gets enacted.

Summary

New Mexico is the only state in my sample in which a Republican governor worked with a Democratic legislature. The result of the state's debate to create a clearinghouse exchange is consistent with expectations based on partisanship. Democrats wanted to implement the ACA and Republicans supported creating an exchange, especially one that they could tailor to local preferences. Had a strong Tea Party presence emerged in New Mexico, Governor Martinez may have been forced to reconsider her support for an exchange. There were signs in March 2012 that people within her administration, most notably senior advisor Jay McCleskey and Human Services Secretary Sidonie Squier, wanted to move in this direction. By the end of the year, Governor Martinez re-affirmed her commitment to creating an exchange. Ironically, a limited Tea Party presence amplified the partisan nature of the debate in New Mexico, especially compared to other states where the primary division was within the Republican Party. This changed the nature of the debate so it was not just about whether or not to do an exchange, but what type of exchange to create.

Partisanship is an incomplete explanation for how and why the state arrived at this decision. With pockets of expertise in the legislature and strong support from the insurance industry, policymakers reached a compromise and enacted legislation to create an exchange. Path dependence and institutional design played an important role in shaping the process that determined the specific type of exchange. Timing was one of the most important factors cutting across each of these dimensions. The inter-governmental implementation calendar conflicted with the state's legislative calendar, giving legislators only two short windows to consider bills. Similarly, the relative power of policymakers and interest groups was not static, but ebbed and flowed at different points in the legislative cycle. The irony is that years of fighting over who was empowered to decide and what type of exchange New Mexico would operate meant that the choice was made so late that the state had to give up control of its exchange anyway.

Chapter 8 - Conclusion

What the ACA accomplishes is remarkably unsettled after four years of implementation. Political discord over the law's enactment was fierce and has intensified over time. Republicans running for federal and state-level offices made repealing the ACA one of the major issues of the three election cycles since its passage. Leaders in more than half the states fought the individual mandate and the Medicaid expansion all the way to the Supreme Court. Many states considered constitutional amendments or legislation to nullify the ACA in their state and the U.S. House of Representatives voted more than 40 times to repeal the law. The ACA is becoming increasingly entrenched as more of it becomes implemented, but it remains vulnerable to changes in control of Congress and the presidency.

Health insurance exchanges were an element of the law expected to win bi-partisan support, especially after the Senate version of reform became law and states would be empowered to run their own exchanges. The threat of a federal takeover was seen as a strong enough deterrent to incentivize most states to want to retain control. Yet, when open enrollment began on October 1, 2013, only 17 had chosen to operate their own exchange, with 27 states defaulting to a federally run exchange, and six choosing a federal-state partnership. Why did so few states decide to maintain control of their exchange, especially when the Obama administration was giving out large amounts of money and repeatedly extending deadlines?

Partisanship is one of the most common explanations for how states reacted, suggesting that Republicans opposed an exchange simply because it was proposed by President Obama and other Democrats. There are indeed clear partisan patterns to state responses, as only one state led entirely by Republicans (Idaho) decided to create an exchange. Of the 30 Republican governors in office when open enrollment began in October 2013, only three (10%) presided over the creation of a state-based exchange, compared to 13 of the 20 Democratic governors (65%).

Yet, partisanship is an incomplete explanation. I show that in many cases the primary division was within the Republican Party, not between Democrats and Republicans. By the time the Supreme Court announced in November 2011 that it would consider the lawsuits against the ACA, 23 states had taken significant steps towards creating an exchange. Republicans controlled at least one legislative chamber or the governor's office in all but two of these states, including nine that were led entirely by Republicans (Table 1). All but one received an average of \$24.1 million in federal exchange grants (Table 2). The other state, Virginia, passed a bill declaring its intention to create a state-based exchange.

The more focused question I address is why only five of these 23 states decided to create an exchange. That two of these five did so by executive order of their governor (Kentucky and New York) suggests that part of understanding *why* states made their decision requires focusing on *how* states made their decisions. I use comparative case study analysis to examine the decision-making process in the two states that came closest to creating an exchange but did not (Michigan and Mississippi) and two of the very last two states to choose to create an exchange (Idaho and New Mexico).

Appendix A contains a summary of findings. Appendix B contains a summary of the theoretical framework guiding this analysis. Appendix C-F contains a timeline of key events in each state. Before discussing these findings in more depth, it will be helpful to briefly review the key moments in each state's debate.

Michigan

Many of Michigan's policymakers were confident in late 2011 that their state would soon become the first state led entirely by Republicans to create an exchange. Advocates for an exchange had much in their favor. Governor Snyder supported a state-based exchange and devoted his office's resources to the issue. An unprecedented set of interest groups were aligned in favor of an exchange, including insurers, hospitals, providers, small businesses, and consumers. Legislation creating an exchange passed the Senate with bi-partisan support. The Obama administration was supportive of the state's plans, awarding the Department of Licensing and Regulatory Affairs (LARA) a \$9.9 million level 1 planning grant.

The greatest opposition to creating an exchange came in the House. Shortly before the 2011 Christmas recess, the House blocked LARA from spending its grant. A month later, the House Health Policy Committee held a marathon hearing lasting more than three hours in which 31 members of the public testified. This meeting was the culmination of a mobilizing effort by Tea Party leaders and the Mackinac Center for Public Policy to oppose the exchange. Committee Chairwoman Gail Haines did not call a vote, making it clear that she would wait until after the Supreme Court released its ruling. When the law was upheld a few months later in

June, House Speaker Jase Bolger momentarily expressed support for an exchange but then clarified that he supported waiting until after the presidential election before holding a vote.

Speaker Bolger and Rep. Haines publicly supported an exchange for the first time shortly after Barack Obama was re-elected president on November 6, 2012. The legislature would not have had time to vote on a bill except that on November 15th HHS Secretary Kathleen Sebelius extended the deadline by which states needed to decide. The House Health Policy Committee defeated Senate Bill 693 two weeks later by a vote of 9-5. The bill might have passed had it not been connected to an abortion bill at the last minute. Two Democrats abstained from voting over the abortion issue; two other Democrats did not show up for reasons that are unclear. If they had all shown up and voted with their party in favor of SB 693, the outcome would have been determined by Republican Wayne Schmidt, who was present at the meeting but did not vote. He had expressed support for an exchange in the past but was under intense pressure from conservative groups over the issue. He did not need to cast this tough vote since the outcome was decided, but it is unclear how he would have responded if the committee had been split 9-9.

The Snyder administration reacted to SB 693's defeat by moving forward with plans to create a partnership exchange. HHS awarded the state a \$31 million level 1 establishment grant in January 2013 and approved Michigan's partnership blueprint application in March. Once again, the legislature blocked LARA from being allowed to spend the federal grant it had received for exchange planning. Ironically, this time it was the House that approved the supplemental funding and the Senate that was opposed. There was little the Snyder administration could do without access to this money, and the state defaulted to the federal exchange.

Mississippi

Mississippi is the only state to have an exchange application rejected by the Obama administration. This is a stunning outcome given that there was considerable consensus for many years among state leaders in favor of maintaining control. Republican Governor Haley Barbour first introduced the idea in 2007 and the Senate passed exchange legislation three times during Barbour's last term in office (2007-2011).

The House was controlled in 2008 and 2009 by Democrats that refused to bring the bills up or a vote. House Democrats became supportive after the ACA was passed in March 2010 and included health insurance exchanges. Legislation passed both chambers in the 2011 session, though with differing governance structures for the exchange. Democrats wanted to keep insurers off the board of directors, whereas Republicans wanted them to be included. A conference committee could not agree on a compromise and the legislation died.

Insurance Commissioner Mike Chaney responded to the legislature's inaction with plans to create an exchange as part of the Mississippi Comprehensive Health Insurance Risk Pool Association (MCHIRPA). He felt this option was available for two reasons: first, an unrelated change to MCHIRPA's statute in 2009 gave him broad authority over any state and federal program which helped people obtain insurance. Second, as an independently elected executive branch official, he felt empowered to act on behalf of the state.

Governor Barbour supported creating the exchange through the high risk pool, though he was term-limited from running again in the 2011 election. Newly elected governor Phil Bryant (R) did not focus on the ACA during the campaign, but indicated he would continue to support an exchange. The Insurance Department convened an advisory board of a wide range of

stakeholders that met monthly throughout 2012 to provide input on exchange planning. The Mississippi Tea Party became more active on the issue after the U.S. Supreme Court announced its ruling upholding the ACA, including attending meetings of the exchange advisory board and of the Personnel Review Board. Tea Party activists were able to successfully block the insurance department's contracts with exchange vendors.

Chaney responded to President Obama's re-election by announcing he would be submitting the state's application once he discussed it with Governor Bryant. He did not hear back from Governor Bryant until the two bumped into each other in the men's room at a Jackson Hotel a week later. Bryant explained that he was going to oppose the application and Chaney responded that the governor's approval was not required and he would submit it anyway. The two leaders sent HHS competing letters over the subsequent two months arguing their respective cases. Mississippi Attorney General Jim Hood (D) issued a report siding with Commissioner Chaney, to which Governor Bryant responded that he would not allow the state's Medicaid division to cooperate with Chaney's exchange in any way. HHS was reportedly willing to move forward but was blocked by the White House. The Obama administration wanted to support a Mississippi-run exchange but was not willing to test whether Bryant was bluffing, and therefore rejected Chaney's application.

HHS subsequently encouraged the Insurance Department to build a partnership exchange. Chaney did not like this idea, saying that it would amount to Mississippi doing most of the work but giving up most of the control. HHS subsequently created an option in which the state could retain authority over its small business exchange even while defaulting to the federal exchange for the individual market. Chaney took this approach and received approval on October 1, 2013.

The SHOP exchange did not need to connect with Medicaid, and so there was little Governor Bryant could do to stop these plans.

Idaho

Idaho is by many measures one of the most conservative states in the country. Opposition to the ACA has been fierce. It was the first state to pass legislation opposing the law, with Governor Otter signing the Idaho Health Freedom Act before the ACA's enactment. Attorney General Wasden was among the first to join the lawsuit challenging the ACA's constitutionality. Despite this opposition, Idaho was the only state led entirely by Republicans that chose to create an exchange.

Governor Otter strongly opposed the ACA but supported the concept of an insurance exchange and preferred that Idaho retain control. He remained non-committal until after the Supreme Court's ruling and President Obama's re-election in 2012, but allowed his Department of Insurance to apply for planning grants before then. The 2011 legislative session was particularly dramatic, with the legislature passed nullification bills declaring the ACA null and void in Idaho. Governor Otter had indicated support for the nullification bill but then vetoed it after the legislature was out of session. He signed an executive order which had a similar effect - banning state officials from working on the ACA's implementation. However, he added an exception saying that he could grant approval on a case by case basis. He specifically cited exchange planning as something he would continue to allow.

One of the most important turning points in the creation of an exchange had nothing specifically to do with health reform. In December 2012, Scott Bedke ousted Lawrence Denney

as Speaker of the House. House Republicans were angry at Denney for using money from his leadership PAC to campaign against incumbent Republicans in that year's primary. Denney was an ardent opponent of the ACA and a state-based exchange, refusing to allow legislation to even come up for a hearing in previous years. Bedke was elected Speaker on a platform of openness, vowing to allow issues like an exchange to move forward if the votes are there.

With Denney no longer standing in the way, Governor Otter threw his full support behind a state-based exchange in the 2013 legislative session. His office coordinated a large coalition of interest groups who supported an exchange. His Chief of Staff introduced the exchange bills at each of the committee hearings. On the other side, the Tea Party mobilized large groups to oppose legislation and the conservative think tank The Idaho Freedom Foundation used its growing influence to lobby aggressively against an exchange.

Legislation passed the Senate Commerce and Human Resources Committee in February 2013 with all Republicans voting in favor. Shortly before the bill was to be debated in the Senate, 16 Republican House freshmen announced that they would not support the Senate's bill but would support an exchange bill with more legislative oversight. Without their votes, legislation would be defeated when it moved to the House. A process was agreed to in which the Senate would pass its original legislation while the House passed a trailer bill, and then each chamber would approve the other's bill. The Senate voted 23-12 to pass the original bill after a remarkably civil, but intense seven hour debate.

By the time the Senate passed its bill, House leaders decided they did not want to trust the Senate to also pass the trailer bill. Parliamentarians also questioned whether the House could pass a trailer bill before passing the bill it trailed. Leaders on both sides agreed that a new bill

would be drafted, first passed by the House, and then by the Senate. The debate was intense on both sides, but both chambers followed through with this plan and legislation enacted on March 28th.

Governor Otter appointed the 19 member board of directors two weeks later, not needing Senate confirmation because the legislative session had already ended for the year. One of the first decisions made by the board was for Idaho to use the federal website for the first year of operation. The board would retain control over many aspects of the exchange but did not have time to develop its own IT. This led to significant confusion in the early days of open enrollment, though Idaho ultimately had one of the highest levels of enrollment in the nation by the time the first open enrollment period closed in March 2014.²²

New Mexico

New Mexico seemed likely to choose to run its own exchange. The state voted for Barack Obama in 2008 and was led by a Democratic governor who had been working on similar types of health reform for many years. The political climate changed in November 2010 when Republican Susana Martinez was elected governor.

Governor Martinez took office in January 2011 and was immediately plunged into a debate over an exchange. Health reform had not been a major part of her campaign and many felt she was out of her element on the issue. The legislature sent a bill to her desk in March 2011 under somewhat dubious circumstances, making it through the House thanks to Speaker Luján's

²² In terms of percentage of the eligible population that signed up during the open enrollment period between October 1, 2013 and March 31, 2014 (KFF 2014c).

maneuvering to call the vote after midnight at the precise moment when there were just enough supporters in the chamber to ensure passage. The bill would have created an active purchaser exchange. This is different than the more conservative model her advisers favored, and she vetoed the bill.

With the legislature unable to act on its own for the next two years, it appeared little would happen to create an exchange. Supporters had hope in August 2011 when Dan Derksen was appointed to lead the New Mexico Office of Health Care Reform. He immediately received Governor Martinez's approval to apply for a level 1 establishment grant, as well as announced plans to apply for a level 2 grant by the following March. This implied that formal authority to operate the exchange would be in place by then, most likely through an executive order. Draft language for an executive order was prepared and the level 2 application was close to. However, Derksen suddenly resigned in March 2012. A reason was not given publicly, but insiders attribute it to frustration over increased scrutiny by Governor Martinez's advisers who did not want to approve the executive order or the grant application just as the Supreme Court was about to decide and Mitt Romney might be elected president..

Planning stalled after Derksen left. The governor's office suggested they would still create an exchange by executive order, doing so through an entity known as the Health Insurance Alliance. Democrats and consumer groups strongly opposed this plan, believing it was too favorable to the insurance industry. Assistant Attorney General Mark Reynolds issued an opinion in September 2012 saying that Governor Martinez does not have authority to create an exchange by executive order since she vetoed similar legislation in the past. Democrats threatened to sue if she proceeded anyway and she backed down.

Four exchange bills were introduced during the 2013 session. Democrats and consumer groups believed they had reached a compromise with Governor Martinez's office in mid-February. That deal fell through, but another compromise was ultimately reached when two Senate Democrats merged their bills. The new bill created a clearinghouse exchange allowing insurers to serve on the board, but gave the legislature power to appoint board members as well. The bill was rushed through multiple committees and multiple chambers in the last week of the session, ultimately being signed by Governor Martinez on March 28th.

The board of directors was appointed in April, with liberal legislators being frustrated that their leaders used their appointments on people favorable to industry rather than consumers. They were also frustrated when the board decided almost immediately that there was not enough time to create an exchange. HHS gave approval in July for the state to retain control of its small business exchange while allowing the federal government to operate the individual exchange for the first year.

Findings

My central theoretical argument is that no single variable or perspective adequately explains each state's decision. I developed an integrated framework in chapter two as a way to examine the multiple factors affecting state decision-making. The framework is not meant as an explanation *per se*, but as an organizing tool for considering the relationship between multiple theoretical perspectives within political science.

The framework consists of three nested layers, with the strategic actors attempting to influence policymaking at the center. This includes interest groups, as well as a broad definition

of policymakers, such as governors, legislators, staff members, and bureaucrats. The framework acknowledges that the policy and strategy options available to these actors is defined by their state’s context, including how institutions are designed, prior policy decisions, and partisan dynamics. It is also important to appreciate that each state is affected by the broader national and inter-governmental context.

Table 14 – Influence of Key Actors on Health Insurance Exchange Decision

	Gov Support 2011	Strong Tea Party	Gov Maintains Support 2012/2013	Strong Industry Coalition	Pockets of expertise	Exchange
Michigan	X	X	X	X		
Mississippi	X	X		X		
Idaho	X	X	X	X	X	X
New Mexico	X		X	X	X	X

Source: Interviews

Table 14 summarizes the patterns of support among various strategic actors and whether the state chose to create a health insurance exchange. The states are listed chronologically in the order in which they decided. Michigan rejected an exchange in November 2012, Mississippi’s application was rejected in February 2013, Idaho and New Mexico enacted legislation in March 2013. All four Republican governors began by supporting an exchange. The only state that did

not have a strong Tea Party presence, New Mexico, went on to create an exchange, including with continued support from the governor and strong industry support. Of the three states with a strong Tea Party presence, Phil Bryant was the only governor to rescind his support of an exchange. As a result, Mississippi defaulted to a federal exchange (at least for the individual market). Both remaining states with a strong Tea Party but continued gubernatorial support (Idaho and Michigan) had a strong coalition of industry and consumer groups supporting a state based exchange. The difference between the two is that Idaho had pockets of expertise in the legislature and went to choose a state-based exchange, whereas Michigan did not have pockets of expertise and went on to reject an exchange.

I discuss each of these elements in more depth below. I first cover the decisions made by policymakers and interest groups. I then discuss the state and federalism contexts that affected whether pockets of expertise developed and otherwise shaped the strategic environment, including institutional design, path dependence, and partisanship.

Strategic Actors: Policymakers

The governor was the most important actor in each state. Their support was a necessary condition for the creation of an exchange. Mississippi is the extreme case, demonstrating that HHS would not approve an application that did not include the governor's signature. Insurance Commissioner Mike Chaney tried to push this boundary but was unsuccessful. Governor Martinez of New Mexico was willing to veto exchange legislation that did not align with her goals, making it clear that an exchange would not be created without her. Legislators in Idaho say they would not have moved forward with exchange legislation if Governor Otter had not

given strong support. His aggressive use of informal powers, including having his Chief of Staff introduce the bills in committee, coordinating a large coalition of interest groups, and regularly meeting with legislators was crucial to winning support from enough Republicans in the House. Rick Snyder's failure in Michigan shows that although necessary, a governor's support was not sufficient.

Another critical factor was whether pockets of expertise had developed around health insurance in the legislature. This refers to legislators who have developed a reputation as a trustworthy source of information on an issue. They are particularly influential within their own party and are most important when counter-pressure from interest groups is strong. One of the reasons an exchange was defeated in Michigan is that there were not legislators expert in health policy and the legislative process to shepherd bills along. There were strong advocates for an exchange, but nobody with sufficient expertise or clout to validate the idea of a state-run exchange for enough Republicans.

Idaho is a good example of the importance of pockets of expertise. Even with strong support from Governor Otter, exchange legislation likely would not have received enough Republican votes if particular legislators with a deep knowledge of health insurance had not stepped up. It helped that a number of the most prominent members of the legislature also happened to be insurance brokers or former insurance executives. They were in powerful positions and had many years of relationships and experience with the legislative process. They strongly supported state control of the exchange and were able to answer even the most technical questions posed by critics. New Mexico had similar pockets, though they were less critical to an exchange's passage since they were members of the Democratic Party which controlled the legislature and mostly all supported an exchange. Still, it helped that the legislators negotiating

most closely with Governor Martinez had a reputation as knowledgeable about health reform. There were no prominent experts in the Mississippi legislature, though it did not matter once the exchange debate shifted venues in 2011 to the executive branch.

Not every legislator supporting an exchange can be described as an expert. Even some highly influential legislators were relatively new to health policy issues. Many of the 16 Republican freshmen in the Idaho legislature had never worked in this area. Benny Shendo, the New Mexican Senator who sponsored the exchange bill that ultimately passed, was new to the legislature and had not worked directly on health. Yet, it is unlikely legislation would have moved to the point that these non-experts could be influential without the work of legislators regarded as experts.

Implied in this analysis is the idea that the judgment, preferences, and experiences of individual people are also important. Yes, incentives change in response to pressure from interest groups, and actors are empowered differently as a result of the state and intergovernmental context. But it should also be recognized that within all these constraints are people making decisions. In other words, different individuals placed in similar circumstances might come to different conclusions about which path to take. The distinction I am making is not that people are fallible and have imperfect judgment, but that people come to different conclusions about which outcome is ideal. For example, many other Republicans in Butch Otter's position would have resisted a state-based exchange. Even with the institutional features empowering Mississippi's insurance commissioner, other people likely would not have pushed so aggressively for state control. Other people in Governor Bryant's position may have let Commissioner Chaney move forward with an exchange through the high risk pool. Former Governor Haley Barbour said he would have. Other Republican insurance commissioners may

not have pressed so hard. Similarly, for pockets of expertise to develop over time, individuals need to consistently work on related issues. Lobbyists may influence what some people focus on, but state legislators have significant discretion to decide which issues they will pursue.

Strategic Actors: Interest Groups

Many of the most powerful interest groups worked together in each state to support a state-based exchange, including insurers, insurance agents, small businesses, hospitals, providers, and consumers. Nobody interviewed could identify another issue on which all of these groups were so closely aligned. Informants were similarly hard pressed to name a time when some combination of these groups united on an issue and were not successful, because these are the historically powerful groups in these states.

Insurance companies played a particularly large role in Idaho, Michigan, and New Mexico. New Mexico was the only case where insurers and consumers competed rather than worked together, but even here, their mutual backing of a state-based exchange sent a powerful message to policymakers. The level of support provided by insurers in Idaho and Michigan was similar, though there is some evidence it was stronger in Idaho. The major insurers in Idaho were careful not to promise a *quid pro quo* for support of an exchange, but made it clear that the exchange was their priority issue that session and that they would offer “undying loyalty and support” (Interview May 2013) in the upcoming primary for legislators with a favorable voting record. By contrast, insurers in Michigan describe no such promise, instead saying that although they preferred state control of the exchange, they would be prepared either way. Many speculate that Blue Cross Blue Shield has such a large market share in Michigan that they were not

worried about losing ground if the exchange was run by the federal government instead of the state.

Industry leaders did not lobby as aggressively for a health insurance exchange in Mississippi as in other states, largely because they thought they did not have to. After the legislature failed to act in 2011 and Commissioner Chaney invited them to participate in an advisory board to create an exchange through the high risk pool, they thought the matter was decided. They did not see the need to lobby because they assumed that an agreement had been reached between Chaney, Governor Bryant, and the Obama administration.

Tea Party strength was a major factor affecting whether a state decided to create its own exchange. The Tea Party may be better conceived of as a social movement (Nownes 2013), but succeeded in these states using many of the same lobbying tactics employed by traditional interest groups. They made phone calls, sent emails, and visited legislative offices. They used social media and the internet to turn out large numbers to committee hearings. But they acted differently than most groups. They used inflammatory rhetoric in their testimonies, insisted on speaking even in meetings where the public does not usually attend, clapped loudly even when it was against decorum, and stood outside of meetings taunting legislators whose votes they did not like.

The Tea Party is also different in that it is not a private interest with a hierarchal structure; there is no such thing as THE Tea Party. Instead, it is a collection of decentralized groups of activists. Their influence is largely through local politics, taking over county and precinct party organizations, regularly attending coffee hours and open houses held by local legislators. Those living close to the state's capital city have greater influence as they are able to

regularly attend legislative meetings and develop relationships with legislators outside their districts.

External organizations played an important role in fueling the Tea Party's momentum and influence. Conservative think tanks in Idaho (the Idaho Freedom Foundation), Michigan (the Mackinac Center for Public Policy), and Mississippi (the Mississippi Center for Public Policy) served as *de facto* leaders of the Tea Party. They did not lead meetings, but they educated citizen activists on the legislative process and provided the data and reports for them to use when contacting legislators or writing blog posts. National groups such as the CATO Institute, ALEC, the Heritage Foundation, and Americans for Prosperity played a similarly important role, providing expertise – and in some cases money. New Mexico is the only state in my sample where the Tea Party is not strong and there is not a prominent conservative organization. The political climate for an exchange was much more favorable as a result, with no prominent groups calling for the state to reject an exchange.

Idaho decided to create a state-based exchange despite aggressive opposition from a strong Tea Party supported by a strong conservative think tank. As described above, a major difference was the pockets of expertise that had developed in the Idaho legislature. Each state's institutional design played an important role in shaping whether pockets of expertise developed. Path dependence and partisanship also played a significant role in shaping the state context and affecting both the process by which the decision was made, as well as the debate's outcome.

State Context: Institutional Design

Pockets of expertise, at least with respect to health insurance, were ironically more common in states with shorter legislative sessions and limited staff support. We might have expected that expertise would be greater in states that spent more time in session or that had more staff to conduct research. Idaho legislators have almost no staff support and are only in session three months per year. As a result, those who had worked in the insurance industry were particularly influential. Other legislators could not rely on a staff for information and so would turn to their colleagues for guidance.

The Michigan legislature was in session longer than the other three states, and as a result had considerably more time for deliberation and hearings. The Michigan House Health Policy Committee held more than a dozen hearings on an exchange compared to one or two hearings in the relevant committees in each other state. Rather than create expertise, this gave interest groups more opportunities to pressure legislators.

The effect of long sessions in Michigan was compounded by term limits, which removes legislators before they can accumulate expertise. A legislator in a state with long sessions could theoretically develop significant expertise if they were allowed to remain in the legislature over time. The effects of term limits are most clear when compared to Idaho. More than one-third of the Idaho legislature was new in 2013 as a result of redistricting and retirements the previous year. This is comparable to the high level of turnover in Michigan as a result of term limits. The major difference is that leadership was constantly turning over in Michigan as well, particularly in the House which is often a stepping stone to serving in the Senate. The top four leaders in the Michigan House had an average of two years of legislative experience. By comparison, House

leaders in Idaho had served an average of ten years. Representative Fred Wood was a newly appointed Chairman of the Idaho House Health and Welfare Committee in January 2013, but had served on that committee since 2006. In Michigan, he would have been term-limited from running in the House by that point.²³ The key committees in Michigan experienced nearly 100% turnover the year the exchange bill was debated. Most legislators on both sides of the debate, including the leaders, had no experience with health policy and a limited knowledge of the legislative process.

It is important to note that Tea Party activists and other opponents of an exchange might draw different conclusions from these same data. They might argue that Michigan's ability to reject a state-run exchange is a success story for term limits because the will of the people beat out the will of powerful interest groups. However, I would respond that legislators were still responding to pressure from interests, but in this case it was ideologically based and legislators with less expertise – individually and collectively – had less ability to sort through the policy and political issues.

State Context: Path Dependence

Prior decisions affected the options available to policymakers and interest groups. One of the most dramatic examples is that alternative paths to creating an exchange were possible in states that had previously created insurance programs governed by a loose statute. When the legislature failed to act in Mississippi, Insurance Commissioner Mike Chaney was able to move forward with planning because the high risk pool gave him broad authority.

²³ New York is an extreme example, where Richard Gottfried has been the Chair of the Assembly's Health Committee since 1987.

Similarly, Governor Susana Martinez and her advisers regularly discussed creating an exchange through the New Mexico Insurance Alliance. The Martinez administration never followed through with these threats, but the Alliance provided significant leverage in debates with Democratic legislators over the governance structure of New Mexico's exchange. At the same time, Martinez was limited by path dependent forces, as there was a legal precedent in the state that a governor is not allowed to use an executive order to make policy on an issue that the legislature has considered and the governor has vetoed.

The selection of Scott Bedke as Idaho's House Speaker is another example of a previous decision changing the range of subsequent options. This change had a domino effect in which supportive committee leaders and members were selected in the House, and in which Governor Otter felt he could put his full support behind exchange legislation. Exchange legislation likely would not have passed had Lawrence Denney still been speaker.

Strategic actors on both sides tried to create path dependent forces which they hoped would work to their advantage down the road. For example, each state created workgroups and task forces shortly after the ACA was passed. The recommendations made as a result of these meetings were non-binding, yet were taken very seriously by participants because they hoped to create momentum behind their positions. The same was true of the interim legislative meetings in New Mexico in 2012 and the exchange advisory board in Mississippi. Opponents of the exchange used the same strategy, hoping to limit their opponents down the road. The Idaho Health Freedom Act of 2010 is a clear example of this, as are the nullification bills which were intended to prevent state officials from doing anything to implement the ACA. These attempts did not work in most cases. Policymakers mostly made their decision without regard to previous support or opposition.

State Context: Partisanship

There are three clear partisan patterns to how states made their decisions over an exchange. One is that the vast majority of Democrats supported creating an exchange. This may seem uninteresting given that the ACA was written and passed by Democrats at the national level. But it is surprising that most Democrats remained supportive in these four Republican-led states, even as it became clear that the type of exchange that might be created in differed from the type they favored. Democrats generally preferred an active purchaser model and preventing insurers from serving on the board of directors, but were willing to support other forms of an exchange if it meant their state retained control.

The choice for Democrats in Idaho and Michigan became supporting a state-based clearinghouse exchange run by a Republican administration and a board of directors that included insurers on the board, or a national exchange run by the Obama administration, and therefore did not empower local insurers. In these states, exchange bills made it to the floor of both chambers in Idaho and in the Michigan Senate. All but one Democrat in these two states voted in favor of a state-based exchange. Democrats on the Michigan House Health Policy Committee all supported the governor's exchange bill, but did not vote for it once it became tie-barred to an abortion bill.

Prior to the Supreme Court's ruling and the 2012 elections, Democrats in Republican-led states supported an exchange in part to entrench key aspects of the law in case the law was defeated or repealed. Yet, Democrats remained supportive of state control after the law became more secure, even if it meant accepting a more conservative model. When asked about this tension, they explained that they genuinely thought state control would be better. Their votes

were crucial to the passage of legislation. Republicans controlled both chambers in the Idaho and Michigan legislatures, but Democratic votes made the difference in Idaho and nearly made the difference in Michigan.

The partisan tension was a little different in Mississippi and New Mexico where the two parties were agreed over creating an exchange but were divided over what type of exchange to create. In Mississippi, this compromise could not be reached in the 2011 conference committee and the debate shifted from the legislative to the executive branch, making partisan conflict less of a factor. In New Mexico, Democrats controlled both chambers of the legislature and were in a much better negotiating position. As a result, this is the only state in my sample where the ongoing debate was not about whether to do an exchange, but what type of exchange to establish. As the end of the session neared in 2013 and compromise still had not been reached, some Democrats relented and agreed to support a more conservative model of an exchange. They allowed insurers to serve on the board and accepted a clearinghouse exchange. Some prominent Democrats voted against this compromise bill, but it still had support from 84% of Democratic legislators (Table 8).

The second partisan pattern is that most opponents of an exchange were Republican. However, the third pattern makes it clear that this is not the same as saying that all Republicans opposed an exchange: Republicans were sharply divided over the issue. There does not appear to be a consistent linear trend in the magnitude of Republican opposition over time. It seems to have increased in Mississippi, with Phil Bryant allowing exchange legislation to pass the Senate three times between 2008-2011 when he presided as Lieutenant Governor and exchange planning to proceed throughout all of 2012. It was not until late in 2012 that the Tea Party became active on this issue and he made it clear he would block the exchange. Republican opposition

intensified over time in other places as well, but diminished sharply after President Obama was re-elected. Republican leaders in the Michigan House did not allow a vote on the exchange bill until November 2012. It was not until this point that Governors Otter and Martinez fully engaged in the debate over an exchange in Idaho and New Mexico.

Federalism Context

The strategic environment in each state was also shaped to a significant degree by the intergovernmental context. The timing of each state's planning process was determined by the deadlines established by the federal government. This affected states differently due to differences in the legislative calendar. States could apply for grants each quarter, though the final deadline for the level 2 grant was June 29, 2012. This was the major grant that would provide states large amounts of money to fund operations until their exchange was self-sustaining. States needed formal authority (i.e. legislation or an executive order) to operate an exchange in order to receive this money, making this the *de facto* deadline by which states needed to decide whether to create an exchange (Jones 2012).

This timing of the deadline is revealing about the level of opposition the Obama administration anticipated. Most states would have two legislative sessions to pass legislation creating an exchange by June 2012, and most were expected to have decided by then. However, opponents challenged the law and the Supreme Court's ruling on the ACA's constitutionality was not released until June 28th. Immediately after the ruling, the Obama administration extended the level 2 grant deadline by two years in order to accommodate the states that had stalled. This deadline extension helped very few states in the short-term because of the timing of

state legislative sessions. Figure 3 shows how each state's length of session conflicted with two major federal deadlines, with only 11 states still in session in July.

The same thing happened in November 2012 when HHS extended the blueprint deadline. Michigan is the only of my four states that was still in session and thus in a position to hold a vote immediately. Yet, the extension fueled the argument made by opponents that the Obama administration lacked the will and the capacity to follow through with threats to takeover in non-compliant states. The extension did not matter to Mississippi, as Commissioner Chaney's application was ready to be submitted. If anything, the extension gave more time for Governor Bryant's position to harden and his opposition to intensify. The extensions did help in Idaho and New Mexico, making it possible for these states to consider and pass legislation in the 2013 session. Of course, it was too late by then for them to develop the IT to run an exchange, and so both defaulted to the federal exchange.

In addition to the challenge of timing, the Obama administration struggled to negotiate with all the various players in state government. Regular channels were developed for constant communication with the governor's office and/or a designated agency in each state. In Idaho and Mississippi this was the Department of Insurance. In Michigan this was the Department of Licensing and Regulatory Affairs. In New Mexico this was the Department of Health. With the exception of Mississippi, the decision of whether to create an exchange was made by each state's legislative, not executive branch. HHS took phone calls from legislators, but did not seem to have a strategy to reach out to legislators. This reinforced the asymmetry in expertise between bureaucrats and most legislators, putting pressure on agency officials to "educate" legislators.²⁴

²⁴ In most cases, it seemed that when bureaucrats talked about "educating" legislators, they were really describing themselves as lobbying.

This may be appropriate, as governors and state bureaucrats would likely consider any such attempts to be meddling. At the same, it increased the division between the Obama administration and the decision-makers. Given these constraints, there is little the Obama administration could have done differently to incentive more states to create an exchange.

In the wake of the troubled rollout of the federal exchange in the fall of 2013, the Washington Post published a memo Harvard economist David Cutler (2010) had written three years earlier warning that the ACA's implementation was off track. He argued that HHS was a deeply flawed organization and that a separate entity should be created to bring together government and industry leaders to oversee implementation. Doonan (2013) similarly called for the creation of a "Center for State-Based Health Exchanges" to work closely with a wide variety of stakeholders to "foster collaboration, align incentives, share information, and document and publicize successes." These proposals likely would have made the Obama administration's oversight more efficient and improved planning of the federal exchange, potentially avoiding the political fallout that came from the early days of open enrollment. But it is unclear how this would have influenced more states to decide to create their own exchange given the state-specific factors of institutional design, path dependence, partisanship, and interest group dynamics I have highlighted.

Does It Matter?

After four years of intense battles over the creation of insurance exchanges, it is worth taking a step back and revisiting whether this debate matters. Another way to frame this question is to consider whether states really have much control by deciding to operate an

exchange. The creation of state-based insurance exchanges is very different from the Medicaid expansion in that implementation money does not really flow to state budgets but simply helps cover the expense of hiring consultants or additional staff to do work under terms dictated by HHS. In some cases the consultants were in-state (such as Public Sector Consultants in Michigan), but often these were large firms such as Leavitt Partners, Wakely, or Deloitte operating in multiple states. By contrast, states choosing to expand Medicaid have flexibility over how to spend money they receive from a generous federal match.

Similarly, residents in every state will have access to an exchange regardless of how their state decided, whereas residents in states that do not expand Medicaid will fall into a coverage gap. A wrinkle in this comparison is an ongoing lawsuit filed by the state of Oklahoma challenging HHS's interpretation of the ACA that it has the authority to provide tax credits to help lower income people purchase coverage on a federally run exchange. The language in the ACA refers to subsidies in state exchanges, but HHS argues it clearly meant subsidies in any exchange. A decision by the courts against the Obama administration would significantly raise the stakes for the exchange debate. It would mean that only people in the 17 states that have created their own exchange would receive federal help. Many currently resistant states would likely respond by creating their own exchange, though many likely would not.

The early results of the first open enrollment period shed some light on the question of whether it matters whether states create their own exchange. By far the most successful state was Vermont, signing up 85% of the potential population eligible to participate in the exchange. Two other states that moved quickly to establish their own exchange – California and Rhode Island – are next at 43% and 41%. However, some of the most resistant states are also in the top, with Florida at 4th and North Carolina at 9th. Idaho and Michigan took divergent paths on the

question of whether or not to create an exchange, yet signed up the exact same proportion of eligible residents (37.7% in Idaho vs. 37.6% in Michigan). Oregon and Maryland were seen as leaders in the development of an exchange but had disastrous rollouts. Oregon never managed to get its website online during open enrollment and ultimately decided to give up and use the federal exchange. The most stunning disappointment is Massachusetts which should have had the easiest time given that it was the first to operate an exchange. Instead, it finished the 2014 open enrollment period with the 49th worst enrollment figures (all statistics come from KFF 2014c).

As of May 2014, the federal government had given out a total of \$4 billion dollars in grants to help states create an exchange. This included \$940 million to states that decided to reject state control (2014b). Not all of this money was spent, as states rejected grants at the same time that they rejected autonomy. Even so, this begs the question of whether it was redundant to require 50 states and the District of Columbia to spend years of their agency time and money to work in parallel to create comparable entities. A single national exchange likely would have been more efficient, notwithstanding the trouble HHS had with healthcare.gov in the fall of 2013. It is also unlikely the Obama administration would have failed so dramatically at launching the website if it did not have to spend so much time coaxing states to act.

It is important to note that state control is about more than just money. Many policymakers have strong feelings about the type of exchange they prefer for their state, with some favoring a more heavily regulated active purchaser model and others preferring a less restrictive clearinghouse model. State-level interest groups have strong feelings about how their exchange should be governed and anticipate greater opportunities for involvement if their state is

in charge. Maintaining state control gives these groups greater say in how their exchange operates.

Finally, it is important to remember that the motivation behind having state-based exchanges was not theoretical but was political and even accidental. Above all, Congressional Democrats wanted a health reform bill that would pass. As described in chapter three, this is why Senator Ted Kennedy did not put up much of a fight over creating a national exchange in the Senate bill. It is also why President Obama and House Democrats were able to accept the Senate bill during the reconciliation process after Senator Kennedy died and Democrats lost their filibuster-proof majority in the Senate. Exchanges were seen as a non-partisan compromise issue, and the expectation was that Republican governors and legislators would welcome federal money and flexibility. They were right about the bill passing but wrong about what followed.

It is too early to determine the long-term implications of choosing to maintain or reject control over an exchange, but this will be an important question going forward. The intergovernmental battle over the creation of health insurance exchanges is a fascinating example that the policymaking process does not end with a bill signing ceremony. Politics are just as intense, if not more so, after a bill becomes law. This is uncharted territory for health policy scholars who for decades have written about why health reform fails. The passage of the ACA was certainly a major achievement, but what the reform actually accomplishes is still very much up for grabs. Many important health policy problems remain unsolved, opening the door for more intense debates in Washington D.C. and in the states.

Appendices

Appendix A - Summary of Findings

1. **Overall** – No one variable explains each state’s decision on an exchange. Instead, it is helpful to focus on a combination of variables, with the most important being governors, the Tea Party, and pockets of expertise in the legislature.
2. **Strategic Actors:**
 - a. *Governors* - A governor’s support was a necessary but not sufficient condition. No state exchange was created without a governor’s endorsement. Mississippi came the closest, with the independently elected insurance commissioner trying to do so on his own. At the same time, a governor’s support did not ensure success. The most notable example is Gov. Snyder’s (MI) inability to convince the legislature to pass a bill.
 - b. *Tea Party vs. industry* – The Tea Party was an amazingly successful counter-weight to the traditionally powerful groups.
 - c. *Legislative pockets of expertise* – Tea Party influence could be overcome if there was strong industry support and “pockets of expertise” in the legislature. These are legislators who have amassed particular clout and knowledge of health policy.
 - d. *Policymakers* – The preferences and judgment of individuals matter
3. **State context** – The relative level of influence between each set of actors depended on a state’s context, including prior policy decisions, institutional design, and partisanship.
 - a. *Institutional design* - Pockets of expertise were ironically more common in the states with short sessions and limited staff support (ID and NM). Many legislators had jobs during the rest of the year the legislature was in session, including people in key positions who were insurance agents, doctors, and former insurance executives. Term limits and long sessions in MI meant that legislators had little experience making policy, but were full-time politicians with limited expertise in a particularly subject.
 - b. *Path dependence* - Alternative paths towards creating an exchange were possible if the state had already established a similar type of an exchange (The Alliance in NM and the High Risk Pool in MS). The viability of this alternative path in MS also depended on there being an independently elected insurance commissioner.
 - c. *Partisanship* - The Tea Party was strong in each of the three states with a Republican controlled legislature. As a result, the main division in these states

was within the Republican Party, not between Democrats and Republicans. This shifted the debate from being over which type of exchange to create to being over whether to create a conservative exchange or none at all.

4. **Federalism context** –Federal deadlines conflicted with state legislative calendars. Could influence governors but limited in ability to negotiate with legislators and interest groups. Severely limited by state context. Extending deadlines made an exchange possible in Idaho, but overall weakened leverage with conservative policymakers and interest groups.

Appendix B – Summary of Theoretical Frameworks Explaining State Implementation of Federal Law

Intergovernmental context

- Federalism
 - Core argument: The balance of power between levels of government is dynamic rather than static. Actors at each level are regularly contesting boundaries.
 - Key insights
 - The federal government uses a variety of carrots and sticks to define a favorable relationship with states.
 - States rely on a variety of safeguards to protect against federal encroachment.
 - Although the terms of intergovernmental negotiations are set by Congress in statute, the negotiation continues throughout a law's implementation as a result of interactions between the bureaucracies of each level of government.

Intra-state context

- Path dependence
 - Core argument: Prior policy decisions affect the menu of options available to strategic actors.
 - Key insights:
 - “New policies create a new politics,” (Schattschneider 1935)
 - The substance of the policy itself shapes the debate over its enactment and implementation
- Institutional design
 - Core argument: Institutions and procedures shape the strategic environment in which decisions are made.
 - Key insights:
 - State legislatures vary dramatically in size, affecting the likelihood that policy entrepreneurs and pockets of expertise emerge on a given issue.
 - States legislatures vary dramatically in length of session, affecting when they make decisions and who can serve.
 - Term limits alters the balance of power between strategic actors, including governors, legislators, and interest groups.
 - States vary dramatically in the amount of staff support provided to each legislator, affecting the relationship between legislators and other strategic actors.
 - The power of governors to advance their agenda varies with their formal and informal powers.

- Bureaucrats play an important role in state decision-making, but their specific role varies by state and by policy.
- Partisanship
 - Core argument: Elected officials are focused on winning elections. Policy debates affect elections and elections affect policy debates.
 - Key insights:
 - Republicans and Democrats have a tendency to oppose each other, even over issues about which they generally agree.
 - Partisanship sometimes trumps preferences for local or national control such that leaders at each level of government support the actions of another level if it is led by a member of their party, and oppose actions led by a member of a different party.

Strategic Actors

- Interest groups
 - Core argument: Private interests play a prominent role in shaping policy decisions.
 - Key insights:
 - A large number of organizations attempt to influence health policy at the federal and state levels.
 - Some interest groups are empowered when policy debates shift to the state level, whereas others are disadvantaged.
 - To the extent that interest groups exert influence on the development of policy, it is because they can mobilize resources in a way that the general public cannot. These include policy information, political intelligence, manpower, and money.
 - Lobbyists spend most of their resources supporting allies rather than blocking likely opponents.
 - It is easier to block a policy proposal than to successfully adopt one.
- Policymakers
 - Core argument: Different people sometimes arrive at different conclusions, even under similar circumstances and facing similar incentives.

Appendix C – Timeline of Key Events in Michigan

2010

- March 23: ACA signed into law by President Obama. MI Attorney General Mike Cox (R) joins multi-state lawsuit challenging the law’s constitutionality.
- March 31: Governor Jennifer Granholm (D) creates The Health Insurance Reform Coordinating Council to oversee the ACA’s implementation.
- September 30: The Department of Community Health (DCH) is awarded \$1 million by the federal government for exchange planning.
- November 2: Rick Snyder (R) elected governor. Republicans win control of the House and won seats in the Senate. Republicans won their largest majorities since the early 1950s.
- December 2: The Coordinating Council releases its reporting recommending the state run its own exchange.

2011

- January 1: Rick Snyder (R) sworn in as Governor.
- February – June: Public Sector Consultants tasked with leading work groups to solicit input from stakeholders. The final report was released June 17th and recommends Michigan develop its own clearinghouse exchange as a quasi-governmental organization.
- September 14: Governor Snyder releases a “special message on health” calling for the legislature to pass legislation creating an exchange by Thanksgiving.
- November 10: Senate passes SB 693 to create an exchange by a vote of 25-12.
- November 14: U.S. Supreme Court announces it will consider the cases challenging the ACA’s constitutionality.
- November 29: Department of Licensing and Regulatory Affairs (LARA) awarded \$9.9 million level 1 establishment grant.
- December 13: House passes supplemental funding bill without authorizing LARA to spend its grant.

2012

- January 19: House Health Policy Committee holds its 10th hearing on the exchange without taking a vote. Thirty-one people testified at this meeting lasting more than three hours.

- June 28: U.S. Supreme Court announces ruling upholding the ACA but making the Medicaid expansion optional; House Speaker Jase Bolger (R) and Committee Chair Gail Haines (R) continue to resist exchange.
- November 6: Barack Obama re-elected President. Republican majority in the House reduced; House Speaker Jase Bolger (R) and Committee Chair Gail Haines (R) publicly support an exchange for the first time.
- November 15: Obama administration extends the deadline by which states need to decide.
- November 29: House Health Policy Committee vote 9-5 against an exchange bill that was tie-barred to an abortion bill. Four Democrats abstained or did not show up. One Republican did not vote.

2013

- January 17: LARA awarded \$31 million level 1 establishment grant.
- January 22: Governor Snyder submits letter to HHS declaring plans to create a partnership exchange.
- February 28: House votes 78-31 to approve supplemental funding bill authorizing LARA to spend the \$31 million level 1 establishment grant.
- March 5: HHS gives conditional approval of Michigan's partnership blueprint. The Senate never took a vote on the supplemental funding bill, effectively blocking the grant and preventing the state from doing the work required to operate a partnership exchange.
- September 16: Governor Snyder signs legislation expanding Medicaid.
- October 1: Open enrollment begins, Michigan is part of the federal exchange.

Appendix D – Timeline of Key Events in Mississippi

Pre-ACA

- 2007: Governor Haley Barbour (R) publicly supports creating an exchange.
- 2008: Two bills to create an exchange were introduced in the Senate, one by Democrat Hob Bryan and one by Republican Eugene Clark. Clark's bill passed the Senate unanimously but was never voted on in the House.
- 2009: Governor Barbour mentions the exchange in his state of the state speech. Once again, a Republican bill passed with bi-partisan support in the Senate but did not receive a vote in the House.
- 2009: The legislature amends the statute governing the Mississippi Comprehensive Health Insurance Risk Pool Association (MCHIRPA) to expand the insurance commissioner's authority over other state and federal insurance programs.

2010

- March 23: ACA is signed into law by President Obama.
- September 30: Insurance Department receives a \$1 million planning grant.
- November: Mississippi is one of the few states that does not hold legislative elections in even numbered years. However, by the start of the next legislative session, enough Senate Democrats switched parties to give Republicans control of the chamber.

2011

- January - March: Four exchange bills were introduced, three in the House and one in the Senate. Each chamber approved a bill, though a conference committee could not agree on a compromise and no legislation was enacted.
- August 12: HHS awards the Insurance Department with a \$20 million level 1 establishment grant. The application outlined plans to use MCHIRPA to create an exchange without legislative approval.
- November 8: Phil Bryant (R) is elected governor. Republicans won full control of both chambers for the first time since Reconstruction in the 19th century. Bryant did not focus on the ACA on the campaign trail, but indicated he would continue to support an exchange.

2012

- January: Insurance Department begins holding meetings of an exchange advisory board comprised of industry leaders and other stakeholders.
- June 28: The U.S. Supreme Court announces its ruling upholding the ACA and making the Medicaid expansion optional.
- July 11: Tea Party leaders speak for the first time at a meeting of the exchange advisory board. The Tea Party continued to mobilize, subsequently attending meetings of the Personnel Review Board and blocking contracts with exchange vendors.
- November 6: Barack Obama is re-elected president. Insurance Commissioner Mike Chaney responds by saying he is ready to submit the state's blueprint once he discusses it with the governor.
- November 12: Governor Bryant and Commissioner Chaney meet at the Governor's Mansion, with Bryant saying he will oppose the application and Chaney saying he will submit it anyway. As an independently elected official himself, Chaney believed he did not need the governor's approval.
- November 26: Governor Bryant writes HHS Secretary Kathleen Sebelius to oppose the application submitted by Commissioner Chaney.

2013

- January 15: MS Attorney General Jim Hood (D) issues a report agreeing with Commissioner Chaney that Governor Bryant's approval is not needed.
- January 18: Governor Bryant writes Secretary Sebelius another letter, this time criticizing Attorney General Hood's report and saying that he would instruct the Mississippi Division of Medicaid not to cooperate with an exchange established by Commissioner Chaney.
- February 7: HHS rejects the Insurance Department's exchange application.
- July 1: Deadline by which Medicaid needed to be renewed. Democrats tried to use this moment as leverage to push Republicans to support expansion. A special session was called in which Medicaid was renewed but not expanded.
- October 1: On the same day that open enrollment begins, HHS approves a plan submitted by Commissioner Chaney for the state to run the small business exchange while the federal government retains control of the individual exchange.

Appendix E – Timeline of Key Events in Idaho

2010

- March 17: Governor Otter signs the Idaho Health Freedom Act, banning public officials from playing any role in enforcing federal insurance mandates.
- March 23: ACA passes and Idaho Attorney General Lawrence Wasden joins the lawsuit.
- September 30: The Department of Insurance receives \$1 million exchange planning grant.
- November 2: Governor Otter re-elected and Republican majorities strengthened in both chambers.
- December: Governor Otter creates the Idaho Health Care Council to solicit stakeholder input.

2011

- February 16: Nullification bill HB 117 passed by the House 49-20.
- February 25: HB 117 defeated by the Senate State Affairs Committee on a voice vote.
- March 16: Senate approves funding of the exchange grant by a vote of 20-15. The House never voted, effectively blocking this grant from being spent.
- April 20: Governor Otter vetoes another nullification bill which had been passed by the House (50-17) and the Senate (24-11). On the same day as this veto, Governor Otter signs an executive order blocking state agencies from implementing the ACA, with the only exception being exchange planning.

2012

- January – March: No exchange legislation introduced in the 2012 legislative session.
- May 15: Republican primary elections reveal divisions within the House Republican caucus. House Speaker Lawrence Denney takes the unprecedented step of using his PAC money against incumbent Republicans.
- November 6: Barack Obama is re-elected president. More than one-third of the legislature would be new in 2013 as a result of redistricting and retirements.
- November 15: HHS extends exchange deadline, giving Idaho a chance to reconsider.
- December 5: Scott Bedke becomes House Speaker after a summer-long campaign to oust Denney.
- December: Governor Otter announces support for a state-based exchange.

2013

- February 7: Exchange legislation (SB 1142) passes the Senate Commerce and Human Resources Committee 8-1 after two days of intense meetings.
- February 13: 16 House Freshmen announce support for an exchange if more oversight is given to the legislature.
- February 21: Senate passes the original exchange bill 23-12 after a seven-hour debate.
- March 6: An alternative exchange bill (HB 248) passes the House Health and Welfare Committee on a voice vote.
- March 13: HB 248 passes 41-29 on the House floor.
- March 19: Senate Commerce and Human Resources Committees approves HB 248.
- March 21: Senate passes HB 248 by a vote of 23-12.
- March 28: Governor Otter signs the legislation creating a state-based exchange.
- April 10: Governor Otter appoints the 19 member board of directors without needing Senate confirmation because the legislative session had ended for the year. One of the first decisions made by the board was for Idaho to use the federal website for its exchange for in 2014.
- October 1: Open enrollment begins. Many Idahoans are confused about whether their state is operating its own exchange.

Appendix F – Timeline of Key Events in New Mexico

Pre-ACA

- 2007-2008: The first exchange bills were introduced, largely at the urging of J.R. Damron, a radiologist who had been the Republican nominee for governor in 2006. Neither bill advanced as Democrats controlling the legislature hoped for a more comprehensive reform.

2010

- July 1: Task force convened by Governor Richardson recommends New Mexico retain control of its exchange. Richardson creates the New Mexico Office of Health Care Reform to oversee implementation.
- November 2: Republican Susana Martinez is elected governor.
- December 27: Richardson’s Office of Health Care Reform prepares a transition plan for the incoming Martinez administration. It includes a recommendation to pass legislation in the 2011 session to create a quasi-governmental exchange with active purchaser powers.

2011

- March 2: SB 38, one of the four exchange bills introduced that session, passes the Senate.
- March 19: SB 38 passes the House. The vote was very close, with Speaker Ben Luján calling the vote after midnight at the precise moment when there were just enough supporters in the chamber to ensure passage.
- April 8: Governor Martinez vetoes SB 38. She is not opposed to creating an exchange but would prefer a clearinghouse model in which insurers are allowed on the board. Her office creating an exchange by executive order within the Health Insurance Alliance.
- August: Dan Derksen is appointed to lead the Office of Health Care Reform. He immediately announces plans to apply for a level 1 establishment grant before the September 30th deadline, as well as to apply for a level 2 grant by the following March. This implies formal authority would be received by then, most likely by executive order.
- September 30: Derksen submits a level 1 grant application requesting \$34 million, including a letter from Governor Martinez saying she is “pleased to endorse” the proposal which would create an exchange through the Alliance.

2012

- January – February: No exchange bills are considered during the legislative session because in even numbered years, the legislature is only allowed to consider bills reacting to a special message from the governor or relating directly to the budget.
- March: Dan Derksen suddenly resigns due to opposition from Governor Martinez’s advisers. The level 2 grant application was nearly ready but is never submitted.
- July 9: The legislature’s Interim Health and Human Services Committee begins holding monthly meetings and discusses the exchange more than any other issue.
- September 11: Assistant Attorney General Mark Reynolds issues an opinion that Governor Martinez does not have authority to create an exchange by executive order since she vetoed similar legislation in the past. Her office backed down after Democrats threatened to sue.
- November 27: The Interim Committee endorses legislation create a clearinghouse exchange through the Alliance.

2013

- January: Governor Martinez announces support for expanding Medicaid. Four exchange bills are introduced, with regular negotiations between the governor’s office and consumer advocates working with legislative Democrats.
- February 28: A bill to create an active purchaser exchange is defeated in the House, 30-39.
- March 15: A bill to create a clearinghouse exchange allowing insurers to serve on the board passes through multiple committees and both chambers in a single week once compromise was reached.
- March 28: Governor Martinez signs exchange legislation.
- April 29: The board of directors holds its first meeting, realizing there is not enough time to create an exchange before open enrollment begins.
- July: HHS grants conditional approval for New Mexico to run the SHOP exchange while still giving up control of the individual exchange for the first year.

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