



Written by [Raven Clabough](#) on December 2, 2014

ObamaCare Faces New Set of Challenges

As 2014 nears its end, the Obama administration is facing a whole new set of challenges to its signature healthcare law, ranging from key ObamaCare architect Jonathan Gruber's upcoming testimony before the House Oversight Committee and big goals for a short open enrollment period, to the Supreme Court's decision to hear cases that question the validity of subsidies, and revelations that the Department of Health and Human Services inflated its enrollment figures. And in the midst of these issues, the president may lose a vital core of ObamaCare backers, as many big businesses are threatening to withdraw their support.



The Obama administration is still dealing with the fallout from a video that went viral featuring Jonathan Gruber admitting that the lack of transparency involving the healthcare law was intentional in order to take advantage of the "stupidity of the American voter."

Gruber, an MIT professor who helped design ObamaCare, appeared at a panel hosted by the Penn Leonard Davis Institute of Health Economics on October 17, 2013, which was captured on video but posted only recently. During that appearance, he admitted that though the individual mandate was upheld by the Supreme Court because it was perceived as a tax, it is in fact not a tax.

Gruber has agreed to appear before the House Oversight Committee on December 9 in a final hearing with outgoing chairman Representative Darrell Issa (R-Calif.). *The Hill* writes, "The gathering, also set to include Centers for Medicare and Medicaid Services (CMS) Administrator Marilyn Tavenner, is sure to prove a distraction for the White House as officials try once again to keep a lid on opposition to the law."

And while much of the focus will likely be on that hearing, the Obama administration is also plagued by further concerns involving open enrollment. It is expected that it will be difficult to bring millions of new customers into the healthcare system (as well as to encourage existing enrollees to return to the system) by February 15, when the open enrollment period ends.

The time period to do so is half as long as it was last year, and the HealthCare.gov website is still unfinished. The Obama administration has already lowered its own expectations, projecting approximately nine million sign-ups this year, far short of the 13 million estimated by the Congressional Budget Office.

Whether the administration's enrollment figures are reliable is yet another issue that the White House will have to address at the December 9 hearing, after a Republican investigation revealed that those numbers were inflated by approximately 400,000. Tavenner, who attempted to place the blame for the incorrect figures on Healthcare.gov, will have to answer for the miscalculation at that hearing.

And just when the White House thought it was in the clear following the Supreme Court's controversial



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ruling that the individual mandate is a tax, the high court has agreed to hear a whole slew of new challenges to the law, including the validity of subsidies, which are said to be a “linchpin” of the healthcare law. According to Newsmax, a ruling against those credits could “unravel the law.”

The administration also continues to be challenged on the law’s birth control mandate from various non-profit groups. *The Hill* reports, “Religious plaintiffs in more than 50 cases argue that participating in any process that leads to birth control coverage for their employees violates their faith, even if they do not pay for or distribute the benefits.”

Recent actions by the Obama administration may result in dropped support of the healthcare law. Major U.S. corporations, which have been loud backers of ObamaCare, are threatening to pull their support after the administration challenged certain “workplace wellness” programs. Those programs have focused on reducing healthcare costs by targeting smoking, obesity, hypertension, and other major health risks. A provision in the 2010 law permits employers to reward healthy behavior and penalize those who do not participate in the program.

In order for employees to participate in the wellness program, they are typically asked by their employer to answer health questionnaires, participate in health screenings, and sometimes take classes that discourage unhealthy behaviors such as smoking or overeating.

However, recent lawsuits have been filed by the Equal Employment Opportunity Commission challenging the wellness programs at Honeywell International and two smaller companies. Employers are so angered by the lawsuits that they have considered withdrawing their allegiance to the healthcare law and aligning themselves with its opponents.

According to the lawsuits, requiring medical testing violates the Americans with Disabilities Act.

Joseph Lazzarotti, employment-law attorney at Jackson Lewis P.C., stated, “You can’t make medical inquiries unless it’s consistent with job-necessity, or part of a voluntary wellness program.”

The plaintiffs are claiming that the wellness programs are not actually voluntary if those who do not participate face thousands of dollars in penalties, loss of insurance, and possible loss of their jobs. Employers are viewing the lawsuits as the Obama administration’s way of reneging on a virtual promise the president made through the healthcare provision.

Yahoo News reports that Roundtable President John Engler sent a letter to the Labor, Treasury, and Health and Human Services Cabinet secretaries asking them to “thwart all future inappropriate actions against employers who are complying with” the provision.

Business Roundtable members are expected to meet with the president in a closed-door session, though it is still unclear just how many members of the group have threatened to take action against ObamaCare.

“The fact that the EEOC sued is shocking to our members,” said Maria Ghazal, vice president and counsel at the Business Roundtable, a group of chief executives of more than 200 large U.S. corporations. “They don’t understand why a plan in compliance with the ACA [Affordable Care Act] is the target of a lawsuit,” she said. “This is a major issue to our members,” she added. “There have been conversations at the most senior levels of the administration about this.”

As noted by Yahoo News, large companies have the power to undermine the healthcare law, by either supporting legal challenges to the subsidies, or making top executives available for hearings on repealing ObamaCare.

“We never did this before,” said a person familiar with the executives’ thinking. “But they could turn up



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the noise. I don't think the White House would want the CEOs turning on them and supporting these efforts on the Hill."

Meanwhile, as the Obama administration scrambles to address the various challenges to its law, Republicans are working to create an alternative to ObamaCare. Florida Senator Marco Rubio and Wisconsin Representative Paul Ryan — potential Republican presidential contenders for 2016 — hope to have their plan completed for a vote by next year.

But free market enthusiasts recognize that the best solution would be for the federal government to simply follow the U.S. Constitution and stay out of healthcare entirely — particularly as government involvement in the healthcare markets is what has caused many of the problems that led to calls for "reform" in the first place.



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