

# ESSAY

## PARTISANSHIP AND (UN)COMPROMISE: A STUDY OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

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*It may be an understatement to say that the passage of the Patient Protection and Affordable Care Act of 2010 was extremely contentious. Indeed, the debate surrounding the bill was one of the most intense partisan legislative battles in recent memory. However, the contentiousness of the debate also raises the question of whether the partisanship in Congress surrounding the bill was an anomaly, or if partisan bickering and unwillingness to compromise are here to stay. This Article argues that the health reform debate marked a transition to a modern political reality where compromise and bipartisanship will be rare. After briefly describing the partisan history of the health reform debate, the Article argues that increased partisan news coverage, lack of transparency, and a difficult economic climate have led to an environment in Congress where partisanship is difficult to achieve. However, this Article also points to certain elements of the health reform bill which provide hope that greater compromise and bipartisanship may still be possible, if attempted.*

### I. INTRODUCTION

President Obama's signing into law of the Patient Protection and Affordable Care Act of 2010 ("PPACA")<sup>1</sup> marked the end of one of the most contentious and partisan legislative battles in recent memory. Regardless of whether one agrees with all, some, or none of the law, there is no question that partisan rancor dominated the nearly two-year-long debate that preceded its codification into law. Not only did the content of the more than 2,700 page bill illustrate the stark ideological differences between the two major political parties, but also the legislative process by which it became law further showcased both sides' entrenchment in their beliefs. While it seems natural for a strong and spirited disagreement to exist over a wholesale change of one of the largest sectors of the American economy,<sup>2</sup> one must

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<sup>1</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered titles of U.S. Code) [hereinafter the PPACA]. For ease of reference, the version of the PPACA used here also includes amendments made to it by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (codified in scattered titles of U.S. Code).

<sup>2</sup> Bureau of Labor Statistics, *U.S. Dep't of Labor, Career Guide to Industries, 2010-11 Edition*, HEALTHCARE (last updated Feb. 2, 2010), available at <http://www.bls.gov/oco/cg/cgs035.htm>.

wonder whether the high level of vitriol merely reflected the passions of an isolated political battle or if the debate signaled a transition to a modern political reality of heightened partisan bickering and unwillingness to compromise that threatens our balanced legislative system.

This Article argues that the highly partisan healthcare reform debate highlighted the transition to a new political reality marked by an unwillingness to compromise, and the root causes of this change include: (1) increased availability of partisan news coverage; (2) a lack of transparency; (3) a difficult economic environment; and with limited exceptions, (4) an unwillingness to incorporate ideas from both political parties into the final product. The remainder of this piece is divided into four parts. Part II will provide a brief history of the PPACA. Part III will explain the root causes of the increase in partisan politics through the lens of the creation and passage of the PPACA. Part IV will discuss some of the most partisan political ideas incorporated into the PPACA as well as a couple of ideas that garnered bipartisan support. Part V will conclude.

## II. A SHORT PARTISAN HISTORY OF THE PPACA

The creation of the PPACA and its ensuing partisan divide rolled onto the American political landscape in four waves, marked by: (1) the bill's pre-introduction debate; (2) the House version of the bill; (3) the subsequent Senate version; and lastly, (4) the reconciliation/final passage phase. The pre-introduction debate began shortly after the 2008 presidential election, as President Obama quickly identified his top legislative priorities and enlisted Democratic congressional leaders to begin pursuing his agenda.<sup>3</sup> Healthcare reform was one such area, and Capitol Hill staffers worked to theorize and craft a massive adjustment to the way America conducts business in the healthcare arena.<sup>4</sup> Rumbblings of the inclusion of a public option plan<sup>5</sup> began circulating and threw many on the Right into a frenzy.<sup>6</sup> House Democrats saw their control of the White House, House of Representatives, and filibuster-proof numbers in the Senate<sup>7</sup> as a once-in-a-lifetime opportunity to re-

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<sup>3</sup> Peter Baker, *Obama Weighing What to Take On in First Months*, N.Y. TIMES, Nov. 9, 2008, at A1; David M. Herszenhorn & Carl Hulse, *Democrats in Congress Vowing to Pursue an Aggressive Agenda*, N.Y. TIMES, Nov. 6, 2008, at A1.

<sup>4</sup> Carrie Brown & Patrick O'Connor, *Democrats Scramble for Pre-Recess Progress*, POLITICO (July 28, 2009, 8:30 PM), <http://www.politico.com/news/stories/0709/25540.html>.

<sup>5</sup> For an explanation and arguments in favor of the public option plan, see Editorial, *A Public Health Plan*, N.Y. TIMES, June 20, 2009, at WK7.

<sup>6</sup> See Scott E. Harrington, Op-Ed., *The "Public Plan" Would Be the Only Plan*, WALL ST. J., June 15, 2009, at A15.

<sup>7</sup> At the start of the term, Democrats had fifty-eight members in the Senate. Senator Arlen Specter (D-Pa.) on April 28, 2009 switched from the Republican Party to the Democratic Party, giving Democrats a fifty-nine member majority in the Senate. Carl Hulse & Adam Nagourney, *Specter Switches Parties; More Heft for Democrats*, N.Y. TIMES, April 29, 2009, at A1. On June 30, 2009, the Minnesota Supreme Court declared Al Franken (D-Minn.) the winner of the 2008 Senate election, giving the Democrats a sixty member filibuster-proof

form an industry they had long seen as tilted toward private payers and providers.<sup>8</sup>

The months of language-drafting and public relations efforts culminated with the introduction of the House Democrats' version of the bill in July 2009,<sup>9</sup> which incorporated several progressive ideas for reform, including the creation of a public option system and a new federal agency that would regulate decisions made by health insurance companies.<sup>10</sup> The proposed legislation engendered a good deal of partisan debate. There were increased tensions not just over government intervention in the marketplace, but also over federal funding for abortion. As Rep. Michele Bachmann (R-Minn.) noted during the debate, "generations yet unborn[ ] are crying out to us tonight to preserve their freedoms."<sup>11</sup> Members on both sides of the aisle took repeated verbal jabs at each other,<sup>12</sup> but the bill eventually passed the House on November 7, 2009 by a 220–215 vote.<sup>13</sup> Thirty-nine Democrats voted against the bill,<sup>14</sup> and one lone Republican cast a vote for it.<sup>15</sup> On the night of its passage, Rep. Jack Kingston (R-Ga.) continued the harsh rhetoric by labeling the bill "a wrecking ball to the entire economy."<sup>16</sup> Speaker of the House Nancy Pelosi (D-Cal.) stated, "[t]his legislation will mean affordability for the middle-class, security for our seniors, and honors our responsibility to our children, adding not one dime to the deficit."<sup>17</sup>

Senate Democratic leaders were unwilling to take on some of the more contentious provisions in the House-sponsored version of the health reform

majority. Monica Davey & Carl Hulse, *Minnesota Court Rules Democrat Won Senate Seat*, N.Y. TIMES, July 1, 2009, at A1.

<sup>8</sup> See Carl Hulse, *Obama Toughens Health Strategy*, N.Y. TIMES, Apr. 25, 2009, at A1.

<sup>9</sup> America's Affordable Health Choices Act of 2009, H.R. 3200, 111th Cong. (2009).

<sup>10</sup> Noam N. Levey, *Healthcare Bill Unveiled in House*, L.A. TIMES, July 15, 2009, at A10; Robert Pear & David M. Herszenhorn, *House Unveils Health Bill, Minus Key Details*, N.Y. TIMES, June 20, 2009, at A1.

<sup>11</sup> 155 CONG. REC. H12,880 (daily ed. Nov. 7, 2009) (statement of Rep. Michele Bachmann (R-Minn.)).

<sup>12</sup> See 155 CONG. REC. H12,851 (daily ed. Nov. 7, 2009) (statement of Rep. Sam Johnson (R-Tex.)) (calling Affordable Health Care for America Act, H.R. 3962, 111th Cong. (2009) "Speaker Pelosi's \$1 trillion Washington takeover of healthcare . . . bulldozes individual liberty . . ."); 155 CONG. REC. H12,873–74 (daily ed. Nov. 7, 2009) (statement of Rep. Joe Courtney (D-Conn.)) (likening the denial of healthcare coverage to Jim Crow laws and laws denying women the right to vote); see also David M. Herszenhorn & Robert Pear, *Health Vote Nearly Done, but Partisan Debate Rages On*, N.Y. TIMES, Mar. 23, 2010, at A19 (reporting that Rep. Randy Neugebauer (R-Tex.) called Rep. Bart Stupak (D-Mich.) a "baby killer" on the House floor).

<sup>13</sup> 155 CONG. REC. H12,967–68 (daily ed. Nov. 7, 2009) (Roll Call Vote 887).

<sup>14</sup> *Id.*

<sup>15</sup> David M. Herszenhorn, *Louisiana Republican Breaks Ranks on Health Bill*, N.Y. TIMES, Nov. 8, 2009, at A14 (Rep. Joseph Cao (R-La.) voted for House Bill 3962 in what he described as "a decision of conscience").

<sup>16</sup> Carl Hulse & Robert Pear, *Sweeping Health Care Plan Passes House*, N.Y. TIMES, Nov. 7, 2009, at A1, available at [www.nytimes.com/2009/11/08/health/policy/08health.html?pagewanted=1](http://www.nytimes.com/2009/11/08/health/policy/08health.html?pagewanted=1).

<sup>17</sup> *Id.*

legislation,<sup>18</sup> and therefore chose to produce their own bill that contained many, but not all of the House provisions.<sup>19</sup> Senate Democratic leaders were worried about a small subset of moderate members within their caucus that was opposed to the progressive provisions in the House bill, and thus crafted their own softer alternative to maintain their filibuster-proof numbers.<sup>20</sup> They assumed that they could reconcile the discrepancies with the House version once they passed the bill and moved to the conference committee stage.<sup>21</sup> The Senate version stripped out the public option while preserving the individual mandate from the House bill.<sup>22</sup> Additionally, the Senate bill relied on state-based insurance exchanges, rather than a single national exchange, where the self-employed, small businesses, and others without insurance could go to purchase plans.<sup>23</sup>

Even though Democrats viewed the bill as a more moderate version of healthcare reform, Republicans did not regard it as a centrist approach and characterized the bill as an insidious tax hike on businesses and the insurance community, instead of a good faith attempt to improve the healthcare industry.<sup>24</sup> Further, some senators and commentators chastised Sen. Ben Nelson (D-Neb.),<sup>25</sup> Sen. Mary Landrieu (D-La.),<sup>26</sup> and Sen. Chris Dodd (D-Conn.)<sup>27</sup> for receiving earmarks in the bill for projects in their respective states. While Senate Majority Leader Harry Reid (D-Nev.) granted these concessions strategically to secure the senators' votes on the bill,<sup>28</sup> the already contentious nature of the legislation and the general political environ-

<sup>18</sup> Shailagh Murray & Lori Montgomery, *Senate Unveils Health-Care Bill; Package Costs \$849 Billion; Reid Hopes to Bring It to Floor by Next Week*, WASH. POST, Nov. 19, 2009, at A1.

<sup>19</sup> Robert Pear & David M. Herszenhorn, *Senate Leaders Unveil Measure on Health Care*, N.Y. TIMES, Nov. 19, 2009, at A1.

<sup>20</sup> Noam N. Levey, *Health Bill Now Relies on Policing*, L.A. TIMES, Dec. 18, 2009, at A1.

<sup>21</sup> Peter Grier, *Health Care Bill 2009: What Happens Next*, CHRISTIAN SCI. MONITOR, Dec. 21, 2009, at A1.

<sup>22</sup> Shailagh Murray & Lori Montgomery, *Senate Democrats Satisfied With Deal; But Groups Representing Hospitals and Doctors Oppose Medicare Buy-In*, WASH. POST, Dec. 10, 2009, at A1.

<sup>23</sup> Levey, *supra* note 20, at A1.

<sup>24</sup> Adam Nagourney & David M. Herszenhorn, *Republicans Call Health Legislation a Tax Increase*, N.Y. TIMES, Oct. 2, 2009, at A22.

<sup>25</sup> Amy Goldstein, *Medicaid Provision for Neb. Raises Ire; Nelson's Controversial Deal May Impact Health-Care Bill*, WASH. POST, Jan. 17, 2010, at A3 (noting that in order to secure Sen. Nelson's vote, Sen. Reid promised 100% federal funding for Nebraska's growing Medicaid program, which became known as the "Cornhusker Kickback").

<sup>26</sup> Dana Milbank, *Looking Out for Number One (Hundred Million)*, WASH. POST, Dec. 22, 2009, at A2 (reporting that a second backroom deal which funded Louisiana's Medicaid program up to an additional \$400 million, known as the "Louisiana Purchase," was secured by Sen. Mary Landrieu in exchange for her support of the bill).

<sup>27</sup> Katherine Mangan, *Senator's \$100-Million Addition to Health-Care Bill Is Intended for UConn*, CHRON. OF HIGHER EDUC. (Dec. 21, 2009), <http://chronicle.com/article/Senators-100-Million/63239/> (noting that Sen. Chris Dodd negotiated insertion of language into the bill that was intended to give \$100 million to a University of Connecticut hospital).

<sup>28</sup> Chris Frates, *Payoffs for States Get Harry Reid to 60 Votes*, POLITICO (Dec. 19, 2009, 7:56 PM), <http://www.politico.com/news/stories/1209/30815.html>.

ment led to relentless rhetoric that nearly submarined the PPACA. Ultimately, the Senate moved for cloture despite a Republican-led filibuster<sup>29</sup> and passed its version of healthcare reform on Christmas Eve 2009 by a strict 60–39 party line vote.<sup>30</sup>

After the contentious passage of both the House and Senate versions of healthcare reform, congressional Democrats ran into an unexpected hurdle. Following the death of Sen. Edward (“Ted”) Kennedy (D-Mass.), who spent most of his political career working for progressive healthcare reform,<sup>31</sup> Scott Brown (R-Mass.), a relatively unknown Massachusetts Republican state senator, won the special election to replace the deceased “Lion of the Senate.”<sup>32</sup> Some viewed the election of the first Republican from Massachusetts to the United States Senate since 1971 as an outright rebuke of the health reform legislation being pushed by President Obama and congressional Democrats.<sup>33</sup> As Senate Minority Leader Mitch McConnell (R-Ky.) stated following Brown’s election, “[t]he voters in Massachusetts, like Americans everywhere, made it abundantly clear where they stand on healthcare.”<sup>34</sup>

Sen. Brown’s election changed the entire playing field of the healthcare debate because the Democrats could no longer end any filibuster by a party-line vote, thus casting into doubt their ability to pass a final bill resulting from a conference committee. Sen. Brown’s election caught the Democrats, including the president, off-guard and unprepared.<sup>35</sup> After a bit of scrambling, strategizing, and vote counting, Democratic leaders decided to use a parliamentary procedure known as reconciliation to bypass the usual voting rules in the Senate and deny Republicans a chance to filibuster the final bill.<sup>36</sup> Reconciliation is traditionally used for budgetary legislation.<sup>37</sup> Republicans strongly objected to the use of reconciliation, and on March 4, 2010, forty-one Republicans wrote a letter to Sen. Harry Reid describing reconciliation as a misuse of Senate rules that “would be a tremendous ‘disservice’ to

<sup>29</sup> Shailagh Murray, *Senators Ready to Vote Again; With 60 Backers, Measure May Pass on Christmas Eve*, WASH. POST, Dec. 22, 2009, at A8.

<sup>30</sup> Shailagh Murray & Lori Montgomery, *Senate Passes Health-Care Bill 60–39; All Republicans Dissent; Differences with House Must Be Worked Out*, WASH. POST, Dec. 25, 2009, at A1. Sen. Jim Bunning (R-Ky.), an opponent of the bill, was the only senator not present for the vote. 155 CONG. REC. S13891 (daily ed. Dec. 24, 2009) (Roll Call Vote 396).

<sup>31</sup> Ceci Connolly, *Kennedy Readies Health-Care Bill*, WASH. POST, June 6, 2009, at A3.

<sup>32</sup> Michael Cooper, *G.O.P. Surges to Senate Victory in Massachusetts*, N.Y. TIMES, Jan. 20, 2010, at A1.

<sup>33</sup> See e.g., *id.*

<sup>34</sup> Alexander Burns, *Scott Brown Pulls Off Historic Upset*, POLITICO (Jan. 19, 2010, 4:25 PM), <http://www.politico.com/news/stories/0110/31674.html>, (last updated Jan. 20, 2010, 7:28 AM).

<sup>35</sup> Cooper, *supra* note 32, at A1.

<sup>36</sup> Shailagh Murray, *Senate, House Approve ‘Fixes’ to Health-Care Law*, WASH. POST, Mar. 26, 2010, at A1.

<sup>37</sup> Orrin Hatch, Op-Ed., *A Health Reform Tactic that Degrades Democracy*, WASH. POST, Mar. 2, 2010, at A15.

the American people” and “an outrage that we should resist.”<sup>38</sup> Democrats responded with their own fire, as Speaker Pelosi commented, “[b]ipartisanship is nice, but it cannot be a substitute for action. Not having it cannot prevent us from going forward.”<sup>39</sup> Both sides were extremely battle-weary by this point and agreement was not likely possible, but the strong partisan language on both sides sealed the fate of any compromise.<sup>40</sup>

Ultimately, President Obama and congressional Democrats attempted to use a public forum to make their case for passage of the PPACA, organizing a summit near the White House in late February 2010. The forum was attended by a select group of leading senators and congressmen, along with President Obama, who acted as moderator while injecting his thoughts into the session.<sup>41</sup> Republicans attended the forum with the hope of airing their grievances against the bill and the proposed reconciliation path that would be used to pass it.<sup>42</sup> While the discourse remained civil throughout the televised meeting, partisan bickering and sniping on both sides continued after the summit.<sup>43</sup> Speaker Pelosi remained an adamant proponent of reconciliation, proclaiming, “We need to have the courage to get this job done, and we will.”<sup>44</sup> She added that she was “not overly optimistic” about a bipartisan agreement taking place.<sup>45</sup> House Minority Whip Eric Cantor (R-Va.) expressed his frustration, saying that “an ounce of sugar does not make bad medicine go down,”<sup>46</sup> while House Minority Leader John Boehner (R-Ohio) simply stated that “[t]he bill needs to be scrapped.”<sup>47</sup> The Democrats waited several weeks, and then moved forward as they had promised. On March 21, 2010, the House passed the Senate version of the PPACA and then passed the Senate’s amendments in a separate reconciliation bill.<sup>48</sup> The Senate

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<sup>38</sup> Letter from Sen. Mitch McConnell, Republican Leader of the United States Senate, to Sen. Harry Reid, Majority Leader of the United States Senate (Mar. 4, 2010), available at <http://www.washingtonpost.com/wp-srv/opinions/ByrdRule.pdf>.

<sup>39</sup> *All Things Considered: What’s Next: Finance Bill?*, NAT’L PUB. RADIO (Mar. 27, 2010), <http://www.npr.org/templates/story/story.php?storyId=125260596>.

<sup>40</sup> Robert Pear & David M. Herszenhorn, *Haggling Over Abortion Compromise in Health Bill*, N.Y. TIMES, Nov. 5, 2009, at A22.

<sup>41</sup> Shailagh Murray & Michael D. Shear, *Obama Pushes for Deal on Health Care; He Warns Both Parties’ Lawmakers Against Political Grandstanding*, WASH. POST, Feb. 21, 2010, at A10.

<sup>42</sup> Lisa Wangsness, *Health Care Summit Underscores Divisions*, BOS. GLOBE, Feb. 25, 2010, at A1.

<sup>43</sup> Laura Meckler & Janet Adamy, *More Talk, No Deal at Health Summit*, WALL ST. J., Feb. 26, 2010, at A1.

<sup>44</sup> Press Release, House Speaker Nancy Pelosi, Pelosi Remarks at Press Availability Following Bipartisan Meeting at Blair House on Health Insurance Reform (Feb. 25, 2010), <http://pelosi.house.gov/news/press-releases/2010/02/releases-Feb10-summit.shtml>.

<sup>45</sup> *Id.*

<sup>46</sup> Meckler & Adamy, *supra* note 43, at A1.

<sup>47</sup> *Id.*

<sup>48</sup> Shailagh Murray & Lori Montgomery, *Divided House Passes Health Bill; Measure Goes to Obama*, WASH. POST, Mar. 22, 2010, at A1.

passed the reconciliation bill on March 25, 2010.<sup>49</sup> President Obama signed the PPACA into law on March 23, 2010.<sup>50</sup> A week later, on March 30, 2010, he signed the reconciliation bill into law.<sup>51</sup>

### III. ROOT CAUSES OF THE PARTISAN DIVIDE

Almost immediately after the curtain opened on the Obama presidency, the issue of health reform dominated the political landscape for over a year and became a rallying cry for both sides of the ideological divide. Set against the backdrop of a struggling economy, the debate led politicians and lay people alike to dig in their heels, arguing chiefly over cost and access to care. The debate highlighted a fundamental difference between: (1) liberals and their sense that government has a responsibility to protect and provide for its citizens, and most importantly that healthcare is a right, not a privilege; and (2) conservatives who believed that the government has a limited role in regulating the healthcare industry and access to care should be left to the free market. The increased number of ideologically-driven cable news shows, the resulting drive for transparency, and the poor economy combined to highlight these divergent views of the future of healthcare in America.

#### A. *The Impact of Media and Cable News*

Much has been made of the partisan rancor that dominated the political airspace leading up to and following passage of the PPACA. Democrats viewed their legislative actions as saving future generations from increasing health insurance premiums,<sup>52</sup> while Republicans saw the law as a government takeover of the healthcare system.<sup>53</sup> The national debate on the future of healthcare played out daily in dramatic fashion on the House and Senate floor, as well as on every cable news outlet.<sup>54</sup>

Rachel Maddow of MSNBC took to the airwaves nightly to defend President Obama and Democrats on Capitol Hill for their courage in fighting for the rights of the everyman and discrediting those who criticized the legis-

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<sup>49</sup> Carrie Brown, *Reconciliation Bill Passes Senate*, POLITICO (Mar. 25, 2010, 2:24 PM), [http://www.politico.com/news/stories/0310/35023\\_Page2.html](http://www.politico.com/news/stories/0310/35023_Page2.html).

<sup>50</sup> Laura Meckler & Greg Hitt, *Obama Signs Landmark Health Bill*, WALL ST. J., Mar. 24, 2010, at A4.

<sup>51</sup> Dana Milbank, *For Obama, Another Big, Um, Fat Deal*, WASH. POST, Mar. 31, 2010, at A2.

<sup>52</sup> See President Barack Obama, News Conference (July 22, 2009), <http://www.whitehouse.gov/the-press-office/news-conference-president-july-22-2009> (discussing how the legislation will curb insurance profits and provide insurance reform).

<sup>53</sup> See, e.g., 155 CONG. REC. H12,868 (daily ed. Nov. 7, 2009) (statement of Rep. Virginia Foxx (R-N.C.)) (“My colleagues should say no to the Pelosi-Obama freedom-killing, job-killing H.R. 3962.”).

<sup>54</sup> E.g., Mark Silva, *Obama Touts Health Plan in TV Blitz*, L.A. TIMES, Sept. 21, 2009, at A10 (reporting President Obama’s appearance on five television talk shows in support of healthcare reform).

lation.<sup>55</sup> Concurrently, Sean Hannity of Fox News would preach to viewers that the legislation was tantamount to the imposition of socialist maxims upon the American healthcare industry and staunchly defend those fighting to defeat the bill.<sup>56</sup>

Regardless of one's political views or stance on the legislation, it is clear that ideologically-driven cable news shows provide a forum for a more impassioned political dialogue to take place.<sup>57</sup> People enjoy watching shows that espouse similar political views to their own and reinforce their beliefs.<sup>58</sup> Hyperbole drives passion, and passion drives ratings. Thus, a perception grows that we exist in a more partisan environment due to our increased exposure to partisan news media.<sup>59</sup> Cable news and specifically political magazine shows did not exist in the 1980s, thus precluding Americans from hearing commentators voicing their support for or opposition to controversial topics such as the Equal Rights Amendment or U.S. sponsored paramilitary action in Central America at the same level they can today.<sup>60</sup> It is difficult to tell whether the level of partisanship is higher now than it has been in the past, but it certainly invades our living rooms at a much higher rate.<sup>61</sup>

### B. Lack of Legislative Transparency

One of the additional factors that contributed to the partisan nature of the PPACA debate was the lack of transparency or collaboration between the parties in drafting the bill. As part of his effort to provide a new kind of leadership early in his tenure, President Obama promised the American peo-

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<sup>55</sup> *E.g.*, *The Rachel Maddow Show* (MSNBC television broadcast Mar. 22, 2010). Maddow states that

[g]overnment is not just for show. Government is for fixing problems . . . . We have a government to work on problems we have as a people, as a country, problems that aren't working themselves out interpersonally or in the marketplace. Government is for something. We have one for a reason.

*Id.*

<sup>56</sup> *Hannity* (Fox News television broadcast Mar. 11, 2010) (Sean Hannity stated that the Democrats passing healthcare reform under the reconciliation mechanism was tantamount to them "giving the American people the middle finger."); *see also The Rush Limbaugh Show: America Hanging by a Thread* (radio broadcast Mar. 22, 2010), available at [http://www.rushlimbaugh.com/daily/2010/03/22/america\\_hangs\\_by\\_a\\_thread](http://www.rushlimbaugh.com/daily/2010/03/22/america_hangs_by_a_thread) (Limbaugh said, "[o]ur freedom has been assaulted" and that Democrats see the will of the American people as "something to be crushed," following the passage of the PPACA.).

<sup>57</sup> Paul Farhi, *Everybody Wins*, 25 AM. JOURNALISM REV., Apr. 2003, <http://www.ajr.org/Article.asp?id=2875>.

<sup>58</sup> Elisabeth Best, *The Age of Affirmation*, MILLER-MCCUNE (Jan. 21, 2010), <http://www.miller-mccune.com/media/the-age-of-affirmation-6594/>.

<sup>59</sup> *See Press Accuracy Rating Hits Two Decade Low*, PEW RES. CENTER (Sept. 13, 2009), <http://people-press.org/2009/09/13/press-accuracy-rating-hits-two-decade-low/#partisanship-jump>.

<sup>60</sup> *Id.*

<sup>61</sup> *See Partisanship and Cable News Audiences*, PEW RES. CENTER (Oct. 30, 2009), <http://pewresearch.org/pubs/1395/partisanship-fox-news-and-other-cable-news-audiences>.



ple to make health reform an open and transparent process.<sup>62</sup> Unfortunately, this promise quickly was broken as not a single part of the initial negotiations was aired on television or discussed publicly in any detail.<sup>63</sup> In a situation very telling of modern politics (especially on contentious issues), the majority party huddled behind closed doors and crafted the legislation with little to no input from the minority party.<sup>64</sup> This represents the worst of modern politics and adds significantly to a perceived increase in partisanship that breeds more abrasive language from the opposition.<sup>65</sup> Worse, it frustrates the beauty of the American system that traditionally incorporated ideas from a wide array of perspectives that represent the vast geographical, ideological, and cultural diversity that binds us as a nation.<sup>66</sup>

In the past, political debates on contentious issues have often bridged a lack of transparency through collaboration between major political players from both parties. For example, Bill Clinton and Newt Gingrich collaborated to pass welfare reform and balanced budget legislation during the 1990s. These collaborations revolve around the personalities of those involved and their willingness to interact; Clinton and Gingrich had a mutual respect that allowed them to cast aside partisan ideals that would preclude compromise and work together publicly. However, the case study of health reform and the major players (President Obama, Speaker Pelosi, House Minority Leader Boehner, Senate Majority Leader Reid, and Senate Minority Leader McConnell) differed significantly from previous examples of working relationships between leaders of opposing parties, representing a departure from the typical collaborative nature of Congress. The lack of a working relationship ex-

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<sup>62</sup> *CBS Morning News* (CBS television broadcast Jan. 7, 2010), available at <http://www.cbsnews.com/stories/2010/01/06/eveningnews/main6064298.shtml?tag=pop>.

<sup>63</sup> See Peter Roff, *Pelosi: Pass Health Reform So You Can Find Out What's in It*, U.S. NEWS & WORLD REP. (Mar. 9, 2010), <http://www.usnews.com/opinion/blogs/peter-roff/2010/03/09/pelosi-pass-health-reform-so-you-can-find-out-whats-in-it> (quoting Speaker Pelosi who stated that Congress needed "to pass the bill so [America] can find out what's in it, away from the fog of controversy"). But see Ruth Marcus, *Obama's Health-Care Summit: Chicken Soup for the Legislative Soul*, WASH. POST (Feb. 1, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/09/AR2010020902469.html> (calling for a televised summit until February 2010, almost a year after debate began).

<sup>64</sup> See also Allen Silverleib, *House Passes Health Care Bill on 219-212 Vote*, CNN (Mar. 21, 2010), [http://articles.cnn.com/2010-03-21/politics/health.care.main\\_1\\_health-care-entire-house-democratic-caucus-pre-existing-conditions/2?\\_s=PM:POLITICS](http://articles.cnn.com/2010-03-21/politics/health.care.main_1_health-care-entire-house-democratic-caucus-pre-existing-conditions/2?_s=PM:POLITICS) (citing an incensed and frustrated House Minority Leader John Boehner, who claimed after passage of the House bill, "Look at how this bill was written. Can you say it was done openly? With transparency and accountability? Without backroom deals that were struck behind closed doors? . . . Hell no you can't!").

<sup>65</sup> Brian Montopoli, *Democrat Backs C-SPAN Broadcast of Health Debate*, CBS NEWS (Jan. 8, 2010), [http://www.cbsnews.com/8301-503544\\_162-6073556-503544.html](http://www.cbsnews.com/8301-503544_162-6073556-503544.html) (quoting Rep. Tom Price (R-Ga.), "The negotiations are obviously being done in secret and the American people just really want to know what they are trying to hide").

<sup>66</sup> See generally THE FEDERALIST No. 10 (James Madison) (arguing that a strong large republican government with a diverse array of interests and perspectives best guards against the dangers of majority factions).

acerbated the lack of transparency and led to more partisan fighting than compromise.

### C. Economic Factors

In many ways, the poor economic environment contributed to the heightened partisanship during the healthcare reform debate. Beginning with the financial and housing crisis in 2008 and coupled with a rapidly rising debt problem for the United States,<sup>67</sup> tensions were running high as President Obama and Congressional Democrats led the country into the health reform debate.<sup>68</sup> As a result of aggressive policies such as the American Recovery and Reinvestment Act (a.k.a. the Stimulus Package)<sup>69</sup> and financial regulation overhaul,<sup>70</sup> political rhetoric increasingly revolved around economic and class distinctions.<sup>71</sup> Both parties made arguments that linked the healthcare reform bill to the economy.<sup>72</sup> Given the natural level of heightened emotions associated with financial circumstances and policy, political figures used increasingly harsh statements to characterize the opposition.<sup>73</sup> The health reform debate landed directly in the middle of the economic tussle, as much of

<sup>67</sup> Eric Dash, *Regional Banks Are Rocked*, N.Y. TIMES, June 19, 2008, at C1.

<sup>68</sup> Dan Balz, *Size of Government Is Subtext of Health-Care Reform Debate*, WASH. POST (Aug. 12, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/11/AR2009081103164.html> (noting that President Obama moved forward with his health reform despite public dissatisfaction with other policy initiatives for which he had thus far advocated, such as the General Motors bailout, which granted the federal government increased control over the economy).

<sup>69</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

<sup>70</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); see also Paul Davidson, *Obama Delivers His Plan to Overhaul Financial Regulation*, USA TODAY (June 22, 2009), [http://www.usatoday.com/money/economy/2009-06-16-protection-agency\\_N.htm](http://www.usatoday.com/money/economy/2009-06-16-protection-agency_N.htm) (describing President Obama's financial regulation overhaul plan as "the most sweeping overhaul of financial market regulation since the 1930's in response to a Wall Street crisis that sent the economy into an epic tailspin"). According to a senior Treasury Department official, the plan would "give broad new powers to the Federal Reserve, abolish the Office of Thrift Supervision, establish a new watchdog agency to protect consumers, and more tightly regulate hedge funds and derivatives." *Id.*

<sup>71</sup> Sheryl G. Stolberg & Jeff Zeleny, *President Seeks Public's Support On Health Care*, N.Y. TIMES, July 22, 2009, at A1 (citing a press conference in which President Obama stated that he would be willing to raise taxes on families earning more than \$1 million a year to pay for the health bill).

<sup>72</sup> Ricardo Alonso-Zaldivar, *Debate Opens on Health Bill; Democrats Divided*, LINCOLN J. STAR (Nov. 30, 2009), [http://journalstar.com/news/national/article\\_5db5eb7e-ddf6-11de-b27a-001cc4c03286.html](http://journalstar.com/news/national/article_5db5eb7e-ddf6-11de-b27a-001cc4c03286.html).

<sup>73</sup> Jim Kuhnenn, *Major Makeover of Wall Street Rules Passes House*, USA TODAY (Dec. 12, 2009), [http://www.usatoday.com/money/topstories/2009-12-11-1760528553\\_x.htm](http://www.usatoday.com/money/topstories/2009-12-11-1760528553_x.htm) (quoting Speaker Boehner after the overhaul passed in the House by a vote of 223-202, "This House has been on a spending spree, a bailout spree and a regulatory spree that I could never have imagined in any of my prior 18 years here in Congress"). Criticizing the complete lack of support from Republicans, White House Chief of Staff Rahm Emanuel fired back, "I didn't expect them to help after a meeting with 100 lobbyists for the financial industry. I'm not surprised they are opposed to it. The lobbyists are trying to gut this." *Id.*

the debate centered on the issue of the uninsured (typically low-income earners)<sup>74</sup> and the overall cost of the proposed measure.<sup>75</sup>

Although health reform was a divisive and controversial issue to begin with, the difficult economic environment in 2008–2010 made compromise even less likely. Unfortunately, because the economic outlook continues to be uncertain,<sup>76</sup> economic partisanship will likely pervade future political debates, resulting in further division and polarization in Congress.

#### IV. PARTISAN ELEMENTS OF THE PPACA

Beyond analyzing the rhetoric used to describe the healthcare reform legislation publicly and the politics behind the bill's formulation and passage, it is equally important to examine the bill itself for clues as to its partisan or bipartisan nature. For the most part, the PPACA contains progressive insurance reform and increased fees and burdens on employers, but the bill also incorporates some forward-thinking delivery-side reforms that received bipartisan support.

##### A. Insurance Reform

Democrats have long decried the payer community for being more concerned with profits than patients and producing barriers to achieving universal coverage.<sup>77</sup> Following the 2008 elections, Democratic control of both Congress and the Presidency finally offered Democrats the opportunity to pass massive insurance industry reforms that directly addressed this concern. The PPACA contains numerous partisan provisions aimed at negating the market power of insurance companies, including severe taxes on insurers,<sup>78</sup> an allowance for adult dependents to remain on their parents' coverage until age twenty-six,<sup>79</sup> establishment of a minimum essential benefits structure

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<sup>74</sup> June E. O'Neil & Dave M. O'Neil, *Who Are The Uninsured: An Analysis of America's Uninsured Population, Their Characteristics, and Their Health*, EMP. POL'Y INST., (June 2009), [http://epionline.org/studies/oneill\\_06-2009.pdf](http://epionline.org/studies/oneill_06-2009.pdf); see also Avery Johnson, *The Standard of Living: Recession Swells Number of Uninsured to 50.7 Million*, WALL ST. J., Sept. 17, 2010, at A4.

<sup>75</sup> Shailagh Murray and Lori Montgomery, *House Passes Health-Care Reform Bill Without Republican Votes*, WASH. POST (Mar. 22, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/21/AR2010032100943.html?sid=ST2010032201830>; see also Mimi Hall & John Fritze, *Health Care: Five Faces of the Uninsured*, USA TODAY (Sept. 25, 2009), [http://www.usatoday.com/money/industries/health/2009-09-22-faces-uninsured\\_N.htm](http://www.usatoday.com/money/industries/health/2009-09-22-faces-uninsured_N.htm).

<sup>76</sup> See Binyamin Appelbaum, *Federal Reserve Slashes Outlook for U.S. Growth*, N.Y. TIMES, Nov. 3 2011, at A1.

<sup>77</sup> Patrick O'Connor & Carrie Budoff Brown, *Tension Between Health Insurers and Democrats Erupting*, NEWSDAY (Oct. 14, 2009), <http://www.newsday.com/news/nation/tension-between-health-insurers-and-democrats-eruption-1.1524080>; see also Pauline W. Chen, *When Insurers Put Profits Between Doctor and Patient*, N. Y. TIMES (Jan. 6, 2011), <http://www.nytimes.com/2011/01/06/health/views/06chen.html?pagewanted=all>.

<sup>78</sup> I.R.C. § 4980I (Supp. IV 2010).

<sup>79</sup> 42 U.S.C § 300gg-14 (2006 & Supp. IV 2010).

that plans must provide, as determined by the government,<sup>80</sup> and more. In fact, the White House even took to referring to the entire health reform effort as health insurance reform, carefully choosing a term with traditionally negative connotations.<sup>81</sup> The White House and Congressional Democrats drafting the bill targeted the payer community,<sup>82</sup> and the significant changes to insurers' business practices in the legislation made a strong partisan statement.

### B. Employer Penalties and Reforms

Another traditional target of Democratic policies has been the business community,<sup>83</sup> and the PPACA subjects businesses to increased restrictions, requirements, and fees, which drew the heavy ire of the U.S. Chamber of Commerce.<sup>84</sup> The PPACA allowed the Democrats to reshape employer participation within the insurance industry and move away from the old model of voluntary, flexible employer-sponsored coverage. It also adds a mandate that many employers provide health insurance coverage to their employees.<sup>85</sup> Businesses and those on the right viewed these provisions as overly onerous and restrictive,<sup>86</sup> accusing Democrats of attempting to pilfer corporate earnings in an attempt to finance the law.<sup>87</sup>

The most commonly cited example of Democratic business overregulation in the bill was Section 9006 of the PPACA,<sup>88</sup> which required businesses beginning in 2012 to issue 1099 IRS tax forms to any individual or corporation from whom they purchased a good or service over \$600 within a given

<sup>80</sup> 42 U.S.C. § 18022 (Supp. IV 2010).

<sup>81</sup> Kathy Arnst, *Health Care Reform Becomes Health Insurance Reform*, BUS. WK. (Aug. 11, 2009), [http://www.businessweek.com/blogs/money\\_politics/archives/2009/08/health\\_care\\_ref.html](http://www.businessweek.com/blogs/money_politics/archives/2009/08/health_care_ref.html).

<sup>82</sup> STAFF OF THE WASHINGTON POST, LANDMARK: THE INSIDE STORY OF AMERICA'S NEW HEALTH-CARE LAW AND WHAT IT MEANS FOR US ALL 23 (PublicAffairs ed., 2010).

<sup>83</sup> Steve Huntley, Editorial, *Democrats Hurting Business, Economy*, CHI. SUN TIMES, Oct. 15, 2010, at A25.

<sup>84</sup> Mike Lillis, *U.S. Chamber to Launch Website for Businesses to Air Health Reform Grievances*, THE HILL (July 20, 2010, 4:36 PM), <http://thehill.com/blogs/healthwatch/health-reform-implementation/109893-us-chamber-to-launch-website-for-businesses-to-air-health-reform-grievances>; see also Julian Pecquet, *U.S. Chamber Raises Concerns with the Health Reform Law*, THE HILL (Jan. 11, 2011, 2:20 PM), <http://thehill.com/blogs/healthwatch/other/137263-us-chamber-raise%20s-concerns-with-the-healthcare-reform-law>.

<sup>85</sup> U.S. Chamber of Commerce, *Critical Employer Issues in the Patient Protection and Affordable Care Act*, 11 (2010).

<sup>86</sup> *U.S. Chamber Urges Congress To Avoid Employer Mandate On Health Care*, FREE ENTERPRISE MAG. (May 1, 2009), <http://www.uschambermagazine.com/article/us-chamber-urges-congress-to-avoid-employer-mandate-on-health-care> (quoting Bruce Josten, U.S. Chamber of Commerce Executive Vice President for Government Affairs, "An employer mandate would be a job killer. It would force struggling employers to spend money they don't have, reduce flexibility and choice, and raise employer costs in an economy that is already shedding jobs").

<sup>87</sup> Naftali Bendavid, *The Health-Care Battle: Idea to Tax Insurers is Gaining Traction*, WALL ST. J., July 27, 2009, at A4.

<sup>88</sup> 26 U.S.C. § 6041 (2006 and Supp. IV 2010).

tax year, regardless of whether the purchase was a healthcare expenditure.<sup>89</sup> This one small provision, among thousands within the bill, was widely criticized for its burdensome and time-consuming nature,<sup>90</sup> especially for large companies that complete thousands of daily transactions.<sup>91</sup> In one of the few bipartisan showings throughout the ongoing debate on the health reform law,<sup>92</sup> Congress repealed the provision in early 2011 before President Obama signed the measure into law.<sup>93</sup>

Despite the minimal showing of bipartisan compromise on the 1099 provision repeal, the U.S. Chamber of Commerce, National Federation of Independent Businesses, and other leading business advocacy groups strongly criticized the legislation as a Democratic partisan effort purposefully aimed at harming employers.<sup>94</sup> These feelings added to the tense partisan atmosphere and were made explicit in public statements made by opponents of the proposed law.<sup>95</sup> The negative economic climate certainly contributed to the mutual frustration surrounding the crafting of the bill, but the partisan barbs between the business community and the Left echoed years of tension. While much of the legislation's contents mirrored a growing partisan divide within the country, some portions of the 2,700 plus page

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<sup>89</sup> Neil de Mause, *Health Care Law's Massive, Hidden Tax Change*, CNN (May 5, 2010), [http://money.cnn.com/2010/05/05/smallbusiness/1099\\_health\\_care\\_tax\\_change/](http://money.cnn.com/2010/05/05/smallbusiness/1099_health_care_tax_change/).

<sup>90</sup> Arthur D. Postal, *PPACA: Health Tax Issue Headed for Senate*, LIFE HEALTH PRO (Sept. 2, 2010), <http://www.lifehealthpro.com/2010/09/02/ppaca-health-tax-issue-headed-for-senate#>.

<sup>91</sup> Sharon Bernstein, *Small Firms Win Repeal of Tax Rule; They Won't Have to File Tax Forms for Every Recipient of More Than \$600*, L.A. TIMES, Apr. 6, 2011, at B2.

<sup>92</sup> Felicia Sonmez, *Obama Signs Repeal of Health-Care Law's '1099' Tax Reporting Rule*, WASH. POST (Apr. 14, 2011), [http://www.washingtonpost.com/blogs/2chambers/post/obama-signs-1099-repeal-into-law-marking-first-repeal-of-national-health-care-law-provision/2011/04/14/AFRhyJeD\\_blog.html](http://www.washingtonpost.com/blogs/2chambers/post/obama-signs-1099-repeal-into-law-marking-first-repeal-of-national-health-care-law-provision/2011/04/14/AFRhyJeD_blog.html).

<sup>93</sup> Ron Shinkman, *Obama Signs Repeal of Health Reform's 1099 Rule*, FIERCE HEALTH FIN. (Apr. 19, 2011, 2:57 PM), <http://www.fiercehealthfinance.com/story/obama-signs-repeal-health-reforms-1099-rule/2011-04-19>.

<sup>94</sup> Letter from U.S. Chamber of Commerce to Members of the United States Senate (Sept. 9, 2010) (on file at <http://www.uschamber.com/issues/letters/2010/letter-supporting-johanns-amendment>); see also Robert Pear, *Many Push for Repeal of Tax Provision in Health Law*, N.Y. TIMES, Sept. 11, 2010, at A25; Rachana Dixit, *House GOP Eyes Grandfathering Regs for Repeal Late This Year*, 3 INSIDE HEALTH REFORM 35, Aug. 31, 2011.

<sup>95</sup> See Julian Pecquet, *U.S. Chamber Raises Concerns with the Healthcare Reform Law*, THE HILL (Jan. 11, 2011, 2:20 PM), <http://thehill.com/blogs/healthwatch/other/137263-us-chamber-raises-concerns-with-the-healthcare-reform-law> (quoting U.S. Chamber President and CEO Thomas Donahue touting repeal of the law as, "an opportunity for everyone to take a look at health care reform – and to replace unworkable approaches with more effective measures that will lower costs, expand access, and improve quality"); see also National Federation of Independent Business, *NFIB Testifies, Issues Study on Impact of Health Care Reform*, OR. BUS. REP. (Aug. 7, 2011), <http://oregonbusinessreport.com/2011/08/nfib-testifies-issues-study-on-impact-of-healthcare-reform/> (referencing a study conducted by the NFIB and cited during Congressional testimony by Senior Research Fellow Richard Dennis, who said, "[t]wenty percent of small employers currently offering [healthcare] expect to significantly change their benefit package and or their employees' premium cost-share the next time they renew their health insurance plans . . . almost all significant changes expected involve a decrease in benefits, an increase in employee cost-share, or both").

bill, however, did include mutually agreed-upon positive steps toward healthcare's future. Those provisions will be discussed next.

### C. *Delivery Reform: One Example of Bipartisanship*

The trending partisan divide is quite apparent throughout the PPACA, but one area that enjoys bipartisan support within the law relates to delivery reform.<sup>96</sup> A goal that unites both sides of the aisle is increased healthcare quality at a lower cost.<sup>97</sup> The two are inextricably linked, and promotion of the accountable care shared savings program<sup>98</sup> in the law is a positive first step that has enjoyed bipartisan support.<sup>99</sup> Shared savings models are systems whereby providers share in the financial gains stemming from the decreased costs they produce as a result of care that achieves positive outcomes. Providers must produce certain health outcomes in order to qualify for the savings and they can incorporate a number of varying performance measures, including patient satisfaction. Alternatively, physicians can also be held financially responsible for any increases in cost resulting from care. The PPACA includes a shared savings model in the form of Accountable Care Organizations ("ACOs"), which is a shared savings structure for Medicare beneficiaries. Delivery reform, particularly shared savings models such as ACOs, enjoyed much more bipartisan support than the remainder of the law.

Bipartisan agreement exists around outcomes-based medicine as a driving force for change within the industry, given the sentiment that rising healthcare costs will render the system unsustainable. Ideological differences do not cloud the overall goal of improving care quality while lowering costs. While this relatively small section of the bill represents one of the only provisions garnering support from both sides of the aisle, some additional hope may exist as health reform continues down the track of implementation. For instance, strong bipartisan support exists for the inclusion of health informa-

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<sup>96</sup> Stephen M. Shortell, Lawrence P. Casalino, & Elliot Fisher, *Implementing Accountable Care Organizations*, BERKELEY CENTER ON HEALTH, ECON., AND FAM. SECURITY ii (May 2010), [http://www.law.berkeley.edu/files/chefs/Implementing\\_ACOs\\_May\\_2010.pdf](http://www.law.berkeley.edu/files/chefs/Implementing_ACOs_May_2010.pdf); see also *Recommendation to Congress*, HEALTHCARE INFO. AND MGMT. SYS. SOC'Y (Sept. 2011), [http://www.himss.org/policy/policysummit/docs/Ask\\_1\\_Congress\\_Maintain\\_Bipartisan\\_Support.pdf](http://www.himss.org/policy/policysummit/docs/Ask_1_Congress_Maintain_Bipartisan_Support.pdf) (noting how bipartisan support exists for movement away from a delivery system that rewards volume toward one that rewards efficiency and quality outcomes).

<sup>97</sup> *About the Center: Mission and Vision*, CENTER FOR HEALTH TRANSFORMATION, <http://www.healthtransformation.net/cs/Mission> (last visited Nov. 4, 2011).

<sup>98</sup> 42 U.S.C. § 1395jjj (2006 & Supp. IV 2010) (defining the Medicare shared savings program as one that promotes accountability for a patient population and coordinates items and services under the law).

<sup>99</sup> Michael L. Millenson, *The Health Reform (Almost) Everyone Loves*, KAISER HEALTH NEWS (Oct. 14, 2010), <http://www.ncsl.org/default.aspx?tabid=19927> (discussing how broad and deep bipartisan support exists for the theoretical underpinnings of Accountable Care Organizations).

tion technology within healthcare delivery. Along with provisions such as ACOs, there is some hope for future agreement free of political argument.

## V. CONCLUSION

The debate and passage of the PPACA displayed just how contentious and partisan a large legislative battle can become in Washington. Tough economic times, a reform affecting one-fifth of the nation's economy, and the constant influx of news outlets covering and commentating on the debate placed a spotlight on the differences of opinion surrounding the process. Influenced by a growing disagreement over the role of government in American society and commerce, both sides dug in and staunchly defended their respective positions. The entire health reform debate illustrated the significant philosophical differences between the Left and Right and how an attempted overhaul of the status quo can drive a wedge into an already fragile relationship.

Very little, if any compromise, accompanied this bill's movement down the legislative track toward passage into law.<sup>100</sup> Politics played a large role in the heated debate over the PPACA, for the simple reason that Democrats controlled the White House and a supermajority in Congress and felt little need to compromise with their Republican counterparts, citing the alleged mandate they had been given by the American people as a rebuke to the George W. Bush years.<sup>101</sup> As a result, few bipartisan discussions occurred, which no doubt led to some bad blood as the two sides marched side by side toward battle. We have seen this before and will no doubt see it again. Large-scale political conflicts are brutal and participants rarely, if ever, come away unscathed. However, one can expect these battles to continue occurring in the future. Partisan bickering is highlighted more today than it ever has been through traditional and non-traditional media outlets. Furthermore, we live in the information age where access to every congressional member's votes, statements, and even whereabouts are available at our fingertips. These factors, combined with a growing ideological divide, provide additional challenges to crafting a piece of legislation representative of varying opinions and even less need to curry bipartisan support.

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<sup>100</sup> Kent Garber, *After Months of Debate, No Bipartisanship on Healthcare*, U.S. NEWS & WORLD REP. (Mar. 22, 2010), <http://www.usnews.com/news/politics/articles/2010/03/22/after-months-of-debate-no-bipartisanship-on-healthcare>; see also Kim Hart & Jordan Fabian, *Pelosi: GOP Has Had Its Day; Confident Dems Can Pull Together on Health Bill*, THE HILL (Feb. 28, 2010, 10:59 AM), <http://thehill.com/homenews/house/84089-pelosi-gop-has-had-its-day-217-healthcare-votes-in-sight> (noting how House Speaker Nancy Pelosi curiously commented that there can be bipartisanship without any bipartisan votes).

<sup>101</sup> Jeff Zeleny, *Obama Weighs Quick Undoing of Bush Policy*, N.Y. TIMES, NOV. 10, 2008, at A14 (quoting a top transition leader, "[Obama] feels like he has a real mandate for change. We need to get off the course the Bush administration has set.>").

