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# All Health Care Is Local: Exploring the Roles of Cities and States in Health Care Delivery and Reform Keynote #2

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# ALL HEALTH CARE IS LOCAL: EXPLORING THE ROLES OF CITIES AND STATES IN HEALTH CARE DELIVERY AND REFORM

KEYNOTE SPEAKER: SENATOR JEFF YARBRO
[edited for reading]

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**Sen. Jeff Yarbro:** Thank you. So, we in the Tennessee State Senate do our best not to socialize with those who are members of the House of Representatives, but I had the opportunity just this past summer to serve on a committee with, it was—I kid you not—the joint ad hoc committee on medical cannabis, and it was co-chaired by representative Faison and as everyone can see here today, he is actually a passionate guy and one of the more entertaining human beings amongst the 132 of us. He also mentioned the book Profiles in Courage by John Kennedy. If you serve long in this business, you recognize there's a reason that that's a relatively short book, but I do think that Representative Faison is someone who is, who has been willing to buck people around and the powers that be on this particular issue. And I appreciate that from anybody in our legislature.

So, I'm going to talk a little bit about just the big changes in the way that we make healthcare policy at the state and local level. So one of my favorite writers is David Foster Wallace who, before his death, gave a speech at Kenyon college and he started with a story. There are these two young fish swimming one day and an older fish passed them, nodded, and said, "morning boys, how's the water?" They continue swimming on a little while and then eventually one looks over the other. It says, "what the hell is water?" I start there because the daily barrage of political information, the shutdown scandals, the tweets and tantrums on Cable News, make it difficult to see what I think have been some pretty big shifts in the water that makes up the way that we actually make healthcare policy and maybe lots of other policy.

And my point of departure there is--we're in a law school, right, at a CLE, I'm going to talk about cases. In *NFIB v. Sebelius*, which everybody talked about for a time, [it was] the Supreme Court'sdecision on whether the Affordable Care Act was unconstitutional.[1] So at the time, you know, liberals were overjoyed that Justice Roberts had written this opinion saying that it was constitutional. Conservatives felt betrayed, they had another David Souter on their hands that was making this decision affirming President Obama's signature accomplishment. But I think less noticed at the time, that's something that we felt a lot more since it's the part of that decision that says the federal government could not use its taxing and spending authority to coerce states to be part of the Medicaid expansion, which was in the Affordable Care Act.[2]

I think Justice Roberts—I just did a little googling on my phone here—but Justice Roberts referred to that as that saying, the threatened loss of 10 percent of state budgets was an economic dragooning that gave states, no real choice.[3] And so building on the line of cases that began with *South Dakota v. Dole* that says the federal government can condition highway funds on whether states adopted a higher drinking age, but built on the implicit limits on the federal government's ability to compel states, Justice Roberts said that the ACA went too far.[4] Justice Ginsburg disagreed, saying it makes no sense that we would have to repeal the whole act and redo it because if Congress had repealed the entire act and reenacted the existing parts of Medicaid and the new parts of Medicaid, there certainly wouldn't have been any problem.[5] But since, as soon as it happened in the way that it did and it was the threat of existing funds, I mean, she sort of felt that line didn't work.

I don't want to get into that. The formal federalism aspects of that to me are less interesting. I think that the sort of more pragmatic federalist effects are bigger and more significant because it's altered the dynamics in which we make policy around the country. So since that time, we're at a pretty, you know, entrenched space where thirty-three states expanded it and eighteen haven't. And I think it was probably done in the context that, you know, the states are laboratories of democracy, that we think about, what we're going to see what works in various places. And then other states are going to follow suit one way or the other. That sort of comes from Justice Brandeis's decision where he sort of says if the states choose,

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[1] Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).
[2] *Id.* at 648.
[3] *Id.* at 582.
[4] *Id.* (*citing* S.D. v. Dole, 438 U.S. 203, 205 (1987)).
[5] *Sebelius*, 567 U.S. at 636.

they can pick novel ways to attack social and economic problems without risking the whole country on it.[6]

And as we see what works, more states will adopt what works and as we see what doesn't work, more states will kind of go against that. And that's really not what we've seen here. And I'm going to say some facts and stuff that might be contentious, but I think last fall there's sort of—somebody collected the 150 plus studies of the Medicaid expansion and looked at all of the data from all these reports and there's no question that we've seen in those states, higher degrees of coverage, lower numbers of uninsured populations, higher rates of access to care, higher degrees of utilization, greater affordability, actually declining Medicaid cost per patient.[7] Largely economic growth, very little strain on state budgets, neutral effects on state labor markets, and you know, that's better reviews than most laws get, frankly.

Especially that part. I mean, there's lots of criticisms of the larger parts of some of the individual market parts of [the] ACA. Those fears have been much more borne out by reality than the Medicaid piece. But because of the way we've structured this thing, the Medicaid one is the one that we're fighting about. I'm sure that there are people here that think that I've just cited some 153 crazy liberal studies, but you know, I'm looking for lots of the information out there. And that's a pretty broad range of ideological stuff that's been gathered to look at, but we got to this place where, in the United States, if a bunch of scientists get together and say there's going to be an eclipse on a certain day between these two minutes and it's going to be visible in this precise spot on the planet, people go out and buy plane tickets, you know.[8] And take the day off work and go there, but we don't actually listen to the sort of facts that affect our political life in the same way.

But regardless of all that we haven't seen, as data comes out, that people are making different decisions. If anything, people are doubling down on that. And so, this strategy of sort of not adopting has fundamentally worked. If you looked at the numbers, people that

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[6] New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932).

[7] Larisa Antonisse et al., *The Effects of Medicaid Expansion Under the ACA: Updated Findings from a Literature Review*, KAISER FAM. FOUND. (Mar. 28, 2018), https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-march-2018/.

[8] Dennis Green, *Prices for flights to eclipse-viewing hot spots have spiraled out of control,* BUSINESS INSIDER (Aug. 16, 2017) https://www.businessinsider.com/solar-eclipse-flight-nashville-how-much-2017-8.

work in the states that have expanded are less supportive of the law, which kind of makes sense. They didn't accrue the benefits of the law. And I think, largely because that's complicated, obscured and partially excused by the way that we think about politics and…it's the federal government's problem....that's sort of been built in so that when you have a change of government at the national level, the states that didn't expand are more likely to have members of Congress that are willing to repeal that part of the law and to attach new requirements or whatever, what have you.

What I think has been fascinating about the last couple of years is you haven't seen the will at the federal level, or the ability at the federal level, to actually make a change in this policy. When repeal and replace was sort of ultimately unsuccessful, Mitch McConnell who's spent a fair bit of time on this issue, kind of came out and said, this is the law of the land.[9] But you still see a different level of engagement by the states on this point. And frankly, it's about to be used in a different way. So now sort of using the same principle that states can go one way or another in their Medicaid policies, the Trump administration is now operating like a whole different set of options to the states. I'm not in the prediction business, especially after the 2016 election, but I think that there will be some difficulty in imposing nationwide work requirements on Medicaid.

I just don't think that's going to happen. What they probably will be able to do is to allow the Trump administration to grant waivers to states, which they can do right now, right? So that the states themselves can impose work requirements. One of the governors that's applying for a waiver right now did sort of say, "I think this will actually cut our rolls by over a hundred thousand people."[10] And so, you know, as we sort of see-saw back and forth at the national level, it means that our red and blue states take advantage of the expansion or cut backs when their favorite party's in charge. And the two states's healthcare systems are going to continue to split or very well could continue to split and that, you know, so instead of having the advantages of federalism sort of undermined by this nationalized hyper partisanship, instead of

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[9] Kristina Peterson & Stephanie Armour, *GOP Senate Leader Mitch McConnell Abandons Health-Care Bill*, WALL ST. J. (July 18, 2017), https://www.wsj.com/articles/gop-senate-leader-mcconnell-abandons-health-care-bill-1500348064.

[10] Deborah Yetter, *Kentucky may cut Medicaid for 500K if it loses court battle*, THE COURIER J. (June 20, 2018), https://www.courier-journal.com/story/news/politics/2018/06/20/ruling-against-matt-bevin-medicaid-plan-could-disrupt-care-thousands-kentucky/715557002/.

seeing the fostering of local experimentation, you're really seeing more partisan elaboration, which really has a big chance of changing the way this works.

I mean, who else heard the Tip O'Neill statement? You know, "all politics is local."[11] In some ways that's right, but really right now it's absolutely not. All politics is national in today's world. If you look at the math on it. So, 1984, Ronald Reagan wins basically the entire country—49 states—one state and district of Columbia are the only people that go the other way.[12] That same year, Democrats probably lost three or you know, a handful, I think it's less than 10 seats in the House of Representatives and they actually picked up seats in the United States Senate, including right here in Tennessee. It was the year Al Gore won. That is unthinkable in today's world that you would see a national election go one way and underlying elections go the other.

So this past election, 2016, for the first time in the history of the republic, every United States Senate race went the same way as the presidential race. It's literally never happened before, but you have all sorts of candidates who do different things, trying to adjust to Donald Trump. Some were embracing him, some were hiding from him, and some were criticizing him openly. And none of that turned out to matter. It only mattered whether he won their state. And so what that means is that we have this nationalized dialogue and while we technically fight every one of our elections out to the 50 yard line, the 50 yard line is not set on a district by district level or a state by state level anymore. It's set by these, you know, [from Representative Faison] "peckerwoods" and we're all electing our local officials, our state officials based on their politics instead of our problems. We're sort of reverting to this different kind of politics, which is, it starts making a real difference in all sorts of things.

But like Representative Faison was talking about with medical marijuana, I think that the expansion/non-expansion states have some significant level of overlap with the states that adopted medical marijuana. You can even look at the numbers on this. A study came out very recently saying states that have medical

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[11] *See* Thomas P. O'Neill & Gary Hymel, *All Politics is Local and Other Rules of the Game* (1994).

[12] Toni Monkivic, *50 Years of Electoral College Maps: How the U.S. Turned Red Blue*, N.Y. TIMES (Aug. 22, 2016), https://www.nytimes.com/2016/08/23/upshot/50-years-of-electoral-college-maps-how-the-us-turned-red-and-blue.html.

marijuana see about 20 percent fewer deaths by opiates.[13] In a state where we are having, we have more deaths by opiates than we do by either car accidents or firearms,[14] that's something that you would expect us to take seriously. And that's why I value so much, that this has become a bipartisan movement to really address this issue because that gives me some hope.

But if you look at the opiate epidemic, which is really hard to put in context just how big this is. So, how many people are here? I mean if this room were the state of Tennessee, basically the first two rows would be at some level of opiate misuse, abuse or treatment. It's one in six people in the state are at some level of misuse, abuse, or treatment. We have 300,000 people that have a disorder that needs to be treated at that level.[15] We had over 20,000 people that OD'd had to go to a hospital or died last year.[16] It is a stunning problem and at the end of the day we're going to spend less on a treatment under current proposals than the Ensworth School spent on its new tennis court.[17] And that's true. It's just numbers. And this is an expensive thing. If you look at the states where people are really trying to—every state is dealing with this. Blue states, actually, in the northeast had a bigger opiate problem that caused more deaths than a state like ours.[18]

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[13] Kate Sheridan, *Where Marijuana is Legal, Opioid Prescriptions Fall,* SCIENTIFIC AMERICAN (Apr. 2, 2018) https://www.scientificamerican.com/article/where-marijuana-is-legal-opioid-prescriptions-fall/.

[14] *Data Dashboard*, Department of Health, https://www.tn.gov/health/health-program-areas/pdo/pdo/data-dashboard.html (last visited July 27, 2018) (used to show the overdose numbers for 2016); *Tennessee Traffic Fatality Rate 1950-2016*, Department of Health, *available at* https://www.tn.gov/content/dam/tn/safety/documents/FatalityRate1950-2016.pdf (last visited July 27, 2018) (used to show the traffic fatality death numbers for 2016); *Stats of the State of Tennessee*, Centers for Disease Control and Prevention (Apr. 9, 2018), https://www.cdc.gov/nchs/pressroom/states/tennessee/tennessee.htm (used to show the firearm death numbers for 2016).

[15] *Opioid Frequently Asked Questions*, TN Together, https://www.tn.gov/opioids/education-and-prevention/educational-information/opioid-frequently-asked-questions.html (last visited July 27, 2018).

[16] *Data Dashboard*, Department of Health, https://www.tn.gov/health/health-program-areas/pdo/pdo/data-dashboard.html (last visited July 27, 2018).

[17] *Ensworth Tennis Complex*, Johnson Johnson Crabtree Architects P.C., http://jjca.com/Portfolios/Ensworth-Tennis-Complex (last visited July 27, 2018); *Ending the Opioid Crisis*, TN Together, *available at* https://www.tn.gov/content/dam/tn/governorsoffice-documents/governorsoffice-documents/TNtogetherFAQs.pdf (last visited July 27, 2018).

[18] Drug Overdose Mortality by State, Ctrs. for Disease Control and Prevention (Jan. 10, 2018), https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm (last visited July 27 2018).

But you can see some of the models that are being adopted. And so, I think it's Vermont, I don't know, but I think it's in Vermont they adopted something call the hub and spoke model where they aligned lots of local and state agencies with nonprofits and they are doing everything they can to get people into treatment and to keep them there at a level of truly activating lots of parts of the community.[19] And they're running a program that costs probably $16,000 a year per participant. It starts about 8,000 participants a year. That's about $132 million dollars. Vermont's a state that is 10 times smaller than us. They have 650,000 people to our 6.6 million. And despite being an order of magnitudes smaller, they're spending five times more than what we're proposing. But that's something that--it's not because they care more it's because they've made a different decision and it's not actually their money.

They've done the, they're using the funds that come out of Medicaid expansion to attack the problem in a different way. And when we come at that problem as Tennesseans, we don't even have the same tools in the tool box to look at. I've talked to providers, for-profit companies that have offices here in Tennessee to work on the opiate epidemic, but they don't actually do the work here in Tennessee because there's not the funding base to support it. You can ask anybody that would probably have the people that work in provider communities or hospitals. The business model is just shifting in lots of different places and some of that's demographic and natural--that's going to happen everywhere. But the change in the way that economic modeling works for hospitals in states that have this and states that don't is just different.

And if we're going to continue on this pathway, where not only do we have an expansion/non-expansion divergence, then we have a work requirement/non-work requirement divergence. You can really see the states continuing to split here to where just the way we approach policy, which then affects the way that businesses come in and work in that system, and then ultimately affects the way that we as the insured, as patients, interact with it. It's going to change dramatically. And that is... we don't really know what that looks like. I mean, we're starting to see bigger divergences in the health world. During the post-World War Two era, it was unheard of for a place to have a lower life expectancy the next year in the United States. Life expectancies are supposed to go up, right? As you look across the history of Western civilization, life expectancies

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[19] *Hub and Spoke*, vermont.gov, http://blueprintforhealth.vermont.gov/about-blueprint/hub-and-spoke (last visited July 27, 2018).

go up unless there's like a Spanish flu, but what you're seeing right now in the country... so I have little factoids. Tennessee's got one of the counties in the country that has had the fastest, one of the, one of the 50 counties with the biggest decline in life expectancy. And so the life expectancy in Grundy County in 1980, it was an average of 73 and is now at 72.[20] I mean, what's a year? But that's not the way this works. That means a lot more people dying at 40. A lot of people dying at 50. It means a lot of lower quality of life for human beings. You compare that to Breckenridge, Colorado. So in 1980, the life expectancy was higher than Grundy County's. It was 79, so people were expected to live six years longer.[21] And I think, in 2014/2015, the life expectancy in that same county in Colorado jumped up.[22] So we went from having a six year difference in life expectancy to a 15 year difference in life expectancy.

And that is a remarkably dramatic thing that at some level we have a moral obligation to do something about. And if not, even if you have an active dislike of humankind, the economics of this aren't sustainable. Our state is a net recipient of federal funds and continuing to worsen those problems and expecting that to continue without changes is probably an unwise thing.

And I mean, I think that we're at a really important moment right now where we've got to figure out whether these kinds of partisan fissures in the world have become so cemented that they are just part of the landscape like the Appalachian Mountains or the Tennessee River, or whether they are going to give way and we're going to return to a place where we're actually making policy decisions based on merits and outcomes. And, and you know, always tempered by politics. You know, we like this, and I don't think anybody thinks that politics has got to go away or the ideology is going to go away. But the place that we're in is a strange one where we venture becoming two republics sharing a common border with a remarkably different health, economic, and life prospects for people that live in one of them and people that live in another one of them. And that is a sort of alarming to me, and I think that you end up having two choices if you start dealing with that reality. One is that we sort of turn back the clock on that a little bit and try to find ourselves back to a space where, you know, the federal government allows you to recognize their state differences, generally speaking, kind of continue moving in that direction.

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[20] *US Health Map*, The Institute for Health Metrics and Evaluation, https://vizhub.healthdata.org/subnational/usa (last visited July 27, 2018).
[21] *Id.*
[22] *Id.*

And as changes get made by one party, we sort of adopt and improve upon those as changes get made by another party. We sort of adopt and improve on those. To use a Medicare policy in the sixties to some Reagan economic policy in the eighties are, at this point, largely accepted by both sides as kind of who we are. But here we're in a place where a fight that happened is a fight that's still happening. And if we don't figure out a way to get past that, then it requires something different of us to start recognizing that if we continue on that pathway, what are the implications for a state like Tennessee? Are there places where you just have to acknowledge that we are in a different context of policy making and figuring out how to be a laboratory with a different set of tools and maybe we'll find ways to solve problems that wouldn't have been available to people that are operating in a different set.

Maybe we won't, but I think on some level we have to start being honest about this very real change and figuring out which model is going to actually make sense for us. And while this is not the most optimistic speech I've ever given, I think the stakes are very high here. I really do. And I think that most casual observers of American politics kind of have like a status quo optimism, pendulum shift. Like it swings back and forth. Things sort of right themselves out over time and for a good deal of the 20th century that was entirely true, but what we're seeing right now is operating differently than that. That doesn't mean that it's, it's stuck in that pathway, but without a change, if the status quo that we've seen for the last now 10, 15 years carries on, I think we find ourselves in a really, really different place. All that being said, anybody that was looking at politics during the Clinton, the Bush years would've been, would've predicted much more easily that a Clinton under a Bush would follow them in office as opposed to a Barack Obama and a Donald Trump. We as a society are really capable of being remarkably dynamic politically. We as people, regardless of side of the aisle, tend to value citizenship, tend to value each other. And I really do think that we have the capacity to, regardless of how these structural things kind of worked out, find our way somewhat back to a place of good decision making. But I do think that we only do that if we are serious about it. Take the challenge that we face head on and actually find the people of goodwill who disagree with us on all sorts of things and find ways forward though. With that, I'll say, that's all.

**Rep. Jeremy Faison:** Can you quantify the numbers for me about Colorado and I'll tell you, I've been out to Colorado three times. They exercise out there.

**Sen. Yarbro:** Yeah, I mean I looked at it this morning and I was kind of blown away by it and Breckenridge is a part of Colorado where they're fine with pot being legal, but they don't use it that much because it would interfere with their snowboarding. And we've got lots of those kinds of issues that are a big deal. And while it's easy to judge economic success by GDP, if you look at the history of the world, places that have increased, the life expectancy... that really ends up being something that matters in a big way.

**Audience Member:** Is there a move on the part of your peers to focus on Tennessee and the needs of Tennessee rather than being partisan, [audio interference] so we can get Tennessee solutions for Tennesseans?

**Senator Yarbro:** No.

[laughter]

I don't want to be unkind because I do think there are ways in which we can. So last year, when we passed the Legal Exchange Bill,[23] which would be unthinkable ideologically, because I think people feel the opioid epidemic happening very personally in their communities and know people that are dying. When we as law makers, most people who do this are well intentioned and want to help people, and as long as the issue doesn't get lost in what I like to call the MSNBC/Fox News vortex we're actually capable of doing good things. But we live in a world where the MSNBC/ Fox News vortex grows every day, where now whether I say "Merry Christmas" and whether I stand in my living room to watch the National Anthem during the Super Bowl has become super-charged politics. So it's harder to separate out those issues that feel like they're state and local issues from that partisan overlay. But I think that's the challenge, not just for people like Jeremy and me, but for everyone in the room and everybody in the state.

[23] S.B. 2359, 110th Gen. Assemb., Reg. Sess. (Tenn. 2018)(amending Tenn. Code Ann. § 68 to authorize county or district health departments to operate a needle and hypodermic syringe exchange program on petition of the county legislative body and approval by the department of health).