



THE ACA AND ITS DISCONTENTS
Matthew B. Lawrence

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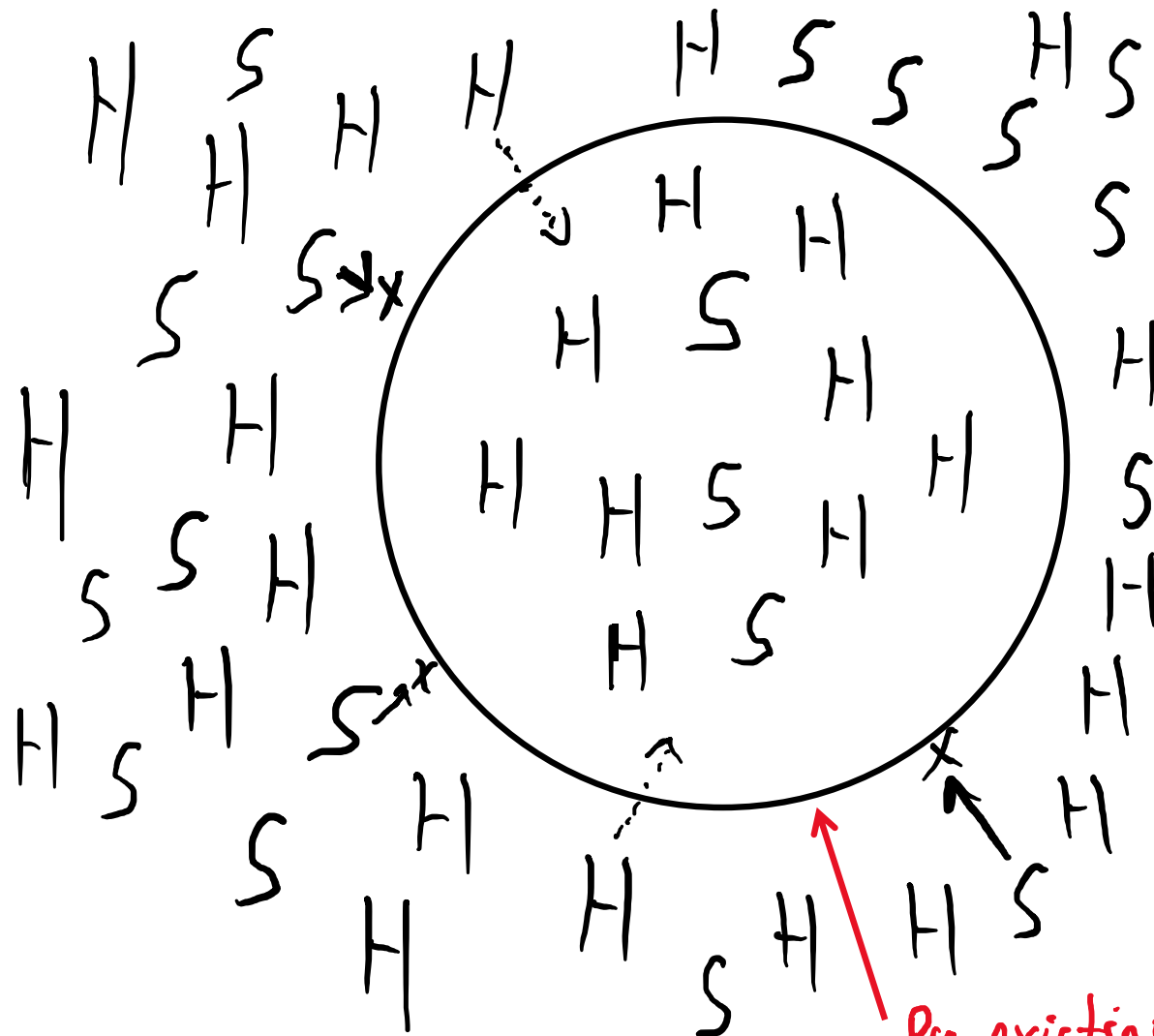
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National Council of Insurance Legislators

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Roadmap:

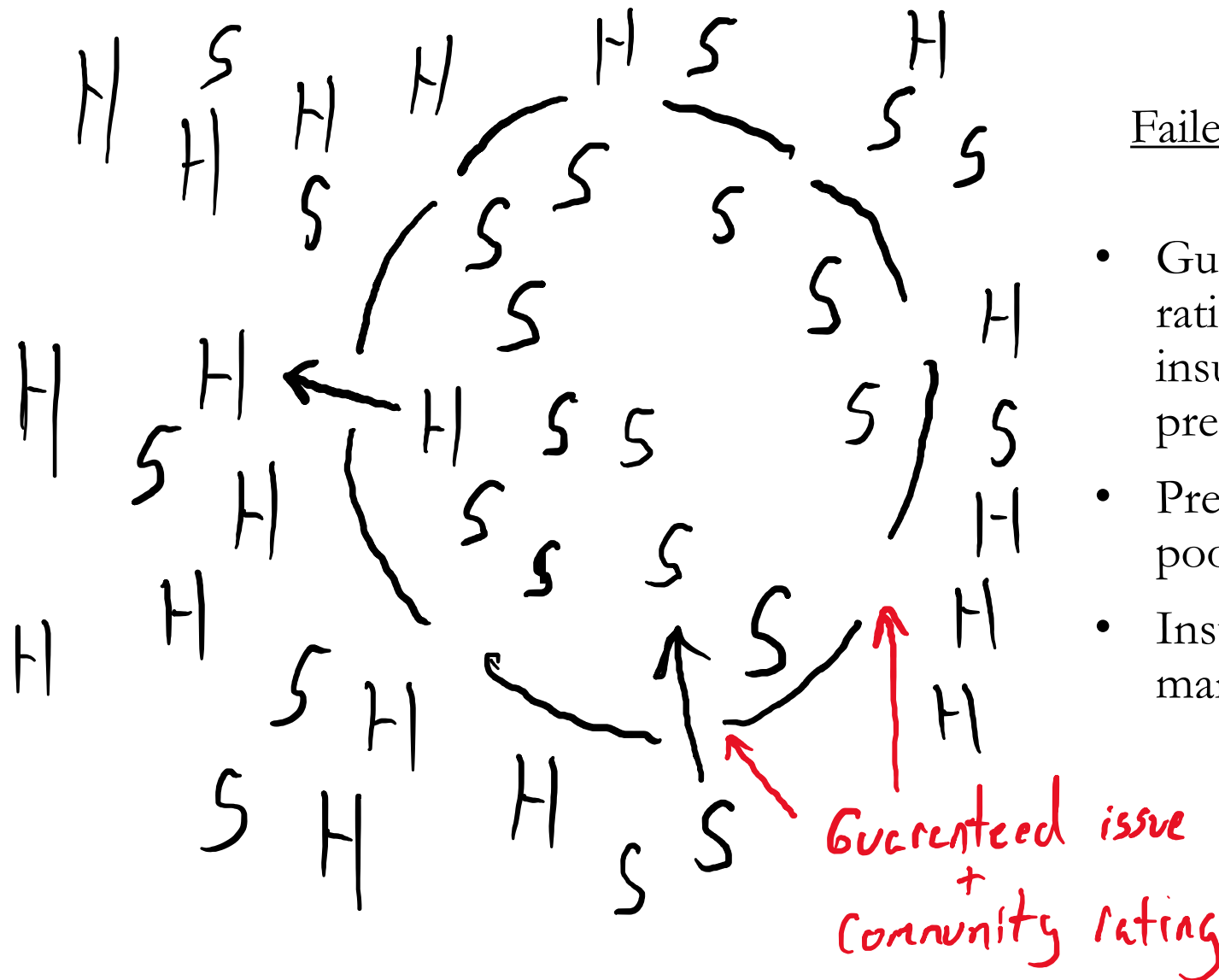
- ACA past (uninsurance and job lock)
- ACA present (controversy and complexity)
- ACA future (Waivers, Texas litigation, Medicare for All)



Pre-ACA: Balanced risk pool but many uninsured

- Sick are unable to purchase insurance (or pay high premiums) due to pre-existing condition exclusions and premium under-writing
- 44 million uninsured create problems
 - Access/Inequality
 - Uncompensated care
 - Financial distress
 - Job lock

Pre-existing condition exclusion
premium under-writing

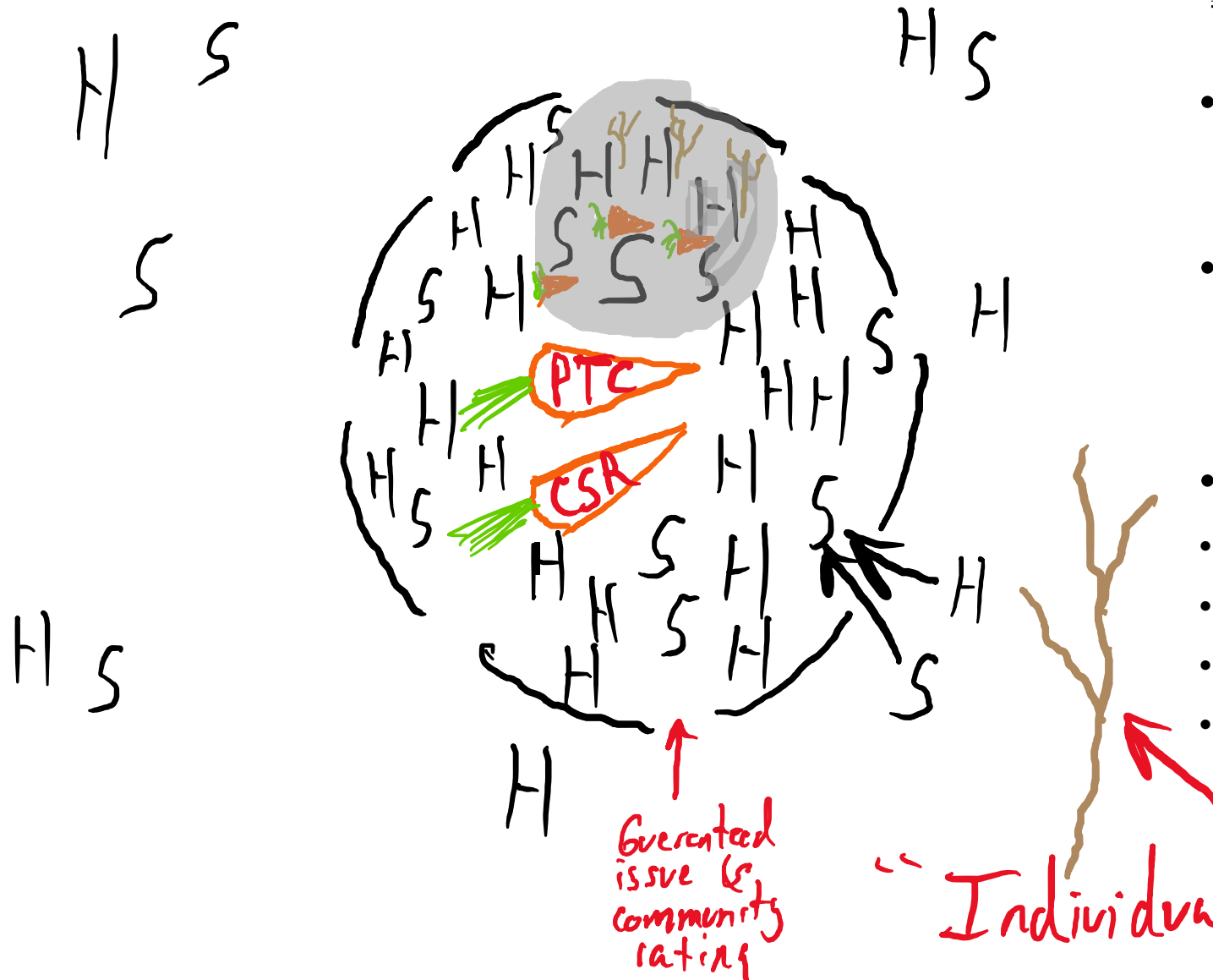


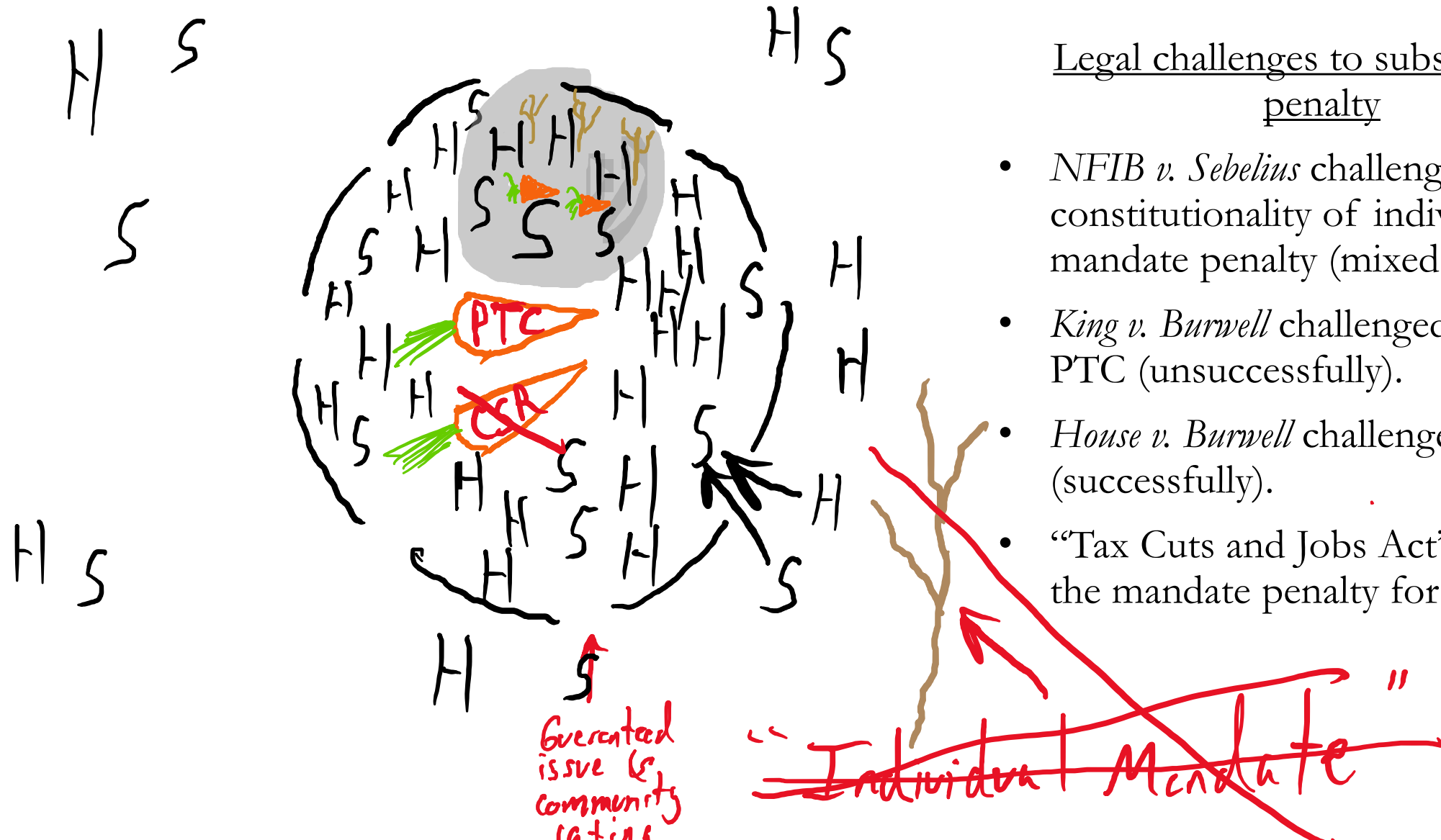
Failed State Reform Experiments—
Soaring premiums

- Guaranteed issue and community rating rules entitle sick to purchase insurance at any time and pay same premiums as healthy
- Premiums soar as healthy leave risk pool
- Insurance is unaffordable even for many sick individuals

ACA: Carrots and stick balance risk pool to limit premium growth

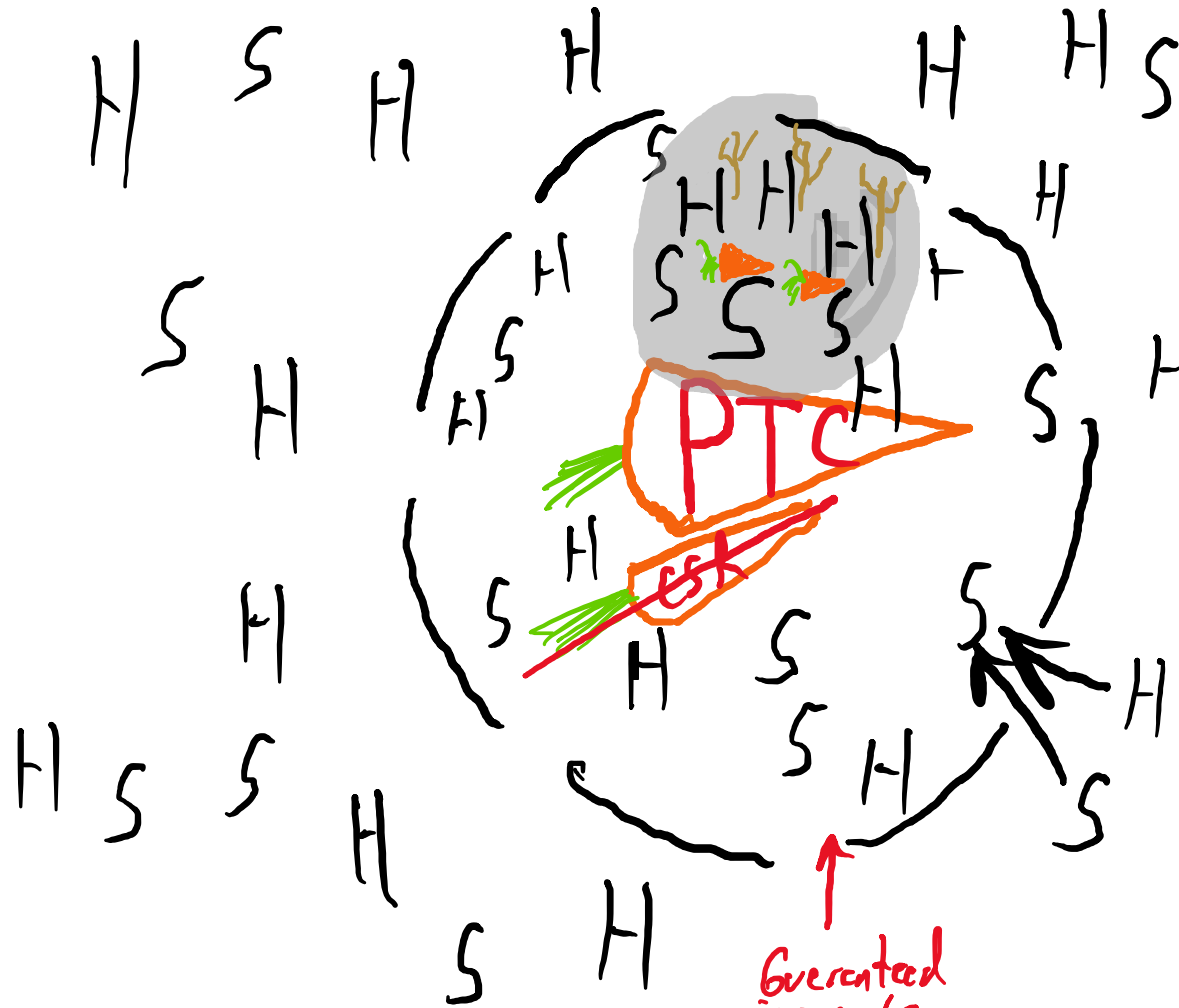
- Guaranteed issue and community rating rules entitle sick to purchase insurance at any time.
- Subsidies for those who purchase insurance and penalty for those who do not encourage enrollment by healthy
- “QHP” and Exchange.
- PTC (carrot)=Premium tax credit subsidy.
- CSR (carrot)=Cost sharing reduction subsidy.
- (stick) = Individual mandate penalty.
- (tiny carrots and sticks) = Risk adjustment





Legal challenges to subsidies and penalty

- *NFIB v. Sebelius* challenged constitutionality of individual mandate penalty (mixed success).
- *King v. Burwell* challenged legality of PTC (unsuccessfully).
- *House v. Burwell* challenged CSR (successfully).
- “Tax Cuts and Jobs Act” repealed the mandate penalty for 2019

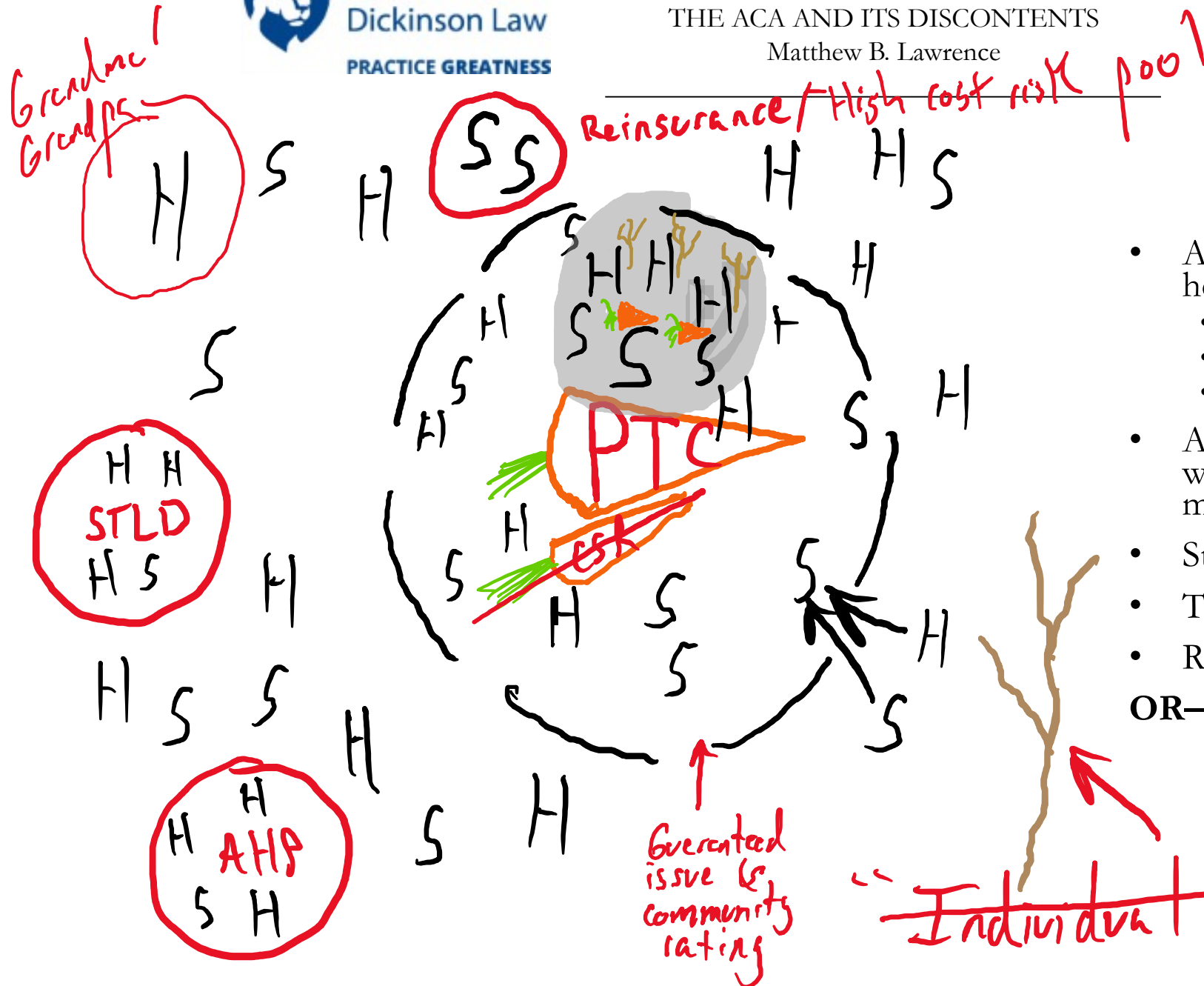


↑
Guaranteed issue & community rating

↑
"Individual Mandate"

Future? Magic growing carrot protects the low income at taxpayer expense

- Premium tax credit amount is based on cost of premiums
- 83% of enrollees in 2016 received PTC (<\$47k for individual, \$97k for family of four)
- As individual mandate repeal and CSR cut-off drive up premiums, taxpayers will pay difference
- Low-income who receive PTC are insulated, others are not



Future—Administrative?

“Technocratic tinkering”

- Administrative low risk pools draw healthy out of marketplace
 - Short term limited duration plans (STLD)
 - Association Health Plans (AHP)
 - Grandma and Grandpa
- Administrative reinsurance/high risk pool waivers under 1332 reduce premiums in marketplace
- State mandates?
- Transformative 1332 waivers (Georgia)?
- Risk adjustment changes

OR—Judiciary destroys (Texas)?

Individual Mandate

Future—Federal legislation?

Original Medicare for All

Medicare Advantage for All?

Public option

Expanded state waiver flexibilities

State considerations

Coordination with federal

Implications for state budgets? (Part D clawback precedent and maintenance of effort)

Can states mitigate endless uncertainty?

Questions?

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Further reading?

[Disappropriation](#), 120 COLUM. L. REV. ____ (forthcoming 2020)

[Health Insurance's Social Consequences Problem and How to Solve It](#), 13 HARV. L. & POL'Y REV. 593 (2019)

[Regulatory Pathways to Promote Treatment for Substance Use Disorder or Other Under-Treated Conditions Using Risk Adjustment](#), 46 J. L. MED. & ETHICS 935 (2018)