



Rules Are For The Little People, Not Cabinet Secretaries

by Hans Bader on September 17, 2012 ·

Kathleen Sebelius, the Secretary of Health & Human Services, violated the Hatch Act by engaging in partisan politics at a “taxpayer-funded public event.” But this political appointee is not getting punished, much less receiving the “statutory minimum penalty” for violations of the Act, namely “30 days’ suspension without pay.” (Generally, a greater penalty than that is required; firing is required unless “the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal.”) Ordinary civil servants have been terminated, or received 120-day suspensions without pay, for infinitely less serious offenses, like sending an email supporting a political candidate.

Sebelius has shown contempt for the law before, such as by flouting the First Amendment. Sebelius unconstitutionally attempted to silence insurers that disclosed how Obamacare was driving up health insurance premiums. Prior to that, Sebelius attempted to gag insurers from disclosing how Obamacare harms Medicare Advantage participants, drawing criticism from First Amendment experts like UCLA law professor Eugene Volokh. Obamacare has already caused sizeable hikes in insurance premiums for some policyholders.

Meanwhile, Obama’s HHS has ordered insurers to disclose how one provision of Obamacare results in small rebates to policyholders, while preventing them from disclosing how other provisions result in far larger increases in their health insurance costs and premiums (a politicized double standard that obviously “raises First Amendment concerns,” noted the *Richmond Times-Dispatch*).

The Obama administration’s attempt to gag insurers from disclosing how Obamacare increases costs to policyholders violates federal court rulings like *Bellsouth v. Farris*. That court ruling struck down a law banning phone companies from listing on their phone bills a line-item charge breaking out the cost of a new state tax, even though it was technically the phone company, not the customer, that was liable for the tax, since the company argued that the tax increased the cost it ultimately charged the customer. The court ruled that businesses have the First Amendment right to publicize the costs of government mandates to consumers. The Obama administration’s requirement that insurers attribute rebates to Obamacare was criticized on First Amendment grounds by constitutional lawyers like the Cato Institute’s Ilya Shapiro.

The Administration's contempt for the Hatch Act is mirrored by its politicized hiring for Justice Department legal positions (all 113 hires in the Civil Rights Division were staunch liberals, partisan hiring that violates the First Amendment and the Supreme Court's Elrod-Branti line of cases), and other acts in which it thumbed its nose at the law, such as its claiming the power to waive the legally-unwaivable work requirements in the 1996 welfare-reform law, and its circumvention of bankruptcy-law rules to rip off bondholders, pension funds, and non-union retirees in the auto bailouts, which discouraged future private investment in American manufacturing. (The auto bailouts' wasteful costs were masked by U.S. automakers' temporary gains due to the Japanese earthquake and Thai floods, which so damaged the Japanese automakers that GM temporarily regained its status as the world's number one automaker, only to be surpassed recently by Toyota as it recovered from the earthquake and floods.)