

So This Is Freedom? They Must Be Joking.



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Amid protests from the nation's governors over the costs of President Barack Obama's [still-unpopular](#) health law, often known as [ObamaCare](#), the president announced last week he is willing to give states more flexibility to implement it. As proof, he endorsed a [bill](#) by Sens. Ron Wyden, D-Ore., and Scott Brown, R-Mass., that would in fact do just that.

If you think that means the president was himself exhibiting flexibility, you would be wrong. Despite the rhetoric about compromise, what the president actually did was offer states the option of replacing his law with a single-payer health care system three years earlier than his law allows.

ObamaCare already allows states to apply for a five-year "waiver for state innovation." If the secretary of Health and Human Services approves the waiver, then in 2017 a state can use the subsidies its residents would have received to launch its own approach to reform. The Wyden-Brown bill simply moves that date up to 2014.

Echoing the law's [supporters](#), industry analyst Robert Laszewski called Obama's endorsement a "[put up or shut up](#)" moment for opponents, who must now either prove that their reforms perform better or quit their complaining.

If only.

Any waiver process that amends federal laws on a state-by-state basis -- such as [proposal](#) advanced in 2006 by the Brookings Institution and the Heritage Foundation, and introduced as legislation by then-Sen. George Voinovich, R-Ohio, and still-Sen. Jeff Bingaman, D- N.M. -- will inherently favor big-government proposals over free-market reforms. For example, states seeking more-coercive approaches would have an easy time meeting whatever performance metrics the federal government sets. They can simply ramp up the mandates and subsidies until coverage levels or health plan offerings meet the targets. Since a free market caters to consumers' preferences, which may deviate from the government's performance metrics, it would be far more difficult to get free-market approaches approved or renewed.

Constitutional constraints would also block free-market reforms. Any effort to reduce health care costs using market forces would have to reform the federal [tax exclusion for employer-sponsored insurance](#)

and the [Medicare](#) program's method of subsidizing coverage. Altering the payroll-tax treatment of health insurance in some states but not others would run afoul of [Article I, Section 8](#): "all ... Excises shall be uniform throughout the United States." Allowing states and HHS to rewrite the tax code or the Medicare statute would run afoul of Article I, Section 1: "all legislative powers ... shall be vested in a Congress of the United States."

ObamaCare goes the extra mile by only permitting approaches that are more coercive than itself. Its waiver provisions only apply to that law's private-insurance provisions, and [require](#) states to preserve the law's price controls prohibiting health rating, to cover the same number of people, and to provide coverage as comprehensive and subsidies as large as the new law does. These restrictions completely bar free-market reforms.

For example, if you ask me, a free market could cover as many people as ObamaCare. (At a minimum, it would provide better access to care. I'll save the "how" for another column.) But imagine trying to demonstrate that a free market -- where the idea is generally to let people spend their own money on as much or as little health insurance as they please -- would cover as many people as a law that forces them to buy coverage under penalty of law. A government that believes it had to use coercion to reach that baseline is unlikely to certify that freedom will do the same.

The New Republic's Jonathan Cohn agrees, [writing](#) that Wyden-Brown "wouldn't allow [Republicans] to enact the sorts of health care reforms they would prefer." Moreover, "Virtually any workable state system relying primarily on private insurance would end up looking something like the scheme envisioned by the overhaul: Prohibiting insurers from discriminating against the sick, compelling people to obtain insurance and then providing subsidies so that everybody could afford coverage."

The only reason to apply for a waiver would be if governors wanted to ramp up the coercion to establish a single-payer health care system. Only in Washington is it considered an act of political compromise when the president encourages people who don't like his policies to adopt policies they like even less.

HHS Secretary Kathleen Sebelius has written that ObamaCare gives states "[incredible freedom](#)" to implement the law. We now know what she meant: states are free to coerce their residents even more than ObamaCare requires. What's incredible is that she calls that freedom.

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