Obamacare Can't Be Fixed

And now is the time to dismantle it

BY MICHAEL F. CANNON

At the 2011 Conservative Political Action Conference, Indiana governor Mitch Daniels observed that to turn the United States into a European-style social democracy, the Left "need only play good defense. The federal spending commitments now in place will bring about the leviathan state they have always sought. The health-care travesty now on the books will engulf private markets and produce a single-payer system or its equivalent, and it won't take long to happen." We even know the drop-dead date: Jan. 1, 2014. That's when Obamacare takes full effect, and it's less than three years away.

On that date, the feds will compel you to purchase health coverage, dictate the content of that health insurance, slap government price controls on it, and begin handing out hundreds of billions of dollars in new entitlement spending. The relatively minor provisions of the law that have taken effect to date are already killing jobs, increasing premiums and taxes, reducing take-home pay, causing private-insurance markets to collapse, and throwing Americans out of their health plans. Yet today's cost increases and other dislocations will look like the good old days compared with what Americans will suffer when—*if*—they allow Obamacare to take full effect. The nonpartisan Congressional Budget Office projects, for example, that Obamacare will permanently eliminate 800,000 jobs by 2021. That's not to mention any temporary job losses.

Even more ominous: Obamacare is already creating constituencies dedicated to its preservation. For months, the Obama administration has been writing checks to states, seniors, and employers, and trumpeting the implicit subsidies that flow from the law's price controls, all with the goal of protecting Obamacare by making more and more people dependent on it.

Such efforts have so far failed to make the law popular. Polls still show that a majority or plurality of the public opposes the law, as has been the case since the first draft of Obamacare was introduced in Congress in June 2009. The latest Rasmussen poll finds that 84 percent of Republicans and 59 percent of independents favor repeal. Not even the $250 checks that the legislation is sending seniors have won them over: The latest Kaiser Family Foundation poll shows that their opposition is now higher than at any point since enactment (59 percent).

That will change if Obamacare is still on the books in 2014. Tens of millions of Americans will begin to receive thousands of dollars each in government subsidies, whether through an expanded Medicaid program or Obamacare's new health-insurance "exchanges." Medicare's chief actuary predicts that these state-based exchanges will slowly crowd out other private coverage (such as through employers) until "essentially all" Americans get their health insurance through them. Just as important, whatever private insurance companies are still standing in 2014 will begin enrolling tens of millions of customers through the same channels. With boots on the ground and deep pockets, these two constituencies will quash any effort to eliminate their new subsidies. Public opinion may even turn in favor of the law—not because Obamacare works, but because tens of millions of people will be dependent on it for their health insurance.

What this means is that opponents may never have more power to chart Obamacare's course than they do right now. In particular, the decisions that federal and state officials make today could determine whether the 2012 elections produce a Congress and president who are willing to repeal the law.

In other words, the iron is hot.

Congressional Republicans appear to grasp the weight of this moment. They are doing everything they can to ensure that Obamacare never sees the year 2014: forcing votes on repealing and defunding the law, and undertaking a two-year campaign to expose its harmful effects. Unfortunately, their efforts are being undercut by their friends back home.

Rather than beat their plowshares into swords, Obamacare opponents in most state capitols are laying the bureaucratic foundations for the law's new entitlement spending and lending it legitimacy by accepting its debt-financed federal grants. Secretary of Health and Human Services Kathleen Sebelius boasts that 48 states have already accepted at least $1 million each from the federal government to help them plan their exchanges.

It's not just Democrats who have taken the money. Wisconsin governor Scott Walker has won plaudits for staring down government-worker unions and returning a $637,000 Obamacare grant. Yet Walker accepted a $38 million Obamacare grant to help get Wisconsin's exchange up and running. Kansas governor Sam Brownback voted against Obamacare when he was in the U.S. Senate. Yet he has accepted a $32 million Obamacare grant and is allowing his Republican insurance commissioner, Sandy Praeger, to forge ahead with creating a Kansas exchange.

Wisconsin and Kansas are two of the 26 plaintiff states in *Florida v. HHS*, the case in which a federal court ruled that Obamacare is unconstitutional and void. In response to that ruling, Walker's attorney general, J. B. Van Hollen, declared the law "dead" in Wisconsin, a reality no less true in the other plaintiff states. Yet Brownback and Walker accepted their $30 million–plus Obamacare grants *after* the ruling. Some governors, including Idaho Republican Butch Otter, have said that the fact that they are accepting Obamacare grants and holding exchange-planning meetings does not mean they have decided to create an exchange. But taking the money lends legitimacy to a law that Otter himself is suing to overturn as unconstitutional. To date, only two governors—Florida's Rick Scott and

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Alaska's Sean Parnell, both Republicans—have refused to accept any Obamacare money or create any Obamacare bureaucracies.

While Obamacare takes a beating in Congress, the federal courts, and the court of public opinion, why are so many opponents acting as its agents? Some state officials say they are hedging their bets. "Some legislators think the state version of the exchange is their only option, even if they don't want it," explains Twila Brase, president of the Minnesota-based Citizens' Council for Health Freedom. "They think the federal exchange is an absolute certainty and that they'll have more power over it if it's a state-built exchange." But that rationale rests on the false premise that Obamacare can be fixed, or its damage mitigated, if it is implemented the right way.

Obamacare confronts states with a veiled Hobson's choice. The law provides that in 2014, each state will have its own health-insurance exchange where individuals who don't have job-based coverage may purchase a federally regulated and subsidized (but "private") health plan. States that develop and obtain federal approval of an exchange blueprint by 2013 may administer their own exchanges in 2014. In states that choose not to create an exchange, HHS will step in to create and administer one.

The veil is the assurance that states will be able to tailor their exchanges. Sebelius audaciously claims that Obamacare "is built on the belief that states understand their health-insurance markets better than anyone else. As such, it puts the states in the driver's seat to lead the process." Other supporters have sought to frighten Republican governors into implementing the law by holding out the nightmare scenario of the federal government's administering the exchanges. Who *administers* the exchanges, however, is unimportant. What counts is who writes the rules that govern them. Those rules will be written entirely in Washington.

Unfortunately, many Republican governors have taken the bait. "We cannot let the insurance exchange default to federal control," says a spokesman for Ohio governor John Kasich, "so we are moving forward with the planning that is required to make the exchange work best for Ohio." A spokesman for Georgia governor Nathan Deal put it more forcefully: "The state cannot halt midstream, because that would be irresponsible. It would put us too far behind if our litigation is not successful in the end." But federal control is not just the exchanges' default setting—it's the only setting.

In a February 24 letter to the nation's governors, Sebelius extolled the four types of flexibility that Obamacare allows states in shaping their exchanges: 1) States can restrict insurers from participating; 2) states can add even more benefit mandates than Obamacare requires; 3) come 2017, states can opt out of Obamacare by creating a single-payer health-care system; and 4) states can adopt their own "governance structure" and "operational philosophy." In sum, states can impose harsher regulations than Obamacare requires and can choose who sits on their exchange's board. That's it. The only additional latitude the Obama administration has offered came when President Obama told the National Governors Association that he is open to letting them launch single-payer systems in 2014 rather than 2017. (Vermont governor Peter Shumlin is champing at the bit.) States already had all these powers, of course, and would continue to possess them if Obamacare were repealed tomorrow. What states need, and Obamacare denies them, is the power to remove the law's harmful regulations, which will block market competition and cost-saving innovations.

Running their own exchanges won't empower states to prevent both the most economical and the most comprehensive health plans from disappearing from their markets. Affordable plans will disappear because Obamacare requires all purchasers to buy whatever coverage Sebelius mandates as "essential," a definition that will grow ever broader, as such definitions always do. The law's price controls will require insurers to charge everyone of a given age the same premium, regardless of whether an actuarially fair premium might be $5,000 or $50,000. Even state-run exchanges would see comprehensive health plans crumble under the weight of too many patients who cost $50,000 but pay far less. Nor can state-run exchanges prevent other dimensions of quality from eroding. Even in state-run exchanges, the sickest patients would struggle to get their claims paid by insurers who are trying to avoid, mistreat, and dump them, because that is what Obamacare's price controls reward.

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States that run their own exchanges will likewise be powerless to prevent HHS from loading health-savings-account (HSA) plans down with mandated benefits. They will have no power to save HSAs from Obamacare's "medical-loss ratio" and "minimum actuarial value" requirements, both of which threaten to destroy health savings accounts.

Twenty-one Republican governors recently told Sebelius that she should prepare to administer their states' exchanges unless HHS 1) provides them "complete flexibility" in running their exchanges; 2) waives all of Obamacare's benefit mandates; 3) waives the provisions that threaten HSAs; and 4) gives states "blanket discretion" to move non-disabled Medicaid enrollees into the exchanges. There is zero chance that Sebelius will accede, because she cannot. Granting the first three demands would mean repealing most of Obamacare's central requirements: the price controls on health insurance, the individual mandate, and the medical-loss-ratio requirements, for starters. That would require an act of Congress. Obamacare vests vast discretionary power in the HHS secretary, but not this much.

And even that act of Congress would not fix Obamacare. The new entitlement spending, in Medicaid and the exchanges, would begin flowing in 2014 as scheduled. The law would still impose an enormous unfunded Medicaid mandate on states. My colleague Jagadeesh Gokhale estimates that New York State would get hit the hardest, being forced to shell out an additional $66 billion over the first ten years. Indeed, the "blanket discretion" these governors seek to move Medicaid enrollees into the exchanges, aside from being a fairly shameless ploy to shift the cost of their Medicaid programs to taxpayers in other states, would entrench Obamacare by making millions of current Medicaid enrollees dependent on the exchange subsidies.

Sebelius's official response to the governors was, effectively, "Drop dead." Having received this answer, the 21 governors should stick to their guns and join Scott and Parnell by refusing any additional Obamacare funds, returning the funds they have heretofore received, and declaring that they will not create any Obamacare exchanges. Brase argues that such a move might doom the exchanges because HHS likely cannot create that many without the help of state officials. "The future is uncertain about a federal exchange," she explains. "Why should we do the feds' work when they might never achieve the exchange without our help?"

There is simply no rationale for implementing an exchange that stands up to scrutiny. Some governors have indulged the fantasy that they can create a *better* exchange, one that does not comply with Obamacare. It's an audacious stratagem. But ask yourself: What insurance company will participate in an exchange that flouts federal law? Before you answer, remember that the federal government is some insurance companies' largest customer.

And remember that every new bureaucracy is itself a constituency for more government.

It would be better that states not create exchanges at all. "Anytime you can keep a government from setting up any bureaucracy of any sort," writes Charlie Arlinghaus of New Hampshire's free-market Josiah Bartlett Center for Public Policy, "it is a victory."

There is no good way, or even a less-bad way, for states or the feds to implement Obamacare's exchanges or other central elements. Permitted to stand, Obamacare will reduce Americans' incomes, harm their health, and decrease their freedom. The only way to fix it is to demolish it.

"Collaboration in setting up exchanges only encourages the corporate interests who will profit from them and sends a signal that 'repeal and replace' is not serious," writes the Pacific Research Institute's John R. Graham. Rather than spend any time, money, or energy creating constituencies for Obamacare, Graham writes, "we have to discourage implementation, totally and immediately."

In *The Bridge on the River Kwai*, the British POW Colonel Nicholson recognizes that his collaboration with his Japanese captors was madness, and gives his life to undo it. State lawmakers need to have a similar epiphany about Obamacare, before things reach the point where correcting their mistakes will cost them their political lives. Unlike soldiers, politicians aren't into self-sacrifice. **NR**

REAL Marriage

A reply to Jason Steorts

BY SHERIF GIRGIS

It's the fall of 2006. John Partilla, an Upper West Side advertising executive, meets Carol Anne Riddell, a local news anchor. Like-minded and both brimming with energy, they hit it off; within five years, they're exchanging vows. But when the *New York Times* covers their wedding, it sparks a blaze of controversy. Why?

Partilla and Riddell were already married when they met—at their children's pre-kindergarten. In fact, their families became friends. But rather than "deny their feelings and live dishonestly," they decided to abandon their spouses and children. As the *Times* put it, "All they had were their feelings, which Ms. Riddell described as 'unconditional and all-encompassing. . . . It was a gift . . . but I had to earn it. Were we brave enough to hold hands and jump?'"

Just days before Partilla and Riddell's story appeared in the *Times*, Robert P. George, Ryan T. Anderson, and I posted online an article to be published in the *Harvard Journal of Law and Public Policy* defining and defending what we called the "conjugal view" of marriage, according to which marriage is inherently the union of one man and one woman. We showed how redefining civil marriage to include same-sex romantic partnerships would speed the cultural currents that led Partilla and Riddell to "jump," and thus seriously harm the common good. Recently in these pages ("Two Views of Marriage," Feb. 7), Jason Steorts published a counterargument that, while not mentioning Riddell and Partilla, amounts to a brief in their defense.

That counterargument is false in almost every dimension. Steorts builds a faulty theory of marital love on a confused account of the human person. He construes marriage as "maximal experiential union"—a goal that, to the extent that it is intelligible at all, would put undue strain on spouses, obscure the value of norms specific to marriage (like permanence and exclusivity), and bulldoze the topography of non-marital relationships. It would thus tend to undermine the marriage culture, and with it the welfare of spouses and children. But it would also affect the unmarried, by obscuring the special value and social prestige of other forms of intimacy. Steorts's view, imbued with sentimentalism, is in fact less humane than the view it would displace.

Steorts wrote his argument with enough acuity to flag certain common philosophical errors, but not enough care to *avoid*

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