

Forbes

Save The Knives For ObamaCare: Four Ways To Actually Defund The ACA

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10/18/2013

So, a band of tea-party Republicans led by Senators Ted Cruz (TX) and Mike Lee (UT) – and backed by groups like FreedomWorks, Heritage Action, and Club for Growth – pushed a risky strategy to defund ObamaCare that led to a partial government shutdown. As a logical matter, President Obama and Senate Democrats were equally culpable for the shutdown; they could have avoided it by approving one of the House-passed bills that funded the government while amending the president's health care law. But that was unlikely. The media and public saw the GOP as more culpable, and the GOP caved. ObamaCare glided away [unscathed](#).

Then came the inevitable recriminations between “defunders” and their detractors. If I may paraphrase and/or embellish: [The shutdown was a failure! No it wasn't! You're stupid! You voted for ObamaCare!](#) Each camp blames the other for the outcome, and for not being sufficiently devoted to fighting ObamaCare.

Oy.

To put my cards on the table, as a [median-voter-theorem enthusiast](#) who opposed the defund strategy before I supported it, I think it's too soon to judge whether it was a failure. As of today, it has produced no gains, and ObamaCare opponents saw their poll numbers slip.

On the other hand, ObamaCare justifies drastic measures. Opponents spent political capital taking a principled stand against a law whose roll-out has been a [two-week-long train wreck](#). Even die-hard supporters like Ezra Klein have called it a “[disaster](#).” Former Obama press secretary Robert Gibbs has said [heads should roll](#), and [nobody knows](#) whether the administration can get its act together before the health insurance “Exchanges” crater. If it can't, the defund strategy will make *all* ObamaCare opponents appear prescient.

Finally, no one has focused on an undeniable success of the shutdown: for one brief, shining moment, my paycheck was larger than my wife's.

In the end, the defund strategy may prove to be a disaster. Or helpful. As the Zen master said, we'll see.

What's clear is that the recriminations are unwisely distracting ObamaCare opponents from adding momentum to strategies that are *already* defunding the law. Here are four things opponents would be better off doing than fighting among themselves:

1. Stop Medicaid expansion in the states.

[As envisioned by the ObamaCare's authors](#), the Medicaid expansion would account for roughly half of the law's \$2 trillion of new entitlement spending over the first 10 years. After the Supreme Court [blocked](#) Congress' attempt to coerce states into implementing it, however, 25 states refused to do so.

As a result, those states have already defunded almost a quarter of ObamaCare's new entitlement spending. They are also helping to increase dissatisfaction with the law among hospitals and other providers, who now won't be receiving the subsidies they were promised in return for their support.

If Cruz, Lee, FreedomWorks, Heritage Action, Club for Growth and the rest really want to defund ObamaCare, they should be [fighting to block the Medicaid expansion](#) in the 25 states that have already authorized it. Wanna squash Republicans who are soft on ObamaCare? Come visit Ohio, where Gov. John Kasich (R) has all but claimed that [God wants](#) Ohio to expand Medicaid, and is literally [trying](#) to do it without the support, and over the objections, of the legislature.

2. Get states, employers, and citizens to challenge the IRS's illegal ObamaCare taxes.

ObamaCare authorizes Exchange subsidies [only through state-established Exchanges](#), not the 34 Exchanges created by the federal government. As a result, those 34 states that refused to establish Exchanges by law have defunded a further one-third of that \$2 trillion dollars. Since those subsidies trigger penalties under both the employer mandate and individual mandate, those states have by law also exempted all of their employers and about [8 million individual residents](#) from those penalties.

Unbelievably, contrary to the clear language of the statute and congressional intent, the IRS is trying impose those taxes and issue those subsidies in those 34 states anyway. The IRS is literally trying to tax, borrow, and spend *more than \$700 billion without congressional authorization* – a more egregious example of taxation without representation than the Stamp Act.

State attorneys general, employers, and individual taxpayers have so far filed four lawsuits challenging those illegal taxes. A federal judge has [rejected](#) the Obama administration's attempt to dismiss the challenge filed by Oklahoma attorney general Scott Pruitt. More than a dozen Indiana school districts [filed suit](#) alongside that state's attorney general Greg Zoeller. A federal court in Washington, D.C., will hear oral arguments on [another challenge](#) on Monday.

s National Review [editorializes](#):

Republicans may not have a great deal of power in Washington, where they control, in John Boehner's words, one half of one third of the federal government; but we have 50

states for a reason, and Republican governors lead 30 of them. Republican governors, attorneys general, and state legislators looking to use their offices to the significant benefit of the nation as a whole should be lining up to create a 30-state united front with Oklahoma. Scott Pruitt is fighting for the rule of law, and Republican governors might trouble themselves to give him a hand.

If anti-ObamaCare groups really want to defund the law, they should get governors, attorneys general, employers, and their own members to file additional challenges.

3. Educate states about how to block the IRS's illegal taxes legislatively.

The 34 states that have refused to establish Exchanges can actually block the IRS's illegal ObamaCare taxes legislatively by [suspending the licenses](#) of insurers that accept the illegal subsidies. Since no insurer would then accept one, not a single employer in the state could be hit with the employer-mandate penalties those subsidies trigger.

Legislators in [Ohio and Missouri](#) have already introduced legislation based on draft language I offered in my Cato study "[50 Vetoes](#)." The American Legislative Exchange Council has given this "Health Care Freedom Act 2.0" its seal of approval and offers [its own model legislation](#).

4. Urge House investigators to subpoena all materials related to the IRS's illegal taxes.

The House Committees on [Oversight & Government Reform](#) and [Ways & Means](#) have been investigating the IRS's illegal taxes for [more than a year](#). This August, House Oversight committee chairman Darrell Issa (R-CA) asked an IRS witness:

Where the hell is the paper on that?... Where's the analysis? Congress doesn't agree with you, at least the House of Representatives, that your rule is consistent with the law. We asked for the analysis. You've stonewalled us... Where are the notes, recommendations, [and] analysis that we asked for?

Issa called the IRS representative "[pretty close to a useless witness](#)" and [threatened](#) that if the agency is not forthcoming, "Not only will I issue a subpoena, but I'm going to have to do a lot more." Here's the [video](#):

Yet the Treasury department has still refused to hand over many emails and other communications that, according to my source, show the IRS did almost no analysis of the law before deciding to tax, borrow, and spend \$700 billion without congressional authorization. If ObamaCare opponents want to defund the law, they should urge Issa to follow through on his threat to issue a subpoena, and "do a lot more."

A good test of whether defunders or detractors are more committed to stopping ObamaCare will be which side is the first to put away the knives and get to work.