

All Governors Should Just Say No To ObamaCare



TOPICS: [HEALTH REFORM](#), [POLITICS](#)

MICHAEL F. CANNON, Director of Health Policy Studies at the Cato Institute

FEB 22, 2011

[View all previous columns »](#)

So far, two Republican governors – Florida's Rick Scott and Alaska's Sean Parnell – have announced they will implement no part of ObamaCare. In the interest of both principle and practicality, the other 48 governors should follow their lead.

Governors are understandably confused about their obligations under ObamaCare. When federal Judge Roger Vinson [declared](#) last month in *Florida v. HHS* that the entire law was unconstitutional, he apparently wasn't clear enough about what his ruling meant.

Vinson granted "declaratory relief" to the plaintiffs, who include 26 states, the National Federation of Independent Business (which represents small businesses) and two individual citizens. Though he did not issue a formal injunction forbidding the federal government to implement or enforce the law, Vinson wrote that declaratory relief is the "functional" and "practical equivalent" of an injunction. Declaratory relief, Vinson wrote, "is adequate and separate injunctive relief is not necessary."

The Obama administration disagrees, and last week [asked](#) Vinson, essentially, "Didn't you *really* mean that we can keep implementing and enforcing the law while we appeal your ruling?"

We may not learn Vinson's answer for weeks, and even then ObamaCare's legal status won't be resolved until it reaches the Supreme Court a year or more from today. Yet governors have to decide what to do *right now*.

Choosing the right course of action is simple for governors who believe ObamaCare is unconstitutional. Every governor takes an oath to support the U.S. Constitution. Implementing a law they believe to be unconstitutional would violate that oath.

At a minimum, then, governors who believe ObamaCare is unconstitutional have a solemn obligation *not* to implement it. Parnell wisely sought [counsel](#) from his attorney general about whether implementing ObamaCare would violate his oath of office. But if Parnell personally believes the law is unconstitutional, then that should tell him what he needs to know.

Swearing an oath to support the Constitution also obligates governors to use lawful means to

prevent its unlawful abuse. Governors who believe ObamaCare to be unconstitutional are as duty-bound to stop implementing the law as they are to challenge it in court.

Georgia Gov. Nathan Deal (R), who is among the Florida plaintiffs, disagrees. His spokesman [said](#) that refusing to implement ObamaCare "would put us too far behind if our litigation is not successful in the end." But implementing ObamaCare entrenches the law's countless subsidies, regulations, and bureaucracies, meaning that Deal himself is making it harder to discard a law that he considers unconstitutional. With friends like that, the Constitution hardly needs enemies.

Deal and 20 other governors recently sent a [letter](#) to HHS Secretary Kathleen Sebelius, complaining of ObamaCare's "constitutional infringements" and requesting greater flexibility to implement it. Since (by design) there is zero chance that Sebelius will accede, those governors should flatly refuse to implement any part of the law. They won't be alone.

Last week, Parnell [announced](#), "The state of Alaska will not pursue unlawful activity to implement a federal health care regime that has been declared unconstitutional by a federal court."

Many reporters missed the fact that Parnell is the second governor to take this stand. Shortly after taking office, Scott [declared](#) he will not implement the law until the Supreme Court considers the matter. "[The court] called it unconstitutional," Scott recently [told](#) an audience of Floridians. "We're not going to put *any* effort into implementing that, and I think every other state ought to do the same thing."

One of Scott's first acts as governor was to [return](#) \$2 million that the Obama administration gave his predecessor, Gov. Charlie Crist (R), to help implement the new law. (Disclosure: I served on Scott's transition team.)

Wisconsin and New Hampshire have also [returned](#) ObamaCare money to the federal government, which highlights the practical reasons why governors should refuse to implement ObamaCare.

It is the height of fiscal irresponsibility to be making new spending commitments (1) when the federal deficit is [\\$1.5 trillion](#) and state budget deficits are a cumulative [\\$175 billion](#), (2) when those new commitments create a framework for a massive new entitlement program, and (3) when that new spending comes under the auspices of a law that has been invalidated by one federal court and may be invalidated by the nation's highest court.

Whichever reason they choose -- fiscal responsibility or fealty to the Constitution -- America's governors should just say "no" to implementing ObamaCare.

Michael F. Cannon is director of health policy studies at the Cato Institute and coauthor of Healthy Competition: What's Holding Back Health Care and How to Free It.



© 2011 Henry J. Kaiser Family Foundation. All rights reserved.