

‘The State, It Is I’

Obama’s answer to the political fallout from Obamacare is to try to make the law disappear.

By Michael Tanner
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President Obama has apparently found a strategy that will prevent Republicans from using Obamacare as a weapon against endangered Democrats in this fall’s midterm elections. He will simply make the law disappear.

Earlier this week, the president once again waved his hands and said the magic words, postponing implementation of the law’s employer mandate for the second time.

The law itself imposes a specific statutory deadline for businesses with 50 or more employees to provide insurance to their workers or pay a penalty, “beginning after December 31, 2013.” But the president dispensed with such legalities last fall, postponing the mandate’s effective date until January 1, 2015. Now he has changed it yet again.

Employers with 50 to 99 workers will now be exempt from the mandate until 2016, while businesses with 100 or more employees will be required to insure only 70 percent of their work force in 2015. In 2016, those larger employers will need to cover 95 percent of workers. How the mandate will be applied to midsize companies (50 to 99 workers) in 2016 is unclear. Some reports suggest that they will be subject to the 70 percent coverage requirement.

But who knows? The president may wake up one day and decide it should be 45.327 percent of workers.

The news of this change overshadowed yet another possible presidential rewrite of the law. Last Friday, the Associated Press reported that the administration is considering a further change to regulations for individual policies as well. You may recall that, in response to the outcry over the cancellation of millions of current policies because they failed to meet Obamacare’s standards, the president allowed people to stay on their current plans for an additional year if state insurance commissioners agreed and the insurance companies continued to offer those plans. Now the administration may extend the grandfathering of those plans for up to an additional three years. HHS claims that a final decision has not yet been made, but talks are underway with insurance companies to see if it can be done without worsening the adverse-selection problem already bedeviling the program.

By now, none of this should come as a surprise. Since the law’s enactment in 2010, President Obama has postponed, altered, or done away with at least 16 parts of his signature legislative

achievement. These include scheduled cuts to Disproportionate Share Hospitals, the Basic Health Plan option, out-of-pocket caps (in some instances), and small-business-exchange enrollment (Small Business Health Option Programs, or SHOP). He even repealed an entire program, the CLASS Act, although that action was subsequently ratified by Congress. And none of this counts the more than 3,000 waivers granted along the way to individual companies or unions.

If it seems like only the other day that an article in the *Daily Kos* was suggesting that opponents of Obamacare who failed to fully implement every jot and tittle of the health-care law should be jailed for sedition . . . well, it was. But then, it's different when the president does it. After all, as President Obama told French president François Hollande, being president means "I can do whatever I want."

That is not to say that "whatever he wants" just means eliminating parts of Obamacare. Sometimes it means creating new parts of the law. For example, the plain language of the law limits subsidies to insurance plans sold through the exchanges in the 17 states that chose to establish them on their own. The law provided no subsidies for plans on federally run exchanges. A technicality, the president decided, and ordered the IRS to make the subsidies available anyway.

The health-care law was 2,562 pages and 511,520 words long. We could have saved 511,513 of those if Congress had just written: "The president can do whatever he wants."

Someday, of course, Democrats may come to regret this precedent. After all, now that we know that laws can be written in disappearing ink, there is nothing, except maybe respect for the constitutional order, to prevent the next Republican president from doing whatever he wants — such as, say, postponing the whole darn mess forever.

— *Michael Tanner is a senior fellow at the [Cato Institute](#) and the author of [Leviathan on the Right: How Big-Government Conservatism Brought Down the Republican Revolution](#).*