THE HEARTLAND INSTITUTE

Think Tank Scholar Challenges Obamacare Supporters on Exchanges

By: Benjamin Domenech – January 28, 2013

Michael Cannon of the libertarian Cato Institute has laid down the gauntlet to supporters of President Obama's health care law, inviting them to debate him anytime or anywhere on a critical point of the law's implementation: whether state refusal to implement health insurance exchanges blocks the penalties packaged within Obama's law. He outlined that argument here:

> Contrary to expectations, more than 30 states have refused to create exchanges or are dragging their heels. And with good reason: State-created exchanges bring higher taxes.
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> The very tax credits that are contingent on states implementing an exchange are also an essential part of the trigger mechanisms for the law's penalties on employers and individuals who don't purchase health insurance. Since those tax credits are only available through state-created exchanges, states can exempt their employers from penalties of up to $2,000 per worker simply by not creating exchanges. By my count, states can collectively exempt 18 million Americans from other penalties that, by 2016, will reach $2,085 on families of four earning as little as $24,000. California could exempt all employers and 2.6 million residents from those penalties just by scuttling its exchange.
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> The repercussions would be tremendous. The purpose of those credits and subsidies is to hide the cost of the law's mandates and regulations. Blocking them would not increase the law's costs; it would reveal those costs to insurers and consumers. Under those circumstances, even vulnerable Democratic senators probably would demand that Congress reopen the law. That seems rather likely: 14 states have enacted statutes or constitutional amendments that explicitly prohibit state employees from even assisting in the imposition of such penalties, a key function of an exchange.
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> To be sure, the Internal Revenue Service is trying to impose those penalties even in states that don't create exchanges. Oklahoma's attorney general has sued to stop them, and additional lawsuits probably will follow.
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> If any such lawsuits prevail, employers will flee states like California that have created exchanges to seek refuge in states such as Arizona, where those penalties do not apply. Even states that have been eager to implement the law would join the "reopen Obamacare" chorus.

Cannon's argument is the basis for a lawsuit brought by the state of Oklahoma and watched with interest among the more than thirty states which have declined to implement state-based exchanges under the law. But Jonathan Gruber, architect of Romneycare and Obamacare, has said this amounts to a "screwy interpretation" of the law. "It's nutty. It's stupid," he told Mother Jones.

Cannon has now responded, offering to debate Gruber or anyone else on the subject.