

News

## Unpopular and deservedly so

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According to a recent Fox News/Opinion Dynamics poll, only a paltry 23 percent want ObamaCare enacted. Fully 70 percent disagree. Among them, 47 percent would start over, and 23 percent would do nothing.

Nonetheless, ObamaCare is like a quietly rumbling volcano — dormant, but not yet dead. The White House's Feb. 25 bipartisan healthcare summit is a sulfurous puff of smoke that should worry ObamaCare opponents.

Consequently, those who want to stop this ruinous measure should keep highlighting its shortcomings until this initiative is extinct.

Consider, then, that ObamaCare flunks the first test of any potential federal law: It is not constitutional. ObamaCare critics deem the individual mandate unconstitutional, since Congress lacks the power to force Americans to buy anything, especially health insurance they wisely or foolishly may not want.

Congress' legitimate power to regulate interstate commerce has been stretched like saltwater taffy. "It is one thing, however, for Congress to regulate economic activity in which individuals choose to engage; it is another to require that individuals engage in such activity," Senator Orrin Hatch, R, Utah, former Ohio Secretary of State J. Kenneth Blackwell, and the American Civil Rights Union's Kenneth Klukowski observed in the Wall Street Journal.

Beyond this lies another problem. The individual mandate would be enforced by penalizing Americans \$495 or 0.5 percent of Adjusted Gross Income, whichever is higher, if they do not acquire health insurance by 2014. That fine would rise to 2 percent of AGI, equal to \$640 today, just two years later. The IRS would collect these fines, a tax for failure to buy insurance.

"Without precedent, Congress is attempting to punish the non-purchase of a private product," says Robert Levy, senior fellow for constitutional studies at the Cato Institute.

The hitch with the IRS enforcement scheme is Article I, Section 8 of the U.S. Constitution, which states: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises." Section 9 adds that "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

A penalty collected via the IRS would be a direct tax on individuals, independent of anything reflected in the Census or tied to enumeration of citizens among the states. As such, the individual mandate's enforcement mechanism would fail Constitutional scrutiny.

If ObamaCare somehow re-erupts into active status, it likely would rely on the suggestion, rather than command, that all must buy health insurance. Such a suggestion would be widely ignored. And without Washington's capacity to pressure Americans into submission, the number of participants in ObamaCare likely would fall well below projections, and the

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entire, glorious experiment would implode.

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