

# The Star-Ledger

## Chris Christie makes a smart move on Obamacare; Politifact caught showing its liberal bias again

By: Paul Mulshine - December 06, 2012

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The Governor made a smart move Thursday when he vetoed that bill setting up a state health-care exchange under Obamacare.

As I've written here, we may be better off leaving it up to the feds to create the exchange for us.

The reason is quite complicated, as are all questions about health-care systems.

Suffice it to say that due to some quirks in the law, a federally created exchange would not have all the powers of a state-created exchange.

The most important of those is the power to impose penalties on businesses that do not offer health insurance, says Michael Cannon of the Cato Institute, a free-market think tank:

Oklahoma's attorney general recently sued in federal court to block Internal Revenue Service regulations essential to Obamacare. Those regs impose tax penalties on employers that fail to provide insurance for their workers.

The AG argues that the Affordable Care Act permits the feds to collect such taxes only in states with exchanges. No exchange, no tax.

Whether the court will agree remains to be seen. But for the moment, Cannon's argument is accepted among conservatives. Republican governors are being urged to thwart Obamacare by refusing to sign on to those exchanges.

As I noted in that column, the issue is very complicated - too complicated for the people who put together those PolitiFact articles, apparently.

For as long as Politifact has existed, we conservatives have accused the editors of expressing their liberal opinions under the guise of presenting facts.

Here, Jonathan Adler of the Volokh Conspiracy puts one such effort on the operating table and exposes it as a bloody mess.

In a prior post, Adler noted the tendency of fact-checkers to insert their opinions into a supposedly objective process:

Political commentary does a public service when it explains how competing claims represent contrasting policy assumptions and premises and provides context so voters can evaluate competing claims. It's quite a disservice, however, to pretend that differences of opinion on, say, whether the Independent Payment Advisory Board is an "unaccountable" agency or whether cutting \$700 billion from the growth of Medicare payments to service providers will adversely affect beneficiaries are simple questions of "fact." Indeed, in those areas in which I am most familiar, I have been quite appalled for what passes as "fact-checking" in many media outlets.

Now the allegedly neutral fact-checkers of PolitiFact Georgia have shown obvious bias in a left-wing screed attacking none other than Cannon himself for an NRO article in which he states this:

There are many arguments against creating exchanges.

First, states are under no obligation to create one.

Second, operating an Obamacare exchange would be illegal in 14 states. Alabama, Arizona, Georgia, Idaho, Indiana, Kansas, Louisiana, Missouri, Montana, Ohio, Oklahoma, Tennessee, Utah, and Virginia have enacted either statutes or constitutional amendments (or both) forbidding state employees to participate in an essential exchange function: implementing Obamacare's individual and employer mandates.

The above statements are factually true. States are indeed under no obligation to create exchanges and the states in question have indeed made participating in them illegal.

Yet the Politifact crowd called on a couple of liberal lawyers to argue that federal law trumps state law. So what? That's not the issue, as Adler notes:

Politifact rated this claim as "false" because "federal law supersedes state law." As the headline reiterated: "Experts say federal law trumps state law on 'Obamacare exchange' claim." It's certainly true that "federal law supersedes state law," but it's also irrelevant to the claim that state law precludes employees in these states from creating exchanges. Under the Supremacy Clause, validly enacted federal laws trump inconsistent state laws, but federal law cannot compel state officials to implement federal law. As the Supreme Court has made clear in numerous cases, and reiterated in *NFIB v. Sebelius*, the federal government may not commandeer state officials to implement a federal program. Therefore, federal law does not – indeed, cannot – compel Georgia (or any other state) to create a health insurance exchange and does not preempt a state law that prohibits state officials from doing so.

Read the whole thing. Not only will you learn more about Politifact's left-wing bias; you'll also learn more about why it was a good idea for Christie to veto the exchange bill.

After that, read this piece by Douglas Holtz-Eakin in NRO in which he argues the opposite of the position that Cannon takes. His argument is that letting the feds set up state exchanges will lead to a single-payer system.

I don't think he's right, but at least he makes a good argument - and acknowledges it's opinion, not fact.