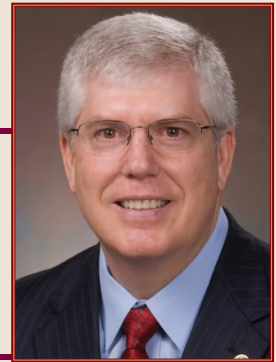


*A Special Article by Mathew D. Staver,
Liberty Counsel's Founder & Chairman*



THE HEALTHCARE LAW: A HISTORIC MISTAKE



When President Barack Obama signed into law the so-called Patient Protection Affordable Care Act, he said the sweeping bill was due to “historic leadership” and that it was a testament to the “persistence of the American people.” The law is certainly historic. But, like many things in history, historic doesn’t mean it will be remembered with favor. This law will not conjure up fond memories in the annals of history. The “persistence of the American people” will make sure it does not.

Despite losing all the statewide races last year in Virginia and New Jersey, President Obama and the Democratic Party under Nancy Pelosi and Harry Reid pressed forward with a healthcare bill that most Americans rejected. And, just in case they did not get the message, President Obama and company lost again – in Massachusetts of all places. The seat occupied by the late Senator Ted Kennedy, the dogged trumpeter of universal, single-payer healthcare, was replaced by a Republican who opposed the healthcare bill. The message from these elections was loud and clear.

While elections have consequences, and thus the reason for this unchecked raw power, these consequences also affect elections. Now that the healthcare bill has become law, the battle surrounding it will likely be the undoing of the Democratic Party, which seems to think it is the only sheriff in town.

This healthcare law is the most sweeping expansion of government into the private lives of people in the history of America. Congress lacks the authority to force every person to buy a product and participate in a market in which they choose not to engage. Despite this lack of authority, from the very beginning of the healthcare debate, one thing was clear: individuals would be required to purchase health insurance and employers would be required to pay for it. In the end, all Americans will pay. At the end of the day, the politicians who ignored the people will also pay a price.

It’s not that healthcare did not need reform. It does, and most agree on that point. But the bill pushed on the American people was not the kind of “reform” needed. A bill introduced by Congressman Dave Camp (R-MI) included cost-saving programs, such as allowing individuals to purchase health plans across state lines, creating high risk pools for those with pre-existing conditions, pooling for small business, instituting malpractice reform (which has effectively and substantially lowered costs in the state of Texas), promoting healthier lifestyles, incentivizing and expanding the use of health savings accounts, and encouraging and incentivizing innovative state programs. However, instead of these simple, yet effective solutions, Congress passed an unconstitutional bill that will cost Americans billions of dollars.

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THE FREEDOM FEDERATION REPRESENTS 40 MILLION AMERICANS WHO ARE DEEPLY CONCERNED ABOUT OBAMACARE

As Chairman of the Freedom Federation, I can say there is broad consensus on key aspects of healthcare reform. The Freedom Federation is a federation of some of the nation’s largest multiracial, multiethnic and multigenerational faith-based and policy organizations. Collectively, these organizations represent about 40 million people. We released a statement representing what most Americans want, which was ignored in this healthcare law.

As members of the Freedom Federation, we believe social justice includes healthcare reform that lowers the cost, increases quality, and expands choice at the greatest convenience, without moving private health decisions from the

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doctor's office to Washington bureaucrats. Individual liberties trump government-imposed obligations. We believe that individuals, communities, and doctors in the free market make better health decisions than government mandates. We believe in incentives, not coercion.

We oppose funding for abortion. Abortion is not healthcare. We support the sanctity of human life from conception to natural death. Life, no matter how young, is not expendable and, no matter how ill or aged, is not to be weighed on a cost-benefit scale. We support conscience laws protecting hospitals and healthcare providers from coerced participation in abortion. We oppose government policies pressuring people to forgo or limit treatment because of age or illness. We oppose rationed healthcare due to age, illness or based on a government agency's determination of "quality" or "value" of life.

If Congress could get away with this expansive intrusion into the private decisions of our lives on something as important as healthcare, then Congress has unlimited authority to dictate our every move.

We support health insurance that is affordable and portable. We support legal reform to stop frivolous lawsuits that drive up healthcare costs, while affording the injured appropriate compensation. We support portability, allowing people to take their healthcare with them so it is not tied to employment. We support options to purchase health insurance across state lines. We support competition; coverage of preexisting conditions; wellness care and prevention incentives; tax relief that provides a dollar-for-dollar deduction for every

dollar spent on premiums or other medical or prescription costs; and a dollar-for-dollar tax deduction with no limit from gross income for every dollar contributed to nonprofit organizations providing healthcare for free or at reduced cost to the needy.


WE HAVE FILED A FEDERAL LAWSUIT AGAINST OBAMACARE

But, notwithstanding this broad consensus that crosses racial, ethnic, generational and political lines, President Obama, flanked by Harry Reid and Nancy Pelosi, presses forward. As a result, as Founder and Chairman of Liberty Counsel, a national public interest law firm, I convened our litigation team to file the first private lawsuit against the healthcare law. The suit was filed the same day President Obama signed it. Ironically, this was 235 years to the day that Patrick Henry gave his famous fiery speech, which he ended by saying, "Give me liberty, or give me death."

Liberty Counsel represents Liberty University, the largest Christian university in the world with over 60,000 students. Also on the suit is a private doctor whose Medicare patients will be immediately affected, state and local elected officials, and private individuals who want to manage their own healthcare.


Based on the lack of constitutional authority of Congress to pass this law, I am fairly confident that when the Supreme Court eventually hears this case, the law will be relegated to the annals of history – not the kind of history President Obama seeks, but the kind this law deserves. If Congress could get away with this expansive intrusion into the private decisions of our lives on something as important as healthcare, then Congress has unlimited authority to dictate our every move. This power was never envisioned by the Founders, nor is it conferred by the Constitution.

The healthcare law was crafted deceptively. Make no mistake, the law will fund abortions. And, by the way, an Executive Order cannot override federal law. This was just a ruse to cover for the likes of Bart Stupak, a Congressman who, at the beginning of the healthcare debate, stood for pro-life principles but compromised his values for Obama, Pelosi, and Reid by voting for a bill that federally funds abortion and has since decided to retire from the House of Representatives. Though some supporters of the bill still argue that the state exchanges require separate accounts for abortion funding and that the Hyde Amendment applies to the bill, the first argument is misleading and the second is patently false.



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Regarding the state exchanges, individuals cannot opt out of abortion coverage. If the plan that fits the needs of an individual or family covers abortion, the individual must pay into the separate account, which will pay for the abortions of others who have the same plan. Although it is technically true that there are two separate accounts for plans that cover abortions (one for the abortion coverage and one for the regular coverage), the federal government is subsidizing the account for regular coverage, and because there is no opt out provision, the federal government is, in effect, subsidizing a plan that provides abortion coverage.

Moreover, the law appropriates 9.5 billion dollars to community health centers. These centers are permitted to cover abortion. Were the Hyde Amendment incorporated into the healthcare law, these funds could not be used to fund abortion. However, though the Hyde Amendment has been incorporated into every appropriations bill providing funds to the Department of Health and Human Services since 1976, the Hyde Amendment was not incorporated into the healthcare law, and, therefore, does not apply.

Liberty University employs over 5,100 people and is self-insured, offering quality health insurance to its employees. Since it is self-insured, according to the new healthcare law, the university will be forced to pay a fee for each covered "life" (employees, spouses and dependents). This penalty makes no sense, but it is only one of many ways the healthcare law extracts money from every American to pay for this monstrosity.

Liberty University will also be fined because its waiting period for new employees does not match that passed by federal bureaucrats. The impact of this bill on employers is enormous. Companies like AT&T, Verizon, Deere & Co., Boeing, Caterpillar, and Prudential Financial, Inc. have estimated that this healthcare law will cost them in excess of \$100 million each. AT&T estimated it will cost the company a staggering 1 billion dollars. These increased costs will be passed on to the people through layoffs and higher consumer prices. Unlike the federal government, which does not know how to balance a checkbook and recklessly borrows money from foreign countries like China, individuals and companies have only so much money to go around.

The health savings accounts of Liberty University employees will soon be taxed at higher rates and will face a new maze of regulations. Health savings accounts allow employees to deposit their funds into tax-free, portable accounts in order to save for routine medical care or future medical expenses. Prior to the passage of the new healthcare law, the funds could be used for prescriptions, over-the-counter medications, and hygiene items and could be withdrawn for nonmedical expenses, so long as the employee paid income tax and a 10 percent penalty on the funds.

However, according to the new healthcare law, starting in January of 2011, health savings accounts cannot be used for purchasing over-the-counter medications, and the penalty for using the funds for nonmedical costs or emergencies will increase to 20%. These new regulations are estimated to cost individuals and families \$1.4 billion.

THE INDIVIDUAL MANDATE TO PARTICIPATE IN OBAMACARE IS UNCONSTITUTIONAL

Similar to the new penalties and regulations that burden health savings accounts are new regulations burdening flexible spending accounts. The new healthcare law caps contributions to flexible spending accounts, which are pretax dollars used for medical care and dependent care expenses, such as child care or adult day care for senior citizens or persons with special needs, at \$2,500. This change especially burdens families with special needs children who require Braille books and magazines, hearing aids, guide dogs, or even speech therapy. These new regulations are estimated to cost special needs families approximately \$13 billion in new taxes.

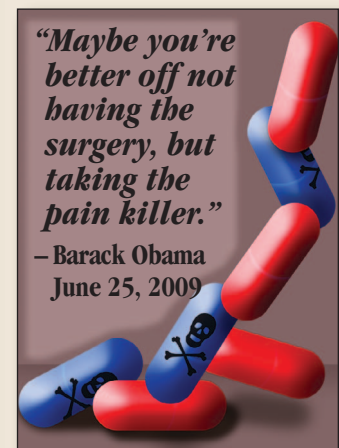
Not only are the institution and the employees of the institution penalized, but the government takeover of the student loan industry, included in the reconciliation bill, will negatively impact college students. The reconciliation bill, H.R. 4872, signed into law on March 30, 2010, does away with the loan programs familiar to most recent college graduates, including Stafford loans, unsubsidized Stafford loans, and Plus loans and terminates the use of federal payments to reduce student interest costs. These changes directly affect the ability of students to receive student loans, as well as the interest amount and payment plans that students will be subjected to upon graduation.

While we will now have to grapple with the provisions of the new healthcare law that most directly affect us, every American will face the individual mandate – a new ultimatum – get insurance or get fined.

The individual mandate requires every individual to purchase health insurance and to ensure that dependents are insured as well, to report that they are insured on their taxes, and to pay any applicable fines to the IRS, for which, by the way, the IRS will need to hire 16,500 agents as enforcers of this law. Starting in the year 2016, the penalty per uninsured person per year will be between \$695 and \$2,085. Never before has an individual been required to purchase something from a private third-party or else pay a fine.

AMERICA'S SENIORS WILL BE DEVASTATED BY OBAMACARE

Senior citizens will be hit hard under this new law. While everyone acknowledges that Medicare needs reform, decency and respect for the elderly should dictate that any reform should protect



With the crushing cost to business and the impact on the elderly, one must ask what President Obama was thinking.

those who paid in all their lives and who are now living on limited incomes. Though the new healthcare law imposes a 3.8% Medicare tax on unearned income, such as the sale of a home, townhome, or income from rental properties, the law drastically cut Medicare reimbursements by 21%, beginning no later than April 1, 2010! So, though this Medicare tax alone raises taxes \$210 billion, Medicare will still be cut by \$523.5 billion. Boy, were the seniors fooled on this one.

I have spoken to physicians, who treat Medicare patients, concerned with how this will affect their practice. There had already been a constant stream of doctors fleeing from Medicare patients. This stream will turn into a flood. Those who will be most hurt are the elderly, who will not be able to find treatment.

This should come as no surprise to anyone who has followed President Obama on healthcare. One of his so-called healthcare advisors is Dr. Ezekiel Emanuel, the brother of Rham Emanuel, the President's hard-driving Chief of Staff. Dr. Emanuel supports what he calls a "complete lives" system of healthcare. His "complete lives" theory rations healthcare for children, adolescents, and the "elderly" by providing priority care to people between the ages of 14 to 40. Emanuel advocates denying care to the disabled "who are irreversibly prevented from being or becoming participating citizens." He added: "An obvious example is not guaranteeing health services to patients with dementia." So, for the elderly, you fall outside of the "complete lives" theory. Good luck on finding quality care, or, for that matter, any care at all.

With the crushing cost to business and the impact on the elderly, one must ask what President Obama was thinking. Will this not bankrupt insurance companies and cause a national crisis? Yes, that is exactly what it will do. This will allow a new cure for our supposed ills – universal single-payer coverage, compliments of the feds.

President Obama publicly advocated a single-payer system when he spoke in 2003 before the AFL-CIO Conference on Civil, Human and Women's Rights. He said, "I happen to be a proponent of a single-payer universal healthcare plan. Everybody in. Nobody out. A single-payer healthcare plan. Universal healthcare plan. That's what I'd like to see. But as all of you know, we may not get there immediately. Because first we've got to take back the White House and we've got to take back the Senate and we've got to take back the House." He later said it may take 5, 10, or 15 years to get to a single-payer system, but he reiterated that is where he wants to drive America. He has made no secret about his intentions.

CONGRESS HAD NO CONSTITUTIONAL AUTHORITY TO PASS OBAMACARE

Coming full circle, the basic question is whether Congress has the authority to pass this law. The answer is no. The healthcare bill references the Commerce Clause of the Constitution as providing the authority to enact an individual mandate. However, interpreting the Commerce Clause of Article I, Section 8 of the Constitution to allow an individual mandate contradicts the intentions of the drafters of the Constitution.

The Commerce Clause has never been used to justify federal authority to require individuals to purchase a good or service. It cannot regulate inactivity. In other words, it cannot be used to force individuals to buy health insurance. The Supreme Court has several times stopped Congress from relying upon the Commerce Clause when the target of regulation affects only state or local concerns. Clearly, this is one area that is beyond the authority of Congress.

Liberty Counsel's lawsuit raises many other constitutional challenges to the healthcare law. The Tenth Amendment reserves rights to the state that are not delegated to the federal government. The Establishment Clause prohibits the federal government from preferring one religion over another, and, yet, that is exactly what this law does by giving preferential opt out provisions to certain "recognized" religions, while not giving the same benefit to other orthodox religions that have equally strong objections to this law. This discriminatory treatment among religions also violates Equal Protection and the Free Exercise Clause.

The healthcare law has more constitutional flaws than I have space to explain. The bottom line is this: The American people and the Constitution will ultimately trump this power grab at the end of the day. Yes, this healthcare law has made history. It is a lesson on what not to do. Soon, President Obama and the Democratic Congress will learn that lesson. Then again, maybe they won't learn, but they will see the day when the people and the rule of law will have their say.