



It's time to protect our rights -- and our economy -- by ending health care mandates

By Steve Forbes and Rob McKenna

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The majority of state Attorneys General have pointed out a fatal flaw in Obama care that the administration refuses to acknowledge: the administration has claimed a power that the Constitution does not grant.

The 11th Circuit Court of Appeals has upheld the Attorneys General in their assertion that it is unconstitutional to force individuals to purchase health insurance. It didn't matter which President appointed the judges who concurred with the AGs, be it Clinton or one of the Bushes.

Then there is the question of the level playing field. Americans like fairness. But it seems that everyone is not expected to suffer in the same way.

A year ago, Health and Human Services Secretary Kathleen Sebelius had a moment of accidental clarity. She spoke with a reporter from The Hill about temporary waivers she was providing — more than 1,000 — to give certain groups a pass from complying with provisions of the new health care law.

“We don't want to take away people's health insurance before they have some realistic other choices,” Sebelius said.

Many of the waivers she's talking about go to employers offering “mini-med” plans: those that offer a small amount of inexpensive coverage for low-wage workers. The plans will be banned under the new health care reform law.

Of course, during the debate about health care reform, Americans were promised that their current coverage wouldn't be taken away. “If you like your health care plan, you can keep your health care plan,” the president repeated. He also said Americans would ultimately save up to \$2,500 per year on their health care coverage. In their wisdom, Americans never believed it, which is probably why ObamaCare has never found favor in the polls.

A troubling aspect of the Affordable Care Act (ACA) touches on your constitutional protections, along with your health care coverage and costs. Beginning in 2014, every American will be

required to own a health insurance plan approved by the federal government. Attorneys generals and governors representing 29 states believe that the so-called “individual mandate” is an unconstitutional expansion of federal power that asserts near total control over your health care coverage.

The mandate also demonstrates how the federal government, when it assumes powers it was never intended to have, micro-manages the personal decisions of every American.

Federal Judge Roger Vinson, in his ruling which struck down the individual health care mandate, pointed out that Congress ignored warnings from the Congressional Research Service and Congressional Budget Office that the mandate would be unprecedented and constitutionally problematic. Congress essentially invited litigation.

Congressional staffers were likely troubled about the mandate’s legality because of questions about whether the Commerce Clause authorizes Congress to compel all Americans to purchase a product in the private marketplace. Under the clause, Congress has the limited power to regulate commerce among the states. It was originally intended to allow the federal government to eliminate trade barriers put up between states.

A clause meant to spark trade and economic opportunity shouldn’t be used to the opposite effect when it comes to health care. With the mandate in place, gone will be most policies that, for example, allow healthy people to buy inexpensive, catastrophic coverage. Such policies prevent bankruptcies related to extended hospitalizations. Instead, Congress and the president require that every American have a plan that offers “free” preventative care, along with a long list of other minimum benefits. Resist and face an IRS fine.

What does it mean for you? You will pay more – not less, as promised – for your health care coverage. As the National Center for Policy Analysis reports, it costs less than \$3,000 a year to cover the medical expenses of most Americans under 50. Yet, under the ACA, the minimum benefit package allowed will cost about \$4,750. Where will the \$1,750 annual difference come from? If you’re lucky enough to be employed, it will come out of future raises. If you’re one of the 14 million unemployed Americans, there’s an even bigger price: when the cost of labor increases, employers think twice about new hires.

As has been widely reported, uncertainty about the economy, and how federal activism will play into potential growth, has companies sitting on nearly \$2 trillion in cash and other assets instead of investing in job-creating activities. Congress exacerbated the problem by remaking one-sixth of the economy through a partisan process. Now, as the constitutionally-questionable new law makes its way through the courts, other provisions – including billions in new taxes and government spending – roll out over a period of six years. And before that, another national election will decide control of the U.S. House, Senate and the White House. It’s no surprise that investors are waiting it out.

A better approach would have sought bipartisan reforms. Make health care plans portable. Allow price competition by letting plans be sold across state lines. Create tax incentives for purchasing insurance instead of deploying IRS agents to seek out stragglers. These are some of the ideas supported by clear majorities of both parties. They leave constitutional protections in place.

It's not too late to change course and clear away at least some of the economic uncertainty caused by the ACA. First, Congress should cancel individual mandates and laws about what qualifies as a minimum health insurance plan. This resolves the multi-state lawsuit.

Second, Congress should revise the provision that requires the states to expand Medicaid coverage beyond its intended, worthy purpose: serving the poor. States are already struggling to cover current Medicaid expenses, and it's unknown how much the expansion will cost. In the state of Washington, for example, the non-partisan Washington Policy Center estimates that it will cost as much as \$8.7 billion in the first 10 years of the program then mushrooms into the future.

Our Constitution limits federal control, reserving certain powers for the federal government and leaving the rest reserved to the states – and to the people. It's a system that created the freest, most prosperous nation in the world. To bolster that freedom and prosperity, Congress and the president must act to pass health care reforms that respect our Constitutional rights, while providing more choices of affordable, portable health care plans. Our pocketbooks, and our health, will benefit.

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