



Written by [Bob Adelman](#) on March 31, 2010

Can ObamaCare Be Repealed, Nullified?

U.S. Representative Michele Bachmann (R-Minn.), who has earned a “Freedom Index” rating of 90 percent in the current Congress to date, has introduced a bill in the House to repeal ObamaCare. In her press release, Bachmann reminded her constituents that “the government already owns or controls about one-third of U.S. economic activity through the takeover of General Motors, the bankruptcy reorganizations of Chrysler, the partial ownership of two of the country’s largest banks in Bank of America and Citigroup, and the seizure of mortgage giants Fannie Mae and Freddie Mac as well as AIG. Taken all together, [with ObamaCare] we’re looking at half of the American economy in the grip of the federal government.” Bachmann said that it “will do nothing to spur economic growth ... [but] will serve only as an obstacle to actual recovery and smother the spirit of innovation and freedoms that made this country great.”



Her bill is simplicity itself:

?A Bill to repeal the Patient Protection and Affordable Care Act. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Section I: Repeal of PPACA. Effective as of the enactment of the Patient Protection and Affordable Care Act, such Act is repealed, and the provisions of law amended or repealed by such Act are restored or revived as if such Act had not been enacted.

The Weekly Standard's early April issue [agrees](#) with Bachmann:

Even putting aside the fact that Social Security and Medicare are going broke and taking the rest of the government with them, these frantic forced analogies [to those socialistic programs] are preposterous. The new law is a ghastly mess, which began as a badly misguided technocratic pipe dream and was then degraded into ruinous incoherence by the madcap process of its enactment.

The best answer and solution to rising costs of healthcare are for less government intervention, and to let “competition and informed consumer choices to exercise a downward pressure on prices.” The problem with the current delivery of health care services is that the present chaotic system “in which employers buy coverage or the government provides it, and consumers almost never pay doctors directly, makes health care too opaque, hiding the cost of everything from everyone [using those services] and so making real pricing and therefore real economic efficiency impossible.” The article reminds its readers:



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The numbers are gargantuan and grim — even as laid out by the Congressional Budget Office, which has to accept as fact all of the legislation’s dubious premises and promises. If the law remains in place, a new entitlement will begin in 2014 that will cost more than \$2.4 trillion in its first 10 years, and will grow faster than either Medicare or private-sector health care spending has in the past decade....

To help pay for the subsidies, and for a massive expansion of Medicaid, taxes will rise by about half a trillion dollars in the program’s first 10 years — hitting employers and investors especially hard, but quickly being passed down to consumers and workers. And the law also cuts Medicare, especially by reducing physician and hospital payment rates, by another half a trillion dollars — cuts that will drastically undermine the program’s operation as, according to the Medicare actuary, about 20 percent of doctors and other providers who participate in the program “could find it difficult to remain profitable and, absent legislative intervention, might end their participation.”...

Of course, this scenario — for all the dark prospects it lays out — assumes things will go more or less as planned. CBO is required to assume as much. But in a program so complex and enormous, which seeks to take control of a sixth of our economy but is profoundly incoherent even in its own terms, things will surely not always go as planned....

In other words, Obamacare is an unmitigated disaster.... But it is a disaster that will not truly get underway for four years, and therefore [is] a disaster we can avert.

Others are not so sanguine about the prospects for repeal. Not surprisingly, the GOP is taking a [much softer](#) and more pragmatic approach. Those to whom voters would look for support of Bachmann-type wholesale repeal are already waffling. Senator John Cornyn (R-Texas), whose “Freedom Index” rating of 85, is chairman of the Republican Senatorial Committee, which is responsible for electing Senators in the fall election. Pragmatism is his focus. In a recent interview, he said, “The focus really should be on the *misplaced priorities* of the [Obama] administration. [Emphasis added.] The No. 1 concern of the public [isn’t health care at all but instead] is jobs and people losing their homes. The administration has been obsessing [excessively] on this health care bill.” And in the best waffle statement of all, Cornyn said, “Candidates are going to test the winds in their own states. In some places, the health care bill is more popular than others.”

And that allegedly staunch opponent of ObamaCare, the U.S. Chamber of Commerce, said, “While some discuss repeal, the U.S. Chamber believes a more effective approach is to work through all available and appropriate avenues — regulatory, legislative, legal and political — to *fix the bill’s flaws* and minimize its harmful impacts.” (Emphasis added.)

Efforts to have courts declare ObamaCare unconstitutional received support from Fox News analyst and former New Jersey Judge Andrew Napolitano when he said the states bringing lawsuits “have a pretty good case” for repeal. He said in a recent [interview](#) that ObamaCare amounts to a “commandeering” of the states for federal purposes, which he says the Supreme Court has forbidden as unconstitutional. “The Constitution does not authorize the Congress to regulate the state governments,” he said.

Nevertheless, in this piece of legislation, the Congress has told the state governments that they must modify their regulation of certain areas of healthcare, they must surrender their regulation of other areas of healthcare, and they must spend state taxpayer-generated dollars in a way that the Congress wants it done. That’s called commandeering the legislature. That’s the Congress



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taking away the discretion of the [state] legislature with respect to regulation, and spending taxpayer dollars. That's prohibited in a couple of Supreme Court cases [the specific cases were not noted]. So on that argument, the attorneys general have a pretty strong case and I think they will prevail.

Napolitano thinks the government lacks the legal authority to order citizens to buy health insurance, that it's something "that's never happened in our history before. My gut tells me that too is unconstitutional because the Congress doesn't have that kind of power under the Constitution." He ended the interview by claiming, "The problem with the Constitution isn't a structural problem. The problem with the Constitution is that those who take the oath to uphold it don't take their oath seriously."

Unfortunately, Napolitano [also holds](#) that it will take eight years for any lawsuit to reach the Supreme Court. No legal case could be made prior to 2014 when all the regulations kick in. And it usually takes another four years for any lawsuit to work its way up the ladder to the Supremes.

The strategy of nullification, however, holds much more promise. Two recent articles [here](#) and [here](#) look closely at nullification as a strategy to resist successfully the takeover of healthcare. It's a simple strategy: one of simply ignoring the law altogether. Brian Roberts of the Tenth Amendment Center explains: "Ignoring D.C. actually means that we must use state governments to defy unconstitutional federal laws ... we must use the legal power of our state governments under the 10th Amendment to eliminate the threat, and formally ignore [these] unconstitutional mandates."

And there has been some success, too. The REAL ID bill was passed into law in 2005 and was supposed to take full effect by 2008. But it met with such resistance at the state level that the feds have backed off. Federal healthcare mandates are being resisted at the state level as well. Eighteen states "are submitting bills that would oppose or limit all or parts of federal healthcare," according to the National Conference of State Legislatures. Another example is the Firearms Freedom Act, which has already passed in Montana and Tennessee, and is being debated in at least 10 other states. The FFA declares simply that any firearms made and retained in the state are beyond the authority of Congress under the [Commerce Clause](#).

"A Brief Analysis of the Legal Challenges to Obamacare" at [Redstate.com](#) states that although "there can be no doubt that the Federal Government currently undertakes a great amount of activity that was never contemplated by the founders under the auspices of the Commerce Clause ... recent Supreme Court decisions such as [United States v. Lopez](#) and [United States v. Morrison](#) may signal a turning of the tide."

In the *Lopez* case, the government was required to show that the Gun Free School Zones Act of 1990 regulated a matter that "affected" interstate commerce. The government failed to prove its case, and, in a 5-4 decision, the court held that "while Congress had broad lawmaking authority under the Commerce Clause, the power was limited." The court said: "To uphold the Government's contentions here, we [would] have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general *police power*." (Emphasis added.) The *Lopez* case has been reinforced by other cases, such as *Morrison*.

As evil and outrageous as ObamaCare is, these are some of the strategies being used to push back. Some things are clear, however. One is that relying on "respectable" Republicans to assist in the "push back" will prove futile. It's clear that the GOP is a party to the crime, and has little interest in repeal.



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The issue of repeal would simply get in the way of some waffling moderates taking a Senate seat in November. Lawsuits have the disadvantage of time. The electorate has a short memory, and human beings are notorious for adapting to incursions into their freedoms if it is done piecemeal, a step at a time. The nullification process, however, holds promise to confront effectively the takeover, under the name of healthcare, of most of the citizens' remaining rights and freedoms.

Photo of Rep. Bachmann: AP Images



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