



Written by [Michael Tennant](#) on May 3, 2012

## ObamaCare: Past, Present, & Yet to Come

“When I sign this bill,” President Barack Obama said on March 23, 2010, “all of the overheated rhetoric over reform will finally confront the reality of reform.”

With that, Obama affixed his John Hancock to a bill that would surely have repulsed the most famous signer — and all the other signers — of the Declaration of Independence, for with it the U.S. government arrogated to itself vastly more power over the lives of its subjects than George III ever dreamed of exercising. That bill, of course, was the Patient Protection and Affordable Care Act (PPACA), better known as ObamaCare.



Americans have since confronted the reality of Obama’s signature domestic policy achievement, and they don’t like what they see. Opinion polls have consistently revealed that the law commands the support of fewer than half of all Americans; and a January ABC News/*Washington Post* poll found that two-thirds believe the Supreme Court should overturn part or all of the law.

The people have very good reason to dislike ObamaCare. Between the PPACA and its companion Health Care and Education Reconciliation Act, nearly 1,000 pages (about 425,000 words) of tax hikes, mandates, and behavior-modification decrees were added to federal law. As of February, resultant regulations had expanded the *Federal Register* by 2.1 million words, making the whole of ObamaCare to date three times as long as the King James Version of the Bible, according to Americans for Limited Government.

### What’s Happening

Although most provisions of ObamaCare do not kick in until 2014, those that have already taken effect have also given Americans ample cause to fear what is to come.

The insurance industry, which surely thought it was getting a sweetheart deal in the form of a captive customer base, has suffered quite a few ill effects from various provisions that are already in force. Children may now remain on their parents’ health insurance policies until age 26. Insurers may not charge copayments for preventive care. They may not deny policies to children with preexisting conditions. All lifetime and some annual coverage caps have been outlawed. As a result, though Obama promised that his plan “would bring down premiums by \$2,500 for the typical family,” insurance rates are on the rise, particularly for individuals and small businesses. Many insurers have stopped writing policies that cover children as individuals, fearing that they will be forced to foot the bill for expensive, long-term treatments for kids with serious conditions. Small insurance companies have been driven out of business.

Another mandate nearly cost part-time and low-wage employees their health insurance. It required all health plans to spend at least 85 percent of their premiums on benefits. Restaurant and retail



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establishments with many part-time and minimum-wage employees typically offer inexpensive limited-benefit health insurance to these employees. However, because of high turnover in these jobs and, consequently, relatively few expensive claims, “There is not any issuer of limited benefit coverage that could meet the enhanced ... standards,” Neil Trautwein, a National Retail Federation vice president, told the *Wall Street Journal*. After McDonald’s Corp. and other large employers told the Department of Health and Human Services (HHS) that they would have to drop coverage for their employees if the rule went into effect, HHS issued a waiver for the rule.

Speaking of waivers, still another mandate — one requiring insurance plans to gradually raise their annual benefit limits, ultimately to infinity in 2014 — was so onerous that over 1,200 companies sought and obtained waivers from it. (Another 96 waiver requests were denied.) Probably not coincidentally, “labor unions representing 543,812 workers received waivers,” the *Daily Caller* reported, while “private employers with a total of 69,813 employees, many of whom work for small businesses, were granted waivers.”

ObamaCare has produced “a wave of frantic consolidation in the healthcare industry,” Dr. Lloyd M. Krieger argued in a 2011 *Wall Street Journal* op-ed. Small insurers that have not simply gone out of business have instead been forced to sell themselves to larger competitors. Doctors, hospitals, and clinics are merging into ever larger organizations, partly because the law encourages the formation of Accountable Care Organizations that will supposedly reduce costs. As a result, healthcare is coming under the control of an ever-dwindling number of large entities — an outcome that Krieger averred “will not be undone by repeal or defunding alone.”

One provision that has yet to kick in has nonetheless already had negative repercussions. Stryker Corporation, a medical device maker in Kalamazoo, Michigan, announced last November that it would be laying off about five percent of its workforce, in part to “realign resources in advance of the new Medical Excise Tax.” That tax, a 2.3-percent levy on medical device manufacturers’ revenue, will start being collected in 2013. AdvaMed, the Advanced Medical Technology Association, “estimated that 43,000 U.S. jobs would be lost as the Medical Device Excise Tax motivates companies to shift more production to nations with less expensive labor,” according to the *Kalamazoo Gazette*.

Recent developments have not exactly endeared ObamaCare to wide swaths of the American public, either.

Most infamously, HHS issued a regulation in January requiring all insurance plans to include coverage of contraceptives, including those that can cause abortions. This, of course, meant that those paying for the insurance — primarily employers — would have to foot the bill for this extra coverage, whether or not they agreed with it. Religious leaders opposed to birth control and/or abortion were rightly up in arms, knowing that the only alternative to paying for contraception coverage was not to buy insurance for their employees at all.

The Obama administration’s “compromise” was to demand that insurers cover contraception for free. They can’t afford to do that, naturally, so the cost of contraceptives will be included in future premium increases, forcing those who are opposed to such coverage to pay for it just the same. And they still will be left with the Hobson’s choice of buying insurance with coverage to which they object or forgoing it altogether, in which case they will be penalized.

On top of the contraception mandate, HHS in March ordered that insurance policies for college-age women — whether provided by schools, parents, or employers — cover surgical sterilization, creating a



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similar dilemma for those opposed to the practice.

ObamaCare famously passed Congress only after the President signed an executive order banning taxpayer funding of abortion under it, assuaging the concerns of pro-life Democrats that the absence of such language in the final bill (it had been included in earlier versions) would permit such funding. However, the PPACA actually contains language forcing enrollees in certain insurance plans to pay a \$1-per-month surcharge for abortion coverage while keeping them almost completely in the dark about the surcharge and giving them no option to decline the coverage.

Despite objections raised by pro-life organizations, HHS confirmed that this mandate will be enforced in a 644-page final rule concerning state insurance exchanges that the department issued in March. That rule also leaves open the possibility that certain multi-state insurance plans administered by the federal government could cover elective abortion, possibly even in states that have prohibited such coverage in their own exchanges. That would most definitely put taxpayers on the hook for administering — and, where insurance is subsidized, directly funding — abortion coverage, Obama's executive order notwithstanding.

Two recent reports from the Congressional Budget Office (CBO) have added fuel to the fire of ObamaCare discontent. The first, issued March 13, estimated that the law would cost \$1.76 trillion between 2012 and 2022 — nearly double the CBO's original 10-year estimate of \$940 billion. And that only accounts for coverage, not implementation and other charges. Add those costs in and the total bill for the next decade comes to \$2.6 trillion, Sen. Jeff Sessions (R-Ala.) told Fox News. So much for ObamaCare's alleged savings.

Two days later the CBO put out another report stating that three million to five million Americans are likely to lose their employer-based health insurance each year from 2019 to 2022 as a direct result of the healthcare law, though the number could go as high as 20 million. Hardest hit will be low-wage earners, not all of whom will be able to obtain government-subsidized coverage to make up for the loss.

The report also noted that, contrary to the hype surrounding ObamaCare, 26 million to 27 million Americans will still be uninsured at the end of 2022. It isn't hard to imagine that at that point politicians will argue that the market, not the corporatist healthcare system they established in 2010, has failed and that only a single-payer, government-run system can ensure that everyone receives the care he needs.

### **Attacks and Resistance**

Such dissatisfaction with the law has produced fierce resistance from all quarters of American society. The same day that Obama signed the PPACA into law, Virginia Attorney General Ken Cuccinelli filed a lawsuit challenging its constitutionality, and 13 other state Attorneys General joined forces to take on the law as well. Since then an additional 13 states and the National Federation of Independent Business have either joined existing lawsuits or filed suits of their own. Liberty University of Lynchburg, Virginia, sued to overturn the law, as did several Michigan residents, aided by the Thomas More Law Center.

These lawsuits have met with varying degrees of success. The Liberty University and Michigan suits were decided in favor of the federal government. In the Virginia case, a judge ruled that the individual mandate, but not necessarily the entire law, was unconstitutional; the appeals court, however, overturned that ruling. A 26-state suit, meanwhile, came before U.S. District Judge Roger Vinson of the Northern District of Florida, who found the entire law unconstitutional. The 11th Circuit Court of Appeals agreed with Vinson that the individual mandate is unconstitutional but disagreed that the rest



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of the law is. The Supreme Court agreed to hear the appeal of this case, and that is where the fate of ObamaCare now rests.

The court heard six hours of oral arguments over the course of three days in late March. It is expected to rule on the case by the end of June. Most observers believe the decision, like so many in recent years, will split 5 to 4, with Justice Anthony Kennedy providing the vote that determines the outcome.

The questions asked by the justices during the hearings suggest that while the court is likely to divide along the expected ideological lines, even the liberal justices weren't buying some of the administration's arguments. Justices Ruth Bader Ginsburg, Stephen Breyer, and Elena Kagan (an Obama appointee) were openly skeptical of the government's claim that the penalty assessed upon individuals who do not purchase health insurance is a tax and therefore well within Congress' power to impose. Among conservatives, Chief Justice John Roberts, Justice Samuel Alito, and Justice Antonin Scalia expressed grave reservations about not just the individual mandate but the entire PPACA. Kennedy, too, "signaled deep unease" with the individual mandate, according to the *Los Angeles Times*. (Justice Clarence Thomas was typically taciturn throughout the proceedings.) While Justices' "comments during oral arguments do not always forecast the eventual ruling," the paper observed, the conservatives' remarks indicated that the court "appeared ready to strike down ... the entire law."

Constitutionalists would certainly welcome such a decision because, as Sally Pipes, president of the Pacific Research Institute and author of *The Truth About ObamaCare*, told The New American, "If the court rules [ObamaCare] is constitutional, there's no limit on the powers of the federal government to coerce us as individuals on what we have to purchase in the private market." Indeed, a finding of constitutionality would demonstrate that the court has accepted the notion that "the government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions," in the (unfortunately) prophetic words of James Madison.

Should the court fail to overturn the law, constitutionalists' next best hope will be the even dicier November elections. Obviously, if Obama is reelected, repeal will be out of the question for another four years, by which time the law will be in full force and thus quite difficult to dislodge. If he is defeated, repeal becomes more likely given that all the Republican presidential candidates have said they favor it; but it cannot occur without Congress' consent, and that is unlikely to be granted if Democrats retain control of the Senate.

If the law is neither struck down nor repealed, state nullification will be the final bulwark against it. A number of states have already passed laws nullifying the individual mandate. The effectiveness of such efforts remains to be seen, though it is a virtual certainty that if the Supreme Court deems the PPACA constitutional it will also deem state laws nullifying it unconstitutional. Quite possibly the Obama administration would threaten to withhold Medicaid or other funds from states that refuse to bow the knee, a favorite method for ensuring state compliance with Washington's desires. States that long ago traded their birthright of sovereignty for a mess of Potomac pottage may find it extremely difficult to stand up to such threats.

### **It Would Hurt — and Does Hurt**

Let us, however, be optimists for the moment and assume that the law is either overturned this year or repealed early in 2013. While the major provisions of the law will not take effect until 2014, many lesser provisions have already been implemented, and reversing the damage they have done will not necessarily be easy, as the *Washington Post* pointed out in a March 22 article ("Health-care changes



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may not all disappear even if justices overturn the law”). Many of the insurance mandates have already been incorporated into state law and will have to be repealed state-by-state. But because the mandates appear to give people free coverage, they “are really very popular,” Georgetown University professor Sabrina Corlette told the newspaper. As such, repealing them may be a politically perilous task for legislators and Governors. New Medicare benefits — among them, drug discounts and free preventive services — will certainly be dropped; but because they, too, are popular, Congress may well be pressured into reinstating them. Also, as previously mentioned, certain other outcomes, such as the consolidation of the healthcare industry, will not be easily undone.

As bad as the lingering effects of a voided PPACA would be, the results of the law remaining in force would be far worse. In addition to forcing Americans to purchase health insurance, ObamaCare “gives the President and the administration, in particular the Secretary of Health and Human Services, a tremendous amount of power in determining how the healthcare system in this country goes and how it affects us as Americans,” said Pipes, pointing to the triple-Bible-length rules and regulations that have already been issued under the law.

The law will also be costly. Up to now it has had a negligible impact on the federal budget because most of the expenditures do not begin until 2014. That bit of subterfuge enabled Obama to claim that his legislation would cost “only” \$940 billion in its first decade. Two years on, with most of the costless years past, the next decade is estimated to set Uncle Sam back twice as much — proof of just how steep the cost curve for ObamaCare is.

“Most of the cost drivers” in ObamaCare go into effect in 2014, Pipes explained. These include a huge expansion of Medicaid to cover low-income persons who cannot otherwise afford health insurance; federal subsidies for others to purchase private insurance on state exchanges; the end of insurance price discrimination based on preexisting conditions; the cessation of all annual and lifetime insurance benefit caps; the individual and employer mandates; and “the hiring of 16,000 new IRS agents to make sure that people show on their tax return that they have insurance or they’re going to pay [the] penalty.” Under this system, she added, Medicaid will cost \$800 billion a year by 2022, and Medicare’s tab will double to \$1 trillion a year. “Medicare,” she asserted, “will be bankrupt in 2022.” If the true cost of just the first decade of ObamaCare — let alone the next several decades — had been revealed in 2010, it would surely have stood a much lower chance of passage.

The government’s costs, of course, will be borne by taxpayers, who will be able to see quite clearly what ObamaCare has done to the federal budget. Other costs will be hidden but just as detrimental. The insurance mandates will cause premiums to rise, a process that is already under way. More widespread coverage will encourage people to make greater use of the healthcare system, thereby driving up prices.

Meanwhile, the increasing red tape and cost controls are likely to reduce the supply of health practitioners. Pipes cited several studies showing that many doctors are seriously considering leaving the medical profession once ObamaCare takes hold, that fewer people are likely to enter that field, and that, as a result, “by 2019 there will be a shortage of 91,000 doctors,” according to the Center for Workforce Studies. She pointed out that in her country of birth, which has a fully socialized healthcare system, “17 percent of 32 million Canadians are on a waiting list just trying to get a primary care doctor.”

Under a free-market system, shortages are rare and short-lived because the market mitigates them by raising prices, thereby encouraging an increase in supply, in turn reducing prices once more. Under a





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socialist system, by contrast, goods and services in short supply are doled out by the government according to their perceived political payoff. ObamaCare already contains incentives for rationing in the form of Accountable Care Organizations, which pay doctors to keep costs under control. Advances in medicine will also be even more tightly controlled by the government than they already are under the Patient-Centered Outcomes Research Institute (PCORI), which Pipes said “will be determining whether a new medicine or medical device is cost-effective as compared to medically effective.”

“Medicare may take the institute’s [PCORI’s] research into account when deciding what procedures it will cover, so long as the new research is not the sole justification and the agency allows for public input,” Kaiser Health News reported shortly after ObamaCare was passed. “Many experts believe that as health costs continue to mushroom, Medicare and private payers will incorporate the institute’s work into their coverage decisions.” That is, a government body will recommend which treatments to offer, and public and private health insurance will follow its recommendations — voluntarily at first; later, perhaps, because doing so becomes either *de facto* or *de jure* mandatory — thereby denying some treatment options to patients. If that isn’t rationing, then I’m Tim Tebow.

Then there are the countless intrusive initiatives contained in the law, a subject on which The New American has reported extensively. They include a “National Prevention and Health Promotion Strategy,” “lifestyle behavior modification,” “individualized wellness plans,” “home visits” by government agents (possibly including forced immunizations), and many other invasions of individuals’ and families’ lives. Implementing these provisions will take billions of taxpayer dollars and a massive new bureaucracy — and what remains of our liberties.

Clearly Americans have every right to despise and fear ObamaCare. It has already done significant, possibly irreparable damage to the United States’ healthcare system. It is contrary to both the spirit and the letter of our founding documents. And it promises to sap our citizens’ and states’ health and well-being while building up Washington’s. Let us pray that, one way or another, the law and its attendant regulations are rendered impotent, lest the Constitution instead be nullified and along with it, “the blessings of liberty” it was created to “secure ... to ourselves and our posterity.”



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