Written by Joe Wolverton, II, J.D. on November 19, 2012

Some GOP Governors Oppose ObamaCare Exchanges; Others Relent

Another governor is adding his name to the list of state executives opposing the ObamaCare mandates.

This past week, Alabama Governor Robert Bentley (pictured) announced that he will recommend that his state legislature refuse to create a health insurance exchange as required by ObamaCare. Bentley also called for the rejection of federal grant money earmarked for the expansion of Medicaid in the states.

"I will not set up a state exchange in Alabama," the governor said at a speech to the Birmingham Business Alliance, as reported by the *Birmingham News*.

To make his opinion of the federal health care behemoth very clear, Bentley has also called ObamaCare "the worst piece of legislation passed in my lifetime," in an article published by the Associated Press (AP).

Reporting on Bentley's announcement, the AP wrote:

> Bentley, a physician, created a commission last year to study creation of an exchange, but he was also one of 21 Republican governors who complained to the Obama administration that states needed more flexibility in deciding which companies participate and what benefits are covered.
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> The exchanges will give the uninsured a place to price insurance and apply for subsidies. Bentley said Tuesday operating an exchange could cost Alabama up to $50 million a year.

According to an Alabama newspaper, Governor Bentley refuses to modify Medicaid "because it is broken."

While state opposition to ObamaCare is growing (*The New American* has previously reported on several state legislators who have proposed bills nullifying ObamaCare), after President Obama was reelected, Speaker of the House John Boehner (R-Ohio) declared that ObamaCare was the "law of the land." Boehner mentioned the Supreme Court's decision declaring ObamaCare constitutional as proof that the matter is settled.

On June 28, 2012, the Supreme Court in a 5-4 decision upheld ObamaCare — the joint venture of the president and Congress to force every American, regardless of ability or desire, to purchase a qualifying health care insurance plan by 2014 or face a tax penalty for failure to comply.

Ironically, the Supreme Court's decision placed a powerful weapon against ObamaCare in the states' arsenal. In the majority opinion, Chief Justice Roberts held that the federal government could not withhold Medicaid funds from states that reject the expansion of the health care program as required by the Affordable Care Act.

In fact, states which refuse the expansion may shift the financial burden of funding Medicaid completely back onto the federal government, an act which some estimate could cost the federal government an additional $230 billion in new exchange-based subsidies for a net added cost of $100 billion in just the first year under the ObamaCare scheme.

As Americans know all too well, ObamaCare already comes with a price tag of over $2.5 trillion from 2014 to 2024, a behemoth boondoggle that will add more than $823 billion to the federal deficit.

Add to that wrinkle in the ObamaCare fabric the fact that most states have yet to set up an exchange as mandated by ObamaCare. And many of those states have Republican governors who adamantly refuse to participate in the exchange altogether. The Cato Institute estimates that "as few as 15 states are likely to have exchanges in operation by the 2014 deadline."

Never fear: It's ObamaCare to the rescue. Relevant provisions in the act authorize the federal government to pinch hit for the recalcitrant states and set up qualifying health insurance exchanges. That may sound like a pretty effective squeeze play, but there is no way that Congress can find funds to set up 35 (or more) exchanges in those states where the governors or legislatures assert their sovereignty and refuse to accede to the unconstitutional demands of ObamaCare.

Besides, only those exchanges that are established by the states are eligible for federal subsidies. ObamaCare doesn't provide for subsidies to be paid through an exchange that was set up and managed by the federal government.

Therefore, if enough state legislators and governors can be convinced by their constituents to stand up for their rights of self-government and refuse to accept either the offer of Medicaid funds or the establishment of qualifying health care exchanges, it will be impossible for ObamaCare to accomplish a hefty portion of its new entitlement spending provisions.

States may yet play another important role in gutting ObamaCare. Those federal subsidies that states can essentially nullify by their refusal to set up exchanges are the trigger that imposes penalties on employers who don't provide their workers with health care benefits. So, by deactivating the triggers, states can simultaneously defuse the "employer mandate" provision of ObamaCare as well.

The employer mandate states that businesses with 50 or more workers have to provide health insurance to their employees or pay a penalty, or as Chief Justice Roberts now calls it, a tax.

Under ObamaCare (as passed by Congress, but not as rewritten by the Supreme Court), that penalty is assessed if at least one of the company's employees qualifies for subsidies under the exchange. However, since those subsidies are made available only through a state-managed exchange, any state that refuses to set one up could effectively nullify the employer mandate completely.

As a final word on this point of the states' ability to repel the encroachments of ObamaCare, if health insurance rates increase under ObamaCare as many experts have argued, many smaller businesses (those with just over 50 employees) could be forced to drop their health insurance policies. If that were to happen, not only would ObamaCare not insure the uninsured as promised by its promoters, but it would rob thousands of workers of the health benefits they once enjoyed before their bosses were priced out of the market.

Governor Bentley isn't standing alone in his defiance of ObamaCare. As reported by PRWatch,

> Several Republican governors — Rick Scott (FL), Bobby Jindal (LA), Sam Brownback (KS), Rick Perry (TX), Nikki Haley (SC), Nathan Deal (GA) and Robert McDonnell (VA) — announced they would nonetheless refuse to implement the state-based health care marketplace "exchanges" that

> are key to reducing health care costs and expanding access.

Florida Governor Rick Scott was once counted among the number of state executives pushing back against the federal health care assault on state sovereignty, but a recent article in the *Miami Herald* suggests Scott may be switching sides in this battle.

Reports the *Herald*:

> After the defeat of Mitt Romney, who vowed to halt Obama's healthcare overhaul, the Republican leaders of the Florida House and Senate quickly said the Legislature needed to reexamine the federal act. On Friday evening, Gov. Rick Scott said he agreed there needed to be a discussion.
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> "Just saying 'no' is not an answer," Scott said in a statement that repeated exactly what Sen. Don Gaetz, R-Destin, the incoming Senate president, told *The Miami Herald* on Thursday.
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> "I don't like this law," Gaetz also said, "but this is the law, and I believe I have a constitutional obligation to carry it out." He added that he thinks "there needs to be some adult debate between Republicans and Democrats" on finding ways to make the law work.

Scott's change of heart might be an example of one of politic's most common gambits: the switch in time.

As Politico reports, "the Republican governors are also facing strong political cross-pressures on Obamacare, and that's why they won't all keep fighting the law just to please their conservative supporters."

Secretary of Health and Human Services Kathleen Sebelius informed governors they have until December 14 to submit their plans for developing ObamaCare exchanges in their states.

Photo of Alabama Governor Robert Bentley: AP Images

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