



Written by [Joe Wolverton, II, J.D.](#) on June 29, 2019

Trump Uses Executive Order to Preserve Part of ObamaCare

An executive order recently issued by President Donald Trump makes it much easier for people seeking medical care to know beforehand exactly how much that care will cost. Anyone who's dealt with doctors and hospitals knows how hard it is to get a straight answer out of medical facilities' accounting departments.



Undoubtedly, the president's pen was used to make seeking affordable medical care much less onerous for many Americans. How could something so good for so many be attracting adverse attention?

Well, answering that question shouldn't be much of a challenge for constitutionalists, but many conservatives are calling out those who are calling out President Trump for exercising an unconstitutional power that his predecessors had a penchant for using: executive orders.

On June 24, President Trump issued an executive order entitled "Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First," declaring that "by the authority vested in [him] as President by the Constitution," he was going "to enhance the ability of patients to choose the healthcare that is best for them."

In remarks made at the White House announcing the issuing of the order, the president made it clear just how much power he presumes he has:

We're here to announce new groundbreaking actions that we're taking to dramatically increase quality, affordability, and fairness to our healthcare system. This landmark initiative continues our campaign to put American patients first. This is a truly big action. People have no idea how big it is. Some people say bigger than healthcare itself. This is something that's going to be very important.

Read that again. President Trump has signed an executive order giving the federal government control over healthcare to such a scope that the federal government's control over healthcare is now "bigger than healthcare itself."

That should be shocking, but the language of the edict is even more expansive.

The president's proclamation declares that it "is the policy of the Federal Government to ensure that patients are engaged with their healthcare decisions and have the information requisite for choosing the healthcare they want and need."

Additionally, the president insists in his diktat that it is also the responsibility of the federal government to "eliminate unnecessary barriers to price and quality transparency; to increase the availability of meaningful price and quality information for patients; to enhance patients' control over their own healthcare resources, including through tax-preferred medical accounts; and to protect patients from



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surprise medical bills.”

Other than the oblique reference to the “authority vested” in him by the Constitution, President Trump doesn’t point to the precise provision of the Constitution where the states that ratified the Constitution granted to the head of the executive branch (or any other branch, for that matter) power to prevent the people of the United States from being burdened by the cost of health care or by the pernicious practices of health care providers.

That’s probably because such authority IS NOT GRANTED IN THE CONSTITUTION TO ANYONE, including the so-called “leader of the free world.”

What should come as a surprise to no one is that many members of the president’s party who called former president Barack Obama a tyrant and a wannabe king for his use of executive orders are praising President Trump for an identical usurpation.

“Patients should know exactly what their medical procedures and prescription drugs cost before they ever get a bill,” said Senator Rick Scott (R-Fla.)

“I applaud the president’s action to make information on out-of-pocket spending more readily available and to require hospitals to publicly disclose prices. I am fighting every day to give patients the information they need to make informed decisions for themselves and their families, and I support these efforts. Even in the hyper-partisan, dysfunctional world of Washington, D.C., creating more transparency in the healthcare system is something we must all support to help families across our nation,” the Republican lawmaker added.

Partisan hypocrisy is not particularly newsworthy. If it were, there could be 24-hour news channels devoted to nothing more than running such stories without a single re-run!

What is notable, though, is when a president campaigns on a promise to eliminate a federal program — ObamaCare — and later, in an interview conducted just hours before he signed the healthcare cost transparency fiat, praises himself for saving that very program, the one he called “a disaster” while running for the office he now occupies.

In an interview broadcast on NBC, President Trump told Chuck Todd, “I could have managed ObamaCare so it would have failed or I could have managed it the way we did so it’s as good as it can be. Not great, but it’s as good — it’s too expensive and the premiums are too high. I had a decision to make. I could have politically killed ObamaCare. I decided not to do it.”

Did you see that? The president admits that he could have kept his campaign promise and “killed ObamaCare,” but he chose “not to do it.”

Surely there will be a significant number of Republican voters who will not disregard such despotic decisions when it comes time to vote in November 2020.

Finally, putting political predictions aside, let’s finish off with a quick constitutionally centered reminder of the reason it was wrong for Barack Obama to presume to make law and it is just as wrong for Donald Trump to do likewise.

James Madison, writing as “Publius,” wrote in *The Federalist*, No. 47: “The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.” Madison himself was restating in his inimitable style, one facet of federalism that was universally considered to be an essential pillar of liberty.



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Federalism was so vital to the preservation of liberty and limited government in the United States that it was explicitly protected in the Tenth Amendment.

Executive orders whose scope exceed the executive branch's enumerated powers are nothing more or less than president attempts to abolish the separation of powers and the Tenth Amendment.

I'll give the last word to Judge Andrew Napolitano, speaking of the president's latest attempt at executive "legislation," Napolitano wrote:

But let's not lose sight of the big picture here. Under the Constitution, the federal government — whether Congress or the president — has no say in health care. We know that because the 10th Amendment reserves the power to regulate health, safety, welfare and morality to the states.

Where does all this leave us? The president is using a law he knows is unconstitutional to make folks feel good. The federal government — more out of control and outside the Constitution than ever — continues to regulate in areas nowhere even hinted at in the Constitution. And the more regulation we tolerate, the less freedom of choice we have.

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