White House Changes Story on Individual Mandate

The Obama administration continues to show itself as a master of the spin. During the heavy campaign to promote the healthcare law, President Barack Obama, House Speaker Nancy Pelosi, and Senate Majority Leader Harry Reid assured the American people that the penalty for individuals who opt out of receiving health insurance was not a tax. Now that 20 states have filed a lawsuit against the federal government over the healthcare law's individual mandate, however, the government claims it is merely exercising its "power to lay and collect taxes."

Starting in March 2014, the healthcare law will impose a "minimum essential coverage" on most Americans. Those who opt out of that coverage will be penalized. For low-income Americans, however, federal subsidies, at the expense of the American taxpayers, will be provided to assist them. It is specifically the individual mandate that drove 20 states to file the lawsuit, claiming that "Congress is attempting to regulate and penalize Americans for choosing not to engage in economic activity. If Congress can do this much, there will be virtually no sphere of private decision-making beyond the reach of federal power."

The states involved in the lawsuit are Florida, Alabama, Alaska, Arizona, Colorado, Georgia, Idaho, Indiana, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Dakota, South Carolina, South Dakota, Pennsylvania, Texas, Utah, and Washington.

In addition to the 20 states that have filed a lawsuit against the federal government, Virginia has filed a separate suit claiming that the healthcare law is in direct violation of a Virginia law which exempts Virginians without health insurance from the imposition of penalties.

While the government expected a constitutional challenge to the healthcare law, it defended its authority to impose the law under the "commerce clause" found in the Constitution. Recognizing the weakness of that defense, perhaps, the federal government now asserts that the power to levy taxes is even greater than the power to regulate interstate commerce and has therefore elected to call the penalty a tax.

White House communications director Dan Pfeiffer has seized upon both defenses, in case either one falls short. "The Commerce Clause supplies sufficient authority for the shared responsibility requirements in the new health reform law. To the extent that there is any question of additional authority — and we don't believe there is — it would be available through the General Welfare Clause."

During the year long campaign for the healthcare overhaul, Obama denied criticism that the individual mandate was in fact a tax by comparing it to mandatory auto insurance. Auto drivers without car insurance would be subject to a similar penalty, he contended.

During an interview with George Stephanopoulos in September 2009, Obama said, "For us to say that you've got to take a responsibility to get health insurance is absolutely not a tax increase."

Stephanopoulos was not entirely convinced, and pursued the issue further. When asked one final time if the individual mandate penalty could be perceived as a tax, the President replied, "Absolutely not. I reject that notion."

The Obama administration changed its tune shortly after the 20 states filed a lawsuit against the federal government, however.

The Justice Department now defends the penalty as a "valid exercise" of Congress' power to levy taxes "even for purposes that would exceed its powers under other provisions" of the Constitution. After citing a variety of Supreme Court cases, the Department insists that the law's use of the word "penalty" rather than "tax" should not change the defense, as the constitutionality of a tax law depends merely on "its practical operation."

The *New York Times* reports that by utilizing this defense, the government can rest its case on the 73-year old Supreme Court decision that upheld the Social Security Act. According to that decision, it is the function of Congress to create taxes "conducive to the general welfare", not the courts.

Strangely enough, the White House is now citing the same data critics used months ago to prove that the penalty was in fact a tax, only to be rebutted by the President. Of the many arguments made by the GOP and critics of the healthcare overhaul were the $4 billion annual revenue expected to be generated by the "penalty" and the collection of the "penalty" by the Internal Revenue Service.

Yale Professor Jack Balkin, who largely supports the law, admitted that the President "has not been honest with the American people about the nature of this bill."

Ironically, the dishonesty regarding the individual mandate began long before Obama was elected. During the debates between then-Senator Obama and then-Senator Hillary Clinton, Obama largely rejected the notion of an individual mandate. He argued, "If a mandate was the solution, we could try that to solve homelessness by mandating everybody buy a house."

Opponents continue to tout the government's overreach through the healthcare overhaul. Utah Republican Senator Orrin Hatch asserts, "This is the first time that Congress has ever ordered Americans to use their own money to purchase a particular good or service."

On July 19, the Rasmussen Report shows that 56 percent of voters favor repeal of the healthcare law, while 38 percent are opposed to it. Likewise, 61 percent recognize that the law will increase the cost of healthcare.

The states' lawsuit is currently being heard by a Florida judge, but according to Fox News, "it is widely expected that at least one lawsuit against the measure will make it to the Supreme Court in the coming years.

Photo: President Obama with healthcare professionals in the East Room of the White House: AP Images