



Written by [Raven Clabough](#) on December 6, 2011

Wisconsin Governor Walker Withdraws Emergency Rule to Implement ObamaCare

Originally, the Governor sought to implement ObamaCare in his state by way of [Assembly Bill 210](#), which was sponsored by a Republican and which was easily passed on October 18 by [57-39](#) in the Republican-controlled Assembly. Next, Senator Frank Lasee made the [dramatic announcement](#) on November 1 that he, as Chairman of the Senate Insurance Committee, was killing AB 210 by letting it die in his committee. In response, Walker then approved an emergency rule that bypassed the state legislature, accomplished the same purpose as AB 210, and thereby brought Wisconsin statutes into compliance with ObamaCare law.



Complicating this controversy over Walker's initial approval of an emergency rule is [a second controversy](#) over whether the governor should return \$49 million in federal "Early Innovator" funds that were given to Wisconsin for the purpose of establishing a state healthcare exchange in accordance with ObamaCare law.

The New American's Alex Newman observed that Scott Walker was the first Republican Governor in the United States to have "kept the ObamaCare funds."

In a [statement](#) released on November 14, Senator Frank Lasee asserted,

My office reached out to Gov. Walker approximately two weeks ago in a sincere effort to discuss the many reasons for killing AB 210. We also hoped to broach the hazard of the \$49 million in federal "Early Innovator Grant" funds that the governor accepted in February of this year. Regrettably, we were rebuffed.

The Walker administration averred that the emergency rule was required so that Wisconsin could "retain jurisdiction and regulatory control over the grievance and the independent review processes and independent review organizations operating in the state."

Walker defended his position by relying on a statement issued by Theodore K. Nickel, the Commissioner of Insurance, concerning the emergency rule. The Commissioner stated, in part:

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Portions of Wisconsin's insurance law and regulations governing grievances and independent review processes are in conflict with federal law and regulation....Therefore, the Commissioner, pursuant to s.631.01 (5)., has determined that it is in the interest of the State of Wisconsin, Wisconsin insureds and the public to exempt insurers, certified independent review



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organizations and self-insured governmental health plans that elect to comply with ch. Ins 18, Wis. Adm. Code, as revised.

The entire maneuver came as a [surprise](#) to Wisconsin Tea Party activists and Republicans. The Fox Valley Initiative explained that both AB 210 and the emergency rule received the support of Republicans because they believed the argument that if ObamaCare was not implemented in Wisconsin, “the federal government will force [Wisconsin] to implement it in a way that infringes on state sovereignty and adversely affect[s] health insurance companies.”

But as noted by the Fox Valley Initiative, “We can’t succumb to these arguments to collaborate with the administration now in order to get some temporary benefits for ourselves. A fully implemented Obamacare program would destroy our healthcare system.”

“The principled conservative position was simply to reject AB 210,” declared state Senator Lasee, wondering why Walker wished to rush the legislation through the legislature. “Perhaps the administration prefers not to take sole responsibility for a decision to entrench ObamaCare in state law. Ensuring a complicit legislature would certainly provide convenient political cover.”

A number of conservative groups such as the state Campaign for Liberty contacted the Walker administration to voice their concerns with the emergency rule. And many put their opinions online.

“Would Scott Walker really stab the Tea Party in the back like this? The Tea Party that got him elected!? It certainly looks that way,” [noted](#) Todd Welch, the interim state coordinator for the Wisconsin Campaign for Liberty in an e-mail to Tony DeMott, Michigan state coordinator for Campaign for Liberty. “You and I have fought too long and too hard against ObamaCare to have it rammed down our throat now.”

Others argued that perhaps Walker was simply misled by advisors.

“My friends, I have come to the conclusion that Governor Walker is being very poorly advised on the matter of compliance with Obamacare,” noted an article from the Wisconsin 9/12 Project that was picked up on some county GOP websites. “We need to break through the bureaucratic double-speak that is surrounding him.”

Last week, after Governor Walker responded to his constituents by withdrawing the emergency rule, he sent a [letter](#) to those who were offended by the rule. It began by outlining his reasoning:

Like you, I oppose Obamacare and want to end the federal government’s encroachment on our state’s rights. That is why, on my first day in office, I directed Wisconsin Attorney General J.B. Van Hollen to join the multi-state lawsuit challenging the constitutionality of this overreaching measure.

Unfortunately, while states wait for [the Supreme Court decision], the federal government continues to implement this law. As a result, states are left with a very difficult decision: do nothing and cede regulatory authority for Wisconsin’s insurance industry to President Obama and the federal government; or make very slight technical changes to pre-existing Wisconsin laws, or administrative rules, to prevent the federal government from taking over our state’s insurance industry.

Ironically, though Walker claimed that without the emergency rule, Wisconsin would have lost its sovereignty, Senator Lasee argued that *with* AB 210 and the emergency rule that mimics it, the same thing would have happened. Lasee contended that passage of that legislation would have compromised



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Wisconsin's sovereignty under the 10th Amendment, infringed upon the healthcare freedom of Wisconsinites, undermined the insurance industry, and damaged credibility in the 26-state lawsuit against ObamaCare. He further declared,

Wisconsinites, whose rights remain endangered by the retention of that \$49 million, deserve an answer. If Gov. Walker is truly serious about safeguarding Wisconsin's sovereignty, the healthcare freedoms of our citizens, and the integrity of the free market, he must return the \$49 million in federal funds. If he does not, it will place in question the seriousness of his desire to keep ObamaCare out of Wisconsin.

Likewise, on September 28 the Heritage Foundation [had this to say](#) about accepting and implementing the requirements that come with the Early Innovator Grant:

The combined effect of these regulations and grant requirements are [sic] that a state would have to agree to surrender any last vestiges of meaningful control over how ObamaCare is implemented. Thus, a state would now have no more real control over an exchange it set up than over one HHS established.

According to the Goldwater Institute, states which accept federal money for the implementation of the federal healthcare measure "are being complicit in enforcing and entrenching this unconstitutional law."

Opponents of ObamaCare recommended that states such as Wisconsin and Arizona follow the lead set by Florida, Oklahoma, and Kansas and send the money back.

Walker's letter does admit that he himself had reservations regarding the emergency rule, and therefore, "I have directed the Wisconsin Insurance Commissioner to withdraw WI INS 18 Emergency Rule."

Critics of ObamaCare are [pleased](#) by Walker's decision to withdraw the hastily passed emergency rule, and are anxiously awaiting next March, when the Supreme Court will begin hearing the case on the President's healthcare plan. Reuters [predicts](#) that the high court will reach a decision by July, right in the midst of the presidential election campaign.

Photo of Scott Walker: AP Images



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