



Written by [Bob Adelman](#) on November 15, 2013

# Obama's "Fix" of ObamaCare's Debut Is Unconstitutional

Within two hours of President Obama's announced ["fix" for the fumble](#) he caused in his ObamaCare rollout, the insurance commissioner from the state of Washington rejected it, on practical grounds. It took only slightly longer for a legal scholar to reject it on constitutional ones.

[Said the president \(shown\) on Thursday](#), "I think it's legitimate for Americans to expect me to have to win back some credibility. And, you know, that's on me. I mean, we fumbled the rollout on this."



And then, using what the White House called the president's "enforcement discretion," the president said he would delay for one year the part of ObamaCare that requires all plans to meet stringent standards of coverage. He said he would "allow" state insurance commissioners to make the final determination in that proposed delay. Two hours later Washington State Insurance Commissioner Mike Kreidler [rejected the Obama fumble fix](#):

I understand that many people are upset by the notices they have recently received from their health plans ... but I have serious concerns about how President Obama's proposal would be implemented and, more significantly, its potential impact on the overall stability of our health insurance market.

I do not believe his proposal is a good deal for the state of Washington. We will not be allowing insurance companies to extend their policies.

Part of the problem is legal: Most insurance companies are required to give their state's insurance commissioners a 60-day notice before launching new policies, and that date has passed. In addition, changing or rescinding previous policy cancellations isn't something that can be done overnight. As one health insurance actuary stated:

New premiums would need to be developed, approved by the state, letters sent out, premiums collected, coordination with health providers [established], letters [sent] to the consumers.... These things take time.

Such rescissions of previous cancellations would likely have national repercussions as well, reducing traffic to the health exchanges and further slowing the enrollment into ObamaCare that insurers were counting on when building their premium structures. Such a slowdown would likely mean that in 2015 when those reinstated policies are finally terminated, the premiums for new coverage would be even higher.

From a constitutional perspective, the Obama fumble fix has vastly larger implications. Put simply, it is unconstitutional. Under the Constitution, [Article II, Section 3](#), the powers of the president are clearly stated, which include: "He shall take care that the laws be faithfully executed."

Known as the Take Care clause, it was deliberately inserted there, [according to Ken Klukowski](#), a constitutional lawyer on the faculty of Liberty University's School of Law,



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to abolish the Royal Prerogative that the framers of the American Constitution knew from their lives as Englishmen. It was the power of the king of England to disregard or effectively suspend Acts of Parliament. The king could not make laws, but he could shelve a law that Parliament had passed.

By using his so-called enforcement discretion — something unknown in the Constitution — Obama has overreached his powers. Said Klukowski:

This is a frightening claim of a sweeping power that is completely inconsistent with the Constitution.... There is no “enforcement discretion” [for Obama] to determine which laws on the books he will enforce....

It is a flagrant and undeniable violation of his constitutional duty under the Take Care clause.... Only Congress can change those parts of the Affordable Care Act....

It’s an open and shut case that this president’s actions are unconstitutional, again.

It’s this gradual usurpation of power not granted under the Constitution that leads to tyranny. As Mike Adams at Natural News [warned](#), “This is how Hitler rose to power, of course. It’s how every tyrant throughout history got [his] start. It’s also precisely what the United States Constitution prohibits.”

Many have raised various questions. How would those cancelled policies be reinstated? How would insurance companies recalculate their premiums? What would be the impact on the health exchanges if cancellations were rescinded? What about the viability of ObamaCare itself as the result of such a delay?

The key question not being asked frequently enough is this: How could the president himself, [who claimed to be](#) a “constitutional law professor, not know about the Take Care clause and that his “fix” would be unconstitutional?

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