

Why The Supreme Court May Validate "Obamacare"

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4 Jun 2012

The Patient Protection and Affordable Care Act (PPACA) of 2010, known by its slang term "Obamacare", has been taken under advisement by the Supreme Court as to the constitutionality of one of its provisions. The law sought to do several things: a) increases coverage of pre-existing conditions; b) permits persons under the age of 26 to remain on their parent's health plan; c) increases overall federal spending on health care; d) reduces Medicare spending at the federal level; e) expands Medicaid eligibility by increasing the income threshold for qualification; f) establishes "healthcare exchanges" at the state level such that consumer could compare insurance products; g) prohibits annual and lifetime limits on health care insurance coverage; h) raises various taxes on insurers, businesses, medical equipment makers, and individuals; and i) imposes an "individual mandate" requiring everyone to obtain health insurance, or to pay a penalty if they do not. This last provision is known as the "shared responsibility requirement". There are a few other minor provisions as well.

It is clear to all but the most casual thinkers that the first eight provisions cited above will increase the number of people in the health care system, each at a higher cost than before, without a corresponding increase in the number of practitioners. It will increase costs through increased taxation and regulation such that, although most health insurance will remain privately run in the short term, health care will drift to a single-payer federal system in the long run. Imagine your medical future determined by your friendly neighborhood Motor Vehicle Bureau.

The one provision that was objected to, and for which many state Attorneys General filed suit, is the question as to whether the federal government can compel a citizen to purchase a health care insurance product. Their claim is that the "individual mandate" is unconstitutional because it does not fall within a legitimate taxation power granted to Congress, nor does it meet the test of limited government, even with the expanded interpretation of the Commerce Clause. It is clearly a very bad omen for the people: if this is upheld, there will be no end of demands made on the people to buy things at the government's dictate.

Unfortunately, it seems to me that the Supreme Court may find a way to justify it within the Constitution, using Social Security as a precedent. Let us review briefly the original claims of Social Security. It was set up in 1935 as a way to ensure that the elderly (then defined as age 65) did not fall into deep poverty. It was partly motivated by the Great Depression and the government's disastrous response to it. If you look at your Social Security card, it says that a "Social Security Account has been established for" [your name], followed by the 9-digit number, and a disclaimer that it to be used "for Social Security and Tax Purposes -- Not for Identification". The Franklin D. Roosevelt administration claimed that the payroll tax "contributions" constituted premiums for "old age insurance", and would pay out a fixed sum per month upon retirement to keep people out of poverty. The proceeds of the "contributions" in excess of current-year payouts would be retained in a "Trust Fund" to ensure that there would always be money available for you when your time came to retire.

Now let us tell the truth about it, ignoring the increases in the payroll tax rate, the increases in income liable for the tax, the increase in life expectancy, the growth of payouts, and the decline in the number of people supporting those who are currently retired. If we restrict ourselves only to the basic provisions, we find the following:

1. The Social Security Number has become the de facto national ID card for all Americans.

2. Your Social Security "account" number is not connected in any way with an "old age insurance" policy in the usual sense of an insurance contract. You are not paying premiums for a policy to insure yourself against poverty.
3. Your "contributions" are not voluntary like every other contribution: they are mandatory. You do not get to choose if you want to participate in Social Security or not; it is a "shared obligation".
4. There is no "trust fund" with your name or account number on it; your "contributions" are not invested for you to be paid when you are eligible. Your taxes are used to pay those currently retired (pay-as-you-go). There is no sense of the traditional reward for work and saving as a normal trust fund would operate. There is nothing held for you in your name, as a usual trust fund would operate. There is nothing paid to your estate if you die before collecting any benefits, as a normal trust fund would operate. The excess "contributions" are neither saved nor invested; they are spent on other items the federal government refuses to fund in other ways.

Here is my concern. If the federal government can force you to pay a mandatory tax (and call it a "contribution") to fund non-existent "premiums" on a non-existent "old-age insurance" policy with the surplus stored in a non-existent "trust fund" while claiming that the ubiquitous mandatory tracking number was to be used only for Social Security and tax purposes, it seems to me the Supreme Court can find a way to force you to pay a "contribution" in the interest of "shared responsibility" for an actual health insurance product. They might even try to distort the meaning of Alexander Hamilton's words from *The Federalist Papers, No. 16*:

"...if it be possible at any rate to construct a federal government capable of regulating the common concerns and preserving the general tranquility ... it must carry its agency to the persons of the citizens".

Hamilton was of course, arguing against one of the pernicious effects of the Articles of Confederation, in which the raising of men and equipment to fight the Revolution depended on the caprice of the states to fulfill their obligations per the Congressional requisitions (which they often failed to do). It had nothing to do with regulating the private affairs of private persons.

The entire health care law, especially the individual mandate, is a very bad idea, and nothing useful will result from it, but that is not the point. The point, just as with Social Security, is to get more people dependent on the government. It will be interesting to see how the Supreme Court acts.