



# FLIGHT-WATCH



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## **A CALL TO REPEAL THE PRESIDENT'S HEALTHCARE LAW**

### **I. A SOUTHERN DEMOCRATIC HERITAGE**

The author of *Flightwatch* grew up in the deep South when Georgia was a one party (Democratic) state. Many people in the deep South gave reverent tribute to the memory of Franklin Delano Roosevelt who (according to my upbringing) saved many Americans from the ravages of the Great Depression. As a youngster, I can recall my congressman, Charles Weltner, refusing to run for reelection to Congress because he would not sign an oath of allegiance to Governor Lester Maddox, an avowed segregationist. Later in life, I would work for Charles Weltner while attending Emory Law School.

The author supported the civil rights movement, ran for a delegate seat to the Democratic National Convention, and was an active supporter of the progressive Democrats in the state of Georgia as well as nationally. For most of my life, with the exceptions of Ronald Reagan and John McCain, I voted for Democratic presidential candidates. Because of my white guilt for what the South had done to slaves, and because of the first hand experiences I had with racial prejudice in the South, I felt it was my personal obligation and moral responsibility to aid those less fortunate to enjoy the American Dream.

My conviction to vote for Democratic presidential candidates continued until the candidacy of Barack Obama emerged. I had great concerns about the capacity of Barack Obama to lead this nation. Our President's conduct during his first year in office, and the last few weeks in particular, has led me to conclude that all of my concerns were valid.

### **II. A BREWING ECONOMIC CRISIS**

According to the Congressional Budget Office (CBO), the cumulative government deficit is nearly ten trillion dollars. Adding debt for 2009 and 2010 will bring the number of nearly 12.7 trillion dollars. By the year 2020, the projected annual deficit will be 1.25 trillion dollars or 5.6 percent of the Gross Domestic Product (GDP). The CBO estimate assumes economic recovery with unemployment at five percent. In 2008, our public debt represented 40% of the GDP. By the year 2020, the figure will be 90% percent, which is close to our post – World War II peak.

We are supposed to believe that the President's healthcare law will save \$138 billion dollars over ten years. Even if that were true, that would represent only about 1 percent of the projected 12.7 trillion dollar deficit. Permit me to go out on a limb and suggest that the President's healthcare law will **not** save \$138 billion over ten years.

It is telling that six days before the House of Representatives passed the healthcare bill, Moody's Investor Service published a paper warning that the exploding United States debt could cause a downgrade of U.S. Treasury Bonds from their AAA rating.

### **III. THE PRESIDENT AND THE DEMOCRATIC DOMINATED CONGRESS ARE ATTEMPTING TO SELL US A BILL OF GOODS**

It is no secret that with expanding entitlement obligations and burgeoning debt, even developed countries can find themselves in the throws of economic ruin. The situation in Greece is a perfect example. Is the European Economic Community going to bail out Greece or allow it to fail? If Greece is allowed to fail and default on its obligations, will it result in a domino effect on nations in the European Economic Community? If European nations can fail to meet their obligations due to massive entitlement obligations so can the United States. Imagine how compassionate and forgiving China will be

if we default in our financial obligations to that country.

The economic realities of the President's healthcare bill were not lost on the American people. A majority of Americans opposed passage of the President's healthcare law. However, he, along with Congressional Democrats, willfully ignored the will of the people and imposed upon us a healthcare law that does not fulfill its obligations and that will actually raise the cost of healthcare at a time when we can least afford it.

Consider the following premises of the President's healthcare law:

(a) *The argument goes that universal healthcare will result in fewer visits to emergency rooms.* However, a Robert Wood Johnson Foundation study found that 83% of the people who visited emergency rooms *had health insurance*. So how is requiring universal healthcare coverage going to decrease the number of visits to emergency rooms? This argument is a canard. In fact, if universal coverage is available and if it is more difficult to see a doctor, the emergency room visits may actually increase.

(b) *Universal healthcare will improve the nation's health.* However, this argument is inconsistent with the data following the introduction of Medicare in 1966 which had no reduction on mortality. Apparently, there was a similar finding for Medicaid. How could this be? First of all, many uninsureds are fairly healthy, since about two fifths are between the ages of 18 and 34. Secondly, many people are too sick to be helped. They suffer from drug abuse, alcohol dependence, smoking, obesity, and simply making healthcare available to them will not improve their health. Finally, the uninsured in America *already* receive healthcare at a level of 50% to 70% of that enjoyed by insured Americans.

(c) *Requiring universal healthcare will curb uncontrolled spending.* The problem with this argument is that by the government's own forecast, healthcare spending which is currently 17% for 2009 will rise to 19% by 2019. Nothing in the President's healthcare law will reverse that trend. Currently, ours is a fee-for-service system. In other words, the more services provided by the physician, the more he or she gets paid. Obvious options to lower costs and improve competition like allowing health insurance companies to compete across state

lines apparently would not satisfy the political appetite of our President.

(d) *The insurance industry is the villain.* While the President portrays the insurance industry as the villain, the fact remains that of 2.472 trillion dollars spent on healthcare in 2009, fourteen insurance companies realized profits of roughly 9 billion dollars which is four tenths of one percent of the total healthcare spending. This suggests to the author that the return on investment for health insurance companies has not been excessive. The President's demonizing the health insurance industry, while it may have a certain visceral appeal to voters, does not appear to be borne out by empirical evidence in terms of excessive returns on investment.

#### IV. A SYNOPSIS OF THE CONSTITUTIONAL ARGUMENTS

Fourteen states have filed claims in court challenging the constitutionality of Obamacare. Central to the success of these lawsuits will be the Tenth Amendment to the United States Constitution which reserves to the states those powers not delegated to the central government. The central government is authorized by the Constitution to engage in the following enumerated powers:

- (a) to raise an army and a navy;
- (b) to operate a court system;
- (c) to provide for standard weights and measures,
- (d) to coin money; and
- (e) to establish a post office system.

As law students, we were inculcated with a body of case law that indicated the commerce clause was to be given far reaching scope and powers. However, the commerce clause affects exactly that, commerce. Can the interstate commerce clause be the justification for imposing a tax or a penalty on a citizen for simply being alive? Please note in phrasing the question I am pointing out the fact that the citizen is not engaging in any "economic activity."

Respectfully, the Founding Fathers never intended to give the federal government any law-making powers that were not set forth above in the enumerated powers.

Recognizing that health insurance has historically been regulated by the states, the first constitutional question is whether the federal government

can mandate that an individual obtain health insurance or suffer a tax or a fine if he or she fails to do so. Bear in mind, there is no specific enumerated power in the Constitution for the Congress to engage in or regulate healthcare. The cases brought by the states against the United States government will assert that the interstate commerce clause does not authorize this intrusion into the lives of individuals. While the interstate commerce clause is designed to ensure the free flow of commerce between the states, when you go to your doctor for treatment, are you engaged in interstate commerce?

A second but related constitutional issue is whether the United States government can commandeer the assets of a state. For example, in Florida, there are 2.7 million recipients of Medicare. Obamacare will expand the Medicare roles by 1.2 million recipients. Obamacare will require that the State of Florida spend at least an additional one billion dollars to comply with the requirements of Obamacare. Further, Obamacare will require that Florida be forced to shoulder this economic burden and spend it on healthcare.

With respect to the second issue, the argument is that Congress cannot commandeer — take over — a state function.

The actions challenging the constitutionality of Obamacare have been filed in the United States District Court for the Northern District of Florida. According to the understanding of the author of this newsletter, there has already been an initial status conference between the judge and the lawyers. The suspicion of the author of *FlightWatch* is that the states have sought a declaratory judgment from the court about whether or not the provisions of Obamacare are constitutional. The court has subject matter jurisdiction over these cases because they involve a federal question arising out of or under the United States Constitution. The author of *Flight-Watch* suspects that in due time cross-motions for summary judgment will be filed and the trial court will eventually render a decision based upon the evidence, materials and testimony before it. Thereafter, the case will make its way to the Eleventh Circuit Court of Appeals in Atlanta and eventually to the Supreme Court of the United States. For those who care about liberty, one can only hope that five members of the United States Supreme Court will declare that the President's healthcare law is unconstitutional.

## V. A CALL TO REPEAL THE PRESENT HEALTHCARE LAW

As a concerned citizen I believe it is my responsibility to alert others to an impending economic, political and social crisis. It is my firm conviction that the leadership of this country has been substantially mismanaged during the tenure of President Obama. I fully appreciate and recognize that commitments by the Bush Administration to war in the Middle East (most especially Iraq) have driven up the national debt. However, the fact is we are where we are, and something must be done to ameliorate the enormous national debt. Another dysfunctional government program that will not satisfy any of the reasons for its existence is the last thing this country needs in the midst of an economic recession when the national debt is forecast to balloon from 40% to 90% of the GDP by 2020. Already a number of major corporations have recently disclosed in filings with the Securities and Exchange Commission the enormous tax burdens that will be visited upon them as a result of the President's healthcare law.

While we await the legal challenges to the President's healthcare law, consider that 16,000 new IRS agents will be hired to enforce universal healthcare obligations. Your insurance carrier will send the IRS a 1099 Form or similar form. The IRS will decide whether you have carried the "minimum essential coverage." If not, you are subject to fines of \$2,250.00 or 2% of your income, whichever is greater, plus penalties and interest. The budget for the IRS operations will balloon to \$10 billion in the next decade to administer this new program. Also, the IRS will verify small business healthcare coverage, including wage levels and number of employees.

As a former Southern Democrat, I urge thinking Americans to consider voting Republican in the fall so that we can wrest control of our country from a predominantly Democratic Congress drunk with power and indifferent to the will of the American people and the economic solvency of this nation.



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