



THE FOUNDATION

“The instruments, by which [government] must act, are either the AUTHORITY of the Laws or FORCE. If the first be destroyed, the last must be substituted; ... and where this becomes the ordinary instrument of government, there is an end to LIBERTY.” --Alexander Hamilton

GOVERNMENT & POLITICS

ObamaCare on Trial

Fundamental to our system of governance is the concept of federalism -- the division of power between the federal government and the states. Cemented in the Constitution, this concept provides the federal government with only certain, specific (“enumerated”) powers, while the states hold all other powers of governance over the individual. This division, along with separation of the federal powers into executive, legislative and judicial branches of government, is the bedrock that secures individual liberty in the U.S.

Although federalism has eroded significantly in the last century, it faces its most serious threat via the Patient Protection and Affordable Care Act, better known as ObamaCare. This week the Supreme Court of the United States (SCOTUS) heard six hours of oral arguments over three days -- the longest amount of time allotted in almost half a century -- and a record-setting 130 amicus briefs in cases consolidated under the title, Department of Health and Human Services, et al., vs. State of Florida, et al., which challenge the constitutionality of the law.

Day One: *Can the Court even hear the case?* Before SCOTUS can reach the merits of this case, it must first decide whether it is properly before the court. Under the 1867 Anti-Injunction Act, taxpayers may not challenge a tax until it is actually collected. While ObamaCare compels individuals to buy health insurance or pay a penalty, this provision is inoperative until 2014. Democrats specifically chose language in the law that avoided the term “tax” in order to evade the certain political accountability associated with raising taxes. If the Court finds that ObamaCare does impose a tax, then it could use the Anti-Injunction Act to sidestep a decision on ObamaCare until that date. The states argue that ObamaCare is not a “tax” and thus falls outside the bounds of the Anti-Injunctive Act.

Interestingly, most scholars and pundits on the legal left believe ObamaCare could survive a constitutional challenge by seeking refuge in the enumerated Taxing and Spending power. This notion put the administration’s lead attorney, Solicitor General Donald Verrilli, in the unenviable Catch-22 of having to argue on Monday that ObamaCare is *not* a tax in order to reach the merits of the case, and then on Tuesday arguing that it *is* a tax in order to assert that Congress has the lawful power to impose ObamaCare’s individual mandate. Justice Samuel Alito asked Verrilli whether he could identify any other case in which a court had ruled something as “not-a-tax” under the Anti-Injunction Act while still holding it constitutional as a taxing power. The short answer is, “No.”

Day Two: *Is the “individual mandate” constitutional?*

The “individual mandate” -- the lynchpin of ObamaCare -- refers to the law’s provision to compel an individual to buy health insurance. Although this provision has several moving parts, the central issue hinges on whether the Commerce Clause, which empowers Congress to “regulate” commerce among the states, allows Congress to *force* individuals to engage in commerce so as to then be regulated. If the Court upholds the individual mandate, then virtually no limit exists to the power Congress has over the individual. Obtusely, the Left argues that an individual’s choice *not* to participate in a certain market therefore affects that market, thus subjecting individuals to regulation.

From a practical standpoint, the pivotal vote is Justice Anthony Kennedy, who asserted that government has a “heavy burden” to establish its “suggested fundamental changes between the role of government and its citizens.” His other major concern was that he could not find a “limiting principle” in the mandate, were it upheld. That is, if Congress is allowed to compel citizens to purchase health insurance, where is the limit to its power?

Justice Antonin Scalia pressed, “Why do you define the ‘market’ that broadly: ‘Health care?’ It may be that everybody needs health care sooner or later, but not everybody needs a heart transplant; not everybody needs a liver transplant. Could you define the market such that everybody has to buy food, sooner or later? So you define the market as food; therefore, everybody’s in the market;

therefore, you can make people buy broccoli?"

Day Three: Severability -- is ObamaCare salvageable apart from the mandate? Though ObamaCare is a statute few have actually read in its entirety, including the legislators who passed it, the Justices will decide whether the 2,700-page leviathan can be broken into parts so that those deemed unconstitutional can be discarded and those that are left can remain law. That the statute has myriad complexities is without debate. Recall then-House Speaker Nancy Pelosi's Leftspeak, "We have to pass the bill so that you can find out what is in it."

Now that "what is in it" has become clearer, the question is whether this poison pill law must be swallowed whole -- and it seems to be an easy answer. Since the individual mandate is the heart of ObamaCare, if that provision dies, then so must the rest of the law. Of all the cases heard in lower courts, only one federal judge struck down the entire law on these grounds, but based upon the tenor of Wednesday's oral arguments we think the Court might agree. The Court is not fond of gutting statutes and recreating from whole cloth the provisions it thinks Congress intended. Indeed, the Court has traditionally viewed this as a dangerous practice that introduces the Court to legislative functions the Constitution never intended.

Also during Wednesday's sessions was a review of the expansion of Medicaid coverage. Plaintiff states challenge the expansion as a coercive intrusion into state sovereignty because the federal government is dictating to the states that they must cover costs of the expansion or risk loss of federal funds. Although the SCOTUS has previously held that such "purse string" arrangements are constitutional, the states are challenging the extent to which that ruling applies, in light of the overwhelming burden the federal government will be saddling upon the states.

In any event, it's hard to overstate what is at stake in SCOTUS' decision in this case. Simply put, if ObamaCare stands, no legal, political or practical limit will bar the federal government from forcing individuals to do whatever it wishes -- buying health insurance is just the tip of the iceberg. If it falls, stay tuned for the Left to push for a single-payer system, in which the government becomes the nation's insurance company.

For now, we remain hopeful and trust that the High Court will come down on the side of Essential Liberty and justice in lieu of "individual mandates" and leftists' warped sense of "fairness." The Justices vote today, but the deci-

sion and opinions won't be released until the end of June. Another decision is expected at the November polls, and we're looking forward to positive outcomes in both.

This Week's 'Braying Jackass' Awards

In honor of this week's oral arguments, let's take a brief walk down memory lane with a look back at how various Democrats have responded to the idea that the Obama administration's signature domestic policy "achievement" just might be unconstitutional:

"Are you serious? Are you serious?" --then-House Speaker Nancy Pelosi (CA)

"[T]he federal government can do most anything in this country." --Rep. Pete Stark (CA)

"There's nothing in the Constitution that says the federal government has anything to do with most of the stuff we do. How about [you] show me where in the Constitution it prohibits the federal government from doing this?" --Rep. James Clyburn (SC)

"I don't worry about the Constitution on this, to be honest. ... It doesn't matter to me." --Rep. Phil Hare (IL)

In related news, Barack Obama's website is hawking "Health Reform Still a BFD" shirts -- a reference to Joe Biden's crude declaration just after its passage that ObamaCare is "a big f---in' deal!" Obviously, Democrats have no respect for the Oval Office or, more important, the Constitution.

News From the Swamp:

The House Tackles Various Budget Proposals

Sen. Dick Durbin (D-IL) announced that the Senate Judiciary Committee will be holding hearings on whether professional football teams engage in the practice of bounties, or financially rewarding players for intentionally hurting opponents during games. Senate Democrats decided to focus on this issue rather than more trivial pursuits -- such as the 2013 budget. Perhaps they want to see just how many years they can go without passing one.

The House, on the other hand, considered several competing budget proposals, including the president's own budget, which was quickly dispatched by an astounding vote of 414-0. That's reminiscent of last year's Obama budget defeat in the Senate, 97-0, and it speaks volumes that even *every Democrat* essentially cast a vote of no confidence in the president.

Conversely, the House passed Rep. Paul Ryan's Path to Prosperity budget by a vote of 228-191. Zero Democrats voted for the proposal and 10 Republicans opposed it, three because it didn't go far enough. The Senate is sure to block it -- or *any* budget proposal, for that matter.

Meanwhile, Democrats released their own \$3.7 trillion plan. The proposal would confiscate \$1 trillion more in taxes by closing loopholes for millionaires and implementing the so-called Buffet Rule. It would allegedly reduce the deficit as a percentage of GDP from 8 percent in 2012, to 2.7 percent in 2022. By comparison, Ryan's plan would reduce the deficit to 1.2 percent of GDP in that same time frame. Democrats made no attempt to reach a balanced budget, nor did they address in any meaningful way reductions or reforms to entitlement programs. The plan failed 163-262.

The Congressional Progressive Caucus also released a budget proposal calling for \$1.3 trillion more in spending than does Obama's budget. Despite this immense rise over and above their boss's profligacy, the CPC budget claims to add less to the deficit over 10 years because of an additional \$4.7 trillion in taxes. These "progressives" propose grabbing additional money via an \$897 billion energy tax, an \$849 billion tax on stock trades and a \$319 billion millionaire surtax. They maintain that these and other new taxes are needed to pay for their proposed \$2.9 trillion in new stimulus spending on the theory that the last "stimulus" was *so* successful. The CPC's plan failed 78-346.

The Republican Study Committee likewise crafted a budget proposal in response to the Ryan plan, which, they argued, doesn't cut spending deeply enough and takes too long to reach a balanced budget. The RSC plan balances the budget in just five years and cuts spending by \$9 trillion over 10 years, while the Ryan plan cuts just \$5.3 trillion. The RSC's plan failed 136-285.

The U.S. government's debt now exceeds \$15.5 trillion. For those of you keeping score, that's about \$50,000 for every man, woman and child in the United States.

New & Notable Legislation

Sen. Sheldon Whitehouse (D-RI) plans to introduce a bill to implement the "Buffet Rule" with a vote scheduled for Tax Day, April 15. The bill requires that individuals earning more than \$1 million a year pay a minimum 30 percent income tax rate. This latest attempt to balance the budget by taxing the wealthy falls dramatically

short of accomplishing that goal, however. Supposedly, it commandeers an additional \$47 billion over 10 years, reducing the \$6.4 trillion deficit in Obama's 2013 budget proposal by just 0.7 percent. Even Fareed Zakaria, one of the mainstream media's most reliable leftists, spoke against the nation's progressive tax system, noting that the top 10 percent of U.S. earners (including Fareed Zakaria) pay 45.1 percent of the total tax burden, more than the top 10 percent in most European countries, including France and Germany. Zakaria even called for lowering income and corporate tax rates dramatically and implementing a national sales tax.

From the Left: Who's Watching the Watchers?

Gannett Wisconsin Media became part of its own story last week when its Appleton, Wisconsin, Post-Crescent reported the names of 29 circuit court judges that had signed petitions to recall Republican Governor Scott Walker over his public-sector union reforms. After publicly tooting its own horn for such splendid journalism, Gannett was forced to follow up with a public notice admitting that 25 of its own Wisconsin reporters, including nine at the Post-Crescent, also had signed recall petitions. Oops!

While Gannett notes that this violated the company's Principles of Ethical Conduct for Newsrooms, the reporter-petitioners argue that they were not engaging in political activity and therefore retained their "journalistic neutrality." Obviously, signing a petition in support of a recall election is a political activity, but the hypocrisy continues. In its statement, Gannett patted itself on the back for its transparency in notifying its readers, and then added that it decided not to make public the names of its activist journalists. "First and foremost," the paper said, "we decided to inform our readers and be as open as possible. We have decided not to name the employees." Once again, the "shield law" shields the media from responsibility -- and the public from the truth.

ECONOMY

Obama 'Doubles Down' on Failed Energy Policy

With the Obama administration dead set on turning the Keystone XL pipeline into a pipe dream, two energy companies have decided it's time for a little less talk and a lot more action. Enterprise Products Partners LP of Houston and Enbridge Inc. of Calgary are each moving forward with new pipeline projects that will deliver up to 850,000 barrels of crude oil daily from Canada to Gulf Coast refineries by mid-2014. Unlike the Keystone pipeline, these projects won't have to scale a State Department block-

ade as the portions of the respective pipelines that cross international borders are already built. Of course, other federal agencies, including the Federal Energy Regulatory Commission, will have to give their permission, but with Obama's push for energy independence relegated to nothing more than lip service, one can only applaud the enterprising energy companies for taking action.

Underscoring this administration's determination to quash domestic oil production and to raise gas prices, reports show that the number of permits issued to drill on federal land has dropped dramatically over the past three years, falling from an average of more than 6,800 per year from 2006 to 2008 to an average of fewer than 4,300 per year from 2009 to 2011. Meanwhile, not only are gas prices already painful but according to experts they're likely to get even worse. Not to worry, as Ed Morrissey sarcastically notes, decreasing permits and rising prices "are completely unrelated. Totally, fully, and undoubtedly unrelated."

Obama also continued to play the part of a fiscally responsible president, demanding that Congress eliminate "subsidies" for oil companies. He claimed that the tax credits available to oil companies, assiduously avoiding mention of similar credits available to other companies, were double dipping on the American taxpayer, once for high prices and again for tax credits. In a Rose Garden press conference Thursday, Obama said, "Instead of taxpayer giveaways to an industry that's never been more profitable, we should be using that money to double down on investments in clean energy technologies that have never been more promising."

Memo to Obama: If loopholes are closed and credits eliminated, the corporate tax rate should be lowered to make it competitive. Above all, stop scapegoating companies that pay more in taxes than they earn in profits. Leave it to him, though, to "double down" on failed policy.

Regulatory Commissars: Coal Is No Longer King

Providing yet more evidence that Barack Obama seeks to put coal companies out of business, this week the EPA enacted regulations that greatly hamper the construction of coal-fired power plants. The new rules limit utilities to 1,000 pounds of carbon dioxide per megawatt, a number that coal plants can't touch without taking extreme measures to reduce carbon dioxide output by nearly half per megawatt. Currently, an average coal plant weighs in at nearly 1,800 pounds of carbon dioxide per megawatt while natural gas-fired power plants produce about 850 pounds of CO₂ per megawatt generated.

It's worth remembering that during his campaign Obama admitted that "electricity costs would necessarily skyrocket" because of his policies capping greenhouse gases. This unprecedented move by the EPA is a major step in that direction. Having set an arbitrary limit of 1,000 pounds of CO₂ per megawatt now, what's to stop a second-term Obama from ratcheting the level down further? There wouldn't be any need for the fracking that environmentalists detest if demand for natural gas is regulated away.

It seems that Obama failed to consider how much more expensive driving those already heavily subsidized Chevy Volts would be with ever-rising electricity costs. Despite his declared intention to buy a Volt upon leaving his current post, rising costs are of no concern to him since the rest of us will pay the freight every time we flip on a light switch or air conditioner.

So we see another example of Obama's real agenda: If energy comes from a so-called fossil fuel, then it's on the hit list. The "all of the above" energy solution rhetoric is as phony as the "green" jobs created by the stimulus.

Income Redistribution: Bullet Train to Nowhere

DesertXpress is seeking a \$4.9 billion "loan" from the Obama administration to build a 150 mph train to travel between Las Vegas and Middle-of-Nowhere, California. Senate Majority Leader Harry Reid (D-NV) is pushing the charade, which would be the largest of its type, because apparently he thinks tourists in Los Angeles will travel 100 miles outside that city to board the train to Las Vegas. Transportation Secretary Ray LaHood says it will mean "jobs," though just over 700 jobs would be permanent. Construction costs have already reached \$6.5 billion, not including interest on the loan. We find it somewhat ironic that the party of "progressive" thought and action is pushing trains as the wave of the future.

Remember when Obama said in 2009, "You can't take a trip to Las Vegas ... on the taxpayer's dime"? Unless you're taking a federally funded train. Or you're Michelle Obama.

SECURITY

Department of Military Readiness: Obama's 'Flexibility'

Meeting at the Nuclear Security Summit in Seoul, South Korea, this week, Barack Obama made clear his objectives for U.S. national defense -- or should we say the lack thereof. Speaking candidly with outgoing Russian President Dmitri Medvedev, Obama was caught unaware

on an open microphone saying, "On all these issues, but particularly missile defense, this, this can be solved but it's important for [incoming Russian President Vladimir Putin] to give me space. This is my last election. After my election I have more flexibility." Medvedev replied, "I understand. I will transmit this information to Vladimir."

Obama, the *real* Etch-A-Sketch candidate, is essentially telling the Russians that he will be a blank slate after the November election, whereupon he will no longer be accountable to the voting public. U.S. national defense in Obama's second term -- should the American people be suicidal enough to grant him one -- is therefore entirely negotiable and subject to Russian approval. Recall that one of Obama's first forays into foreign policy was to back-stab our allies, Poland and the Czech Republic, by renegeing on the missile defense agreement hammered out by the Bush administration.

The president, of course, tried to brush off the remarks, declaring, "The only way I get this stuff done is if I'm consulting with the Pentagon, with Congress, if I've got bipartisan support and frankly, the current environment is not conducive to those kinds of thoughtful consultations. This is not a matter of hiding the ball." He then claimed that he was referring to *Russian* elections, such as they are: "I don't think it's any surprise that you can't start that a few months before presidential and congressional elections in the United States, and at a time when they just completed elections in Russia, and they're in the process of a presidential transition where a new president's going to be coming in, in a little less than two months."

There's no denying the truth, however. Obama wants "space," or time, from Putin to get himself re-elected. Then everything is fair game. Indeed, also this week, Obama asserted that the U.S. has a "moral obligation" to take "concrete steps towards a world without nuclear weapons." Seemingly, the commander in chief operates under the dangerous view that our enemies will reciprocate if we just play nice. If his objective is to knock the U.S. down a few pegs -- which we believe it is -- that's certainly the way to do it.

Warfront With Jihadistan: 'Friendly' Fire

American public support for the Afghan war has tanked since the recent crises involving the Koran burnings and the murder of Afghan civilians. Keep in mind that polls are too often used to *drive* public opinion rather than reflect it, but 69 percent of Americans now say we should not even be in Afghanistan, and a similar number say

that the war is going "very badly" or "somewhat badly," according to a New York Times/CBS poll released this week. Further damaging public support are the increasing number of attacks by Afghan soldiers, police and even citizens (a.k.a. our "Afghan allies") on American and coalition forces. Just Monday, an Afghan soldier murdered two British troops in southern Afghanistan.

Unfortunately, the Pentagon's handling of these so-called "green on blue" attacks has not reassured people that they are isolated incidents. On March 22, General John Allen, coalition commander in Afghanistan, told the Senate Armed Services Committee that Afghan security forces have killed at least 52 of their American counterparts since 2007, but that number appears to be woefully short of the truth. A number of American casualties whom the Pentagon claimed died in combat actually were victims of insider attacks. Whether these were Pentagon mistakes, or meant to misinform, is unknown at this time.

One American, Marine Corporal Edward Dycus, died in February from a gunshot wound. The Pentagon's official version said Dycus died "while conducting combat operations," but an investigation found that an Afghan soldier shot Dycus in the back of the head while standing guard at an Afghan-U.S. base. The Defense Department made no mention of the treachery in its public notice. Since Dycus' murder, six other U.S. soldiers were killed by their Afghan "partners" and in each case the Pentagon failed to report that it was a "green on blue" killing. According to military blogger Michael Yon, Afghan turncoats have inflicted about 200 casualties since Operation Enduring Freedom began, with more than 75 percent of the attacks occurring in the past two years.

Americans have expended great sums of blood and treasure to smash al-Qa'ida and remove the Taliban from power. Has the U.S. reached the point of diminishing returns in trying to help these treacherous, murderous ingrates?

CULTURE

New York Times Complains of Media Bias in Zimmerman/Martin Case

According to the tired, old Gray Lady, a "blog post [of Trayvon Martin's Twitter account photo] features an image of him making an obscene gesture and quotes from a message that includes an abbreviation for an obscenity." The image was posted "on The Daily Caller, a site founded by Tucker Carlson, a conservative pundit. ... The [twitter image was] selected to reinforce the argument

that the victim of the fatal shooting was a menacing figure who might plausibly have been mistaken for a criminal.” Versus the NYT, which was founded and still managed by Socialists.

Actually, the image was posted because the alternate image being circulated by the Leftmedia in regard to Martin’s death is one when he was 11 or 12 years old, not a recent photo. Why not a recent photo? Obviously The New York Times’ agenda is to portray Martin as an innocent pre-teen “victim,” as they identified him.

As for the “quotes from a message,” the Times just notes that it “includes an abbreviation for an obscenity.” Martin tweeted under the handle “NO_LIMIT_NIGGA,” and a recent message was, “Plzz shoot da #mf dat lied 2 u!” Did you detect something more menacing than just “an abbreviation for an obscenity”?

For more on the Zimmerman/Martin case, read Mark Alexander’s column on [Race-Bait Political Hustlers](#), whose objective is to “keep black folks enslaved on the ObamaNation Plantation.

Climate Change This Week: Immunity and the Money to Make It Necessary

Acting as the market, we may not want to purchase the more expensive “alternative” energy or pay higher taxes and fees to subsidize its place in the market. Government in this era is, however, government that knows best, and we’re going to pay for saving the planet with both our cash and our liberty. Take as an example the Green Climate Fund, a kitty of \$30 billion extorted from UN member states and an agency looking for a permanent home. Of course, one condition of a nation becoming its headquarters would be allowing its operations to be shielded through diplomatic immunity, even though it’s not technically part of the UN itself.

Or you can look at our very own Global Climate Change Initiative, a budget item for which Barack Obama seeks \$770 million for FY2013, bringing the total U.S. funding to a cool \$3 billion over the life of the program. This money is mainly spent overseas to help countries “adapt” to climate change and create in these far-flung places the green jobs Americans just won’t do -- because there really are none.

All this is despite the fact that the global temperature has changed little over the last 15 years -- contrary to dire predictions that global warming is close to becoming

irreversible -- and the unusually warm winter those in the eastern half of the country enjoyed was tempered by overly severe winters in other locales, particularly Europe, Asia and Alaska.

Yet it’s a global scale where Al Gore and other climate change believers truly seek their change. These zealots call for “fundamental reorientation and restructuring of national and international institutions toward more effective Earth system governance and planetary stewardship” leading to a “new set of institutions [that] would have to be imbued with heavy-handed, transnational enforcement powers.” No wonder they demand immunity; their next demand will be our sovereignty.

Not Fonda This Casting Choice

Semi-retired as an actress since her heyday several decades ago, “Hanoi Jane” Fonda has concentrated more on her political activism. But every once in a while, she will take a small role, and her latest part has raised eyebrows -- imagine the leftwing activist as Nancy Reagan.

An upcoming movie about longtime White House butler Eugene Allen, who served under eight presidents spanning from Truman to Reagan, is the vehicle for Fonda’s latest comeback. Fortunately, they haven’t cast her ex-husband Ted Turner as the Gipper, but give them time.

The movie, which depicts Allen as a man who began his career in Washington at a time when he couldn’t even use the public restrooms in his native Virginia because he was black, is a vanity project of sorts for director Lee Daniels, who is still working out casting details and financing. If all comes together, filming may begin this summer.

It would be Oscar-worthy if Fonda can convince moviegoers that she’s the real Nancy Reagan and not the astrology-following caricature of the former First Lady that the media prefers to present, all while Fonda would be acting so opposite her own character.

And Last...

Over the last three years, the Obamas have done everything they could to demean the office of the president. Indeed, the degradation extends to the White House itself. Blogger Keith Koffler writes, “The ornate and historic East Room is a national treasure that has been used for events like presidential press conferences, command performances by the world’s greatest musicians, the signing of historic legislation like the 1964 Civil Rights Act, shimmering White House parties, presidential awards of

military and civilian honors, and the funeral of Abraham Lincoln.” Not anymore. Michelle Obama, as part of her “Let’s Move” drive to fight obesity, hosted a workout session in the East Room to be broadcast as part of TV’s “The Biggest Loser.” Which gives us an idea for a campaign slogan Obama can use -- and we won’t even ask for a consulting fee. “The Biggest Loser” has a nice ring to it.

Semper Vigilo, Fortis, Paratus et Fidelis! Nate Jackson for *The Patriot Post* Editorial Team. Read online at <http://patriotpost.us>

(Please pray for our Armed Forces standing in harm’s way around the world, and for their families -- especially families of those fallen Soldiers, Sailors, Airmen, Marines and Coast Guardsmen, who granted their lives in defense of American liberty.)