National Federation of Republican Women
POLITICAL BRIEFING

Obamacare and Predatory Federalism: Talking Points on the Role of State Exchanges in Obamacare

Michael Cannon, the director of health policy studies at the Cato Institute and former domestic policy analyst for the U.S. Senate Republican Policy Committee, has done extensive research on Obamacare and has been watching its implementation. The following talking points are adapted from his various articles, papers, and a Capitol Hill briefing, cited below:

- The Patient Protection and Affordable Care Act, popularly known as Obamacare, is like a stool that stands on three legs: the pre-existing condition provision, the individual mandate, and the premium assistance tax credits hold up the law.
- According to section 1311 of Obamacare, states "shall" create exchanges in order to receive the tax credits for low to moderate income people. The law restricts the tax credits to those exchanges created by the states because the credits were meant as an incentive for the states to create the exchanges.
- According to section 1321 of Obamacare, in a state that refuses to set up an exchange, the federal government creates an exchange for the state; however, the law states 6 times that the tax credits are only for those exchanges created by the states.
- Several states have been adamant about not creating the health care exchanges, namely Texas, Louisiana, Michigan, South Carolina, and Florida. New Jersey Governor Chris Christie vetoed setting up an exchange in his state in May of this year, and Governor John Lynch of New Hampshire (a Democrat) also vetoed the initiative in his state. Check to see how your state is handling Obamacare's exchange provision here.
- Employers who fail to provide what the federal government defines as "essential coverage" to employees are liable to a tax as high as $3,000 per employee. However, if a state refuses to set up an exchange and the federal government sets one up for that state instead, according to the letter of the law, the employer does not incur the tax. States that do not set up an exchange are not subjecting their employers to the tax.
- In order to close this state-exchange loophole in the law, the IRS disregarded Obamacare's statutory language on May 18, 2012, by declaring that the tax credit will apply to the federally created exchanges. This is an illegal action by the IRS that will increase deficit spending tremendously.
- After the Supreme Court's decision in June upholding Obamacare, the law can be overturned by administrative action or by the Congressional Review Act. Contact your Governor today and urge him or her not to create an exchange in your state!

To learn more about the illegal IRS action concerning state exchanges under Obamacare, watch Michael Cannon's presentation on Capitol Hill last week.

For more reading on this issue:

"The Illegal IRS Rule to Increase Taxes & Spending Under Obamacare" by Michael Cannon and Jonathan Adler
"Obamacare: The Road to Repeal Starts in the States" by Michael Cannon
"The Illegal IRS Rule to Expand Tax Credits Under the PPACA: A Response to Timothy Jost" by Michael Cannon