

Will ObamaCare Abolish the States?

Lecture by the Hon. Ken Blackwell
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We are nearing the end of an exhausting year of debate about nationalizing health care in this country. It is certainly an odd time for Speaker Pelosi and Sen. Reid to take the debate behind closed doors. The Speaker says this has been the most open debate in history. It was hardly that. But even if we grant her statement, by taking the final bill behind closed doors, doesn't her action make a mockery of any previous "openness?"

It's more like Mikhail Gorbachev's famed *glasnost* in the former USSR: He was "open" to every possibility except the only one his people wanted: they wanted out of the USSR. Already, Americans desperately want *out* of ObamaCare. Every poll confirms this.

The Speaker reminds me of the cynical old Tory floor leader in the House of Commons in nineteenth century Britain. "This is really a terrible bill," the leader cynically told his senior colleagues behind his hand, "we shall have to apply our *majority* to it."

That's what Speaker Pelosi is now doing. Mrs. Pelosi remembers the fate of Mrs. Clinton's health care takeover in 1994. That proposal sank of its own dead weight. And the Republicans took control of the Congress for the first time in forty years. Speaker Pelosi is determined to bull it through. She knows this

much: She is very unlikely to be defeated in her own district no matter how far left she goes. There are only two types of Democrats in her San Francisco district—Left and Lefter.

Speaker Pelosi knows that her time is limited. Very likely, the Senate that convenes in January, 2011, will *not* have 60 Democratic votes to constitute a super-majority. As likely, the House of Representatives that meets then will have a reduced Democratic majority. It is at least possible that Democrats could lose control of both Houses in this fall's elections. There is a *tsunami* of opposition to the liberal juggernaut that has a number of endangered Democrats racing to the exits. So, for liberals like Mrs. Pelosi, it's now or never.

Pete Wehner thinks James Madison may have checked President Obama. Wehner says the President's "fundamental mistake" has been "attempting to ram through changes without respect for what James Madison called the 'auxiliary precautions' of American government—meaning... 'the self-restraining, majority-restraining principles of the Constitution, like the separation of powers, bicameralism, limited government, all the internal checks, etc.'"

Pete Wehner is certainly right about Madison's contributions to our constitutional system of checks and balances, although I should point out that Madison wanted a federal Congress based solely on population. He mourned the Great Compromise that allowed little Connecticut as much influence in the Senate as the more populous Virginia.

What would Madison make of Sen. Ben Nelson's unique contribution to constitutionalism? Article I, Section 8, Clause 1 of the U.S. Constitution does *not*

say: "...but all Duties, Imposts and Excises shall be uniform throughout the United States *except in Nebraska.*"

Sen. Nelson's "Cornhusker Carve-out" exempts his state from having to share the added Medicaid costs that he and his Democratic colleagues voted to impose on forty-nine other states. All animals are equal, but some animals are more equal than others, George Orwell wrote in *Animal Farm*. Orwell was writing satire. Sen. Nelson, presumably, was writing legislation.

I agree with Pete Wehner's opposition to ObamaCare and his invoking Madison. But it's not at all clear that President Obama and his congressional cohorts care about James Madison's ideas or his Constitution. When we were promised "change we can believe in," part of that change was a *re-founding* of the American republic.

Only now are we seeing how radical that re-founding will be. Liberals snickered when conservatives last year expressed alarm over the children at B. Bernice Young Elementary School in Burlington, New Jersey. The students had been taught by their teachers to chant "Mmm, mmm, mmm, Barack Hussein Obama." They praised the new President for all he had achieved. It was remarkable because, up to that point, he hadn't done anything remarkable. But the children were only the warm-up act for the Nobel Peace Prize committee.

The alarm of the conservatives then, and now, is real. Once, American elementary schools featured stern portraits of George Washington. Once, young children cut out little paper hatchets to remind them of the story of young George chopping down the cherry tree. In most of our schools, those same children cut out tall, black stovepipe hats as a symbol of the other greatest

President, Abraham Lincoln. Never before had schoolchildren been mobilized and drilled to sing the praises of an incumbent President. Their song eerily reminded many of us of some Third World dictatorship, of places where “Dear Leaders” are worshipped as “as sort of god” by the youth.

A quieter revolution is taking place. The chanting children in New Jersey are symbolic of the federal takeover of the schools. As long ago as 1989, *Republican* President George H.W. Bush convened a National Education Summit in Charlottesville, Virginia. He summoned the nation’s governors to meet with him and jointly to hammer out a national education policy.

That was the two hundredth year of our U.S. Constitution’s adoption. Where in that venerable Constitution did the first President Bush find authority to direct education from Washington, D.C.? The Tenth Amendment was drafted by James Madison in 1789. Madison would later go on to help found the University of Virginia, where President Bush and some forty-nine state governors trampled the Tenth Amendment to that Constitution.

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people,” states the Tenth.

You can search the ancient text of our cherished U.S. Constitution. You will find not one word giving authority to the federal government to direct education. Could it be that that well-intentioned but ultimately and predictably failed presidential initiative by a Republican President has opened the door to the current effort at a federal takeover of health care?

It should be noted that the final report of that Charlottesville National Education Summit could have been written by then-Gov. Bill Clinton of Arkansas and his First Lady, Hillary Rodham Clinton. It embodied their ideas on education more than anything recognizably conservative, or even *constitutional*. The only rose on that dung cart was a small proposal for parental choice in education. That delicate rose, of course, was immediately tossed off the cart as it wended its way through committees chaired by Massachusetts' Ted Kennedy in the Senate and California's George Miller in the House.

Is it surprising that Sen. Chris Dodd, after casting his midnight vote for ObamaCare, went over to Arlington to pay tribute at the grave of Ted Kennedy? Or that Congressman George Miller—who tried to abolish home schools altogether—is in every picture of leaders pushing for the health care takeover?

These liberals would have no problem with abolishing the states. Madison warned of this tendency in *The Federalist No. 14*

In the first place, it is to be remembered, that the general [federal] government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments [state and local governments] which can extend their care to all those other objects which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the [constitutional] convention to abolish the governments of the...states,[the Constitution's] adversaries would have some ground for their objection..."

By ordering the states to establish health care exchanges, the states are as much in bondage to the federal government as are the citizens who now are required to purchase health insurance or pay heavy fines.

We should be very direct and very candid about our opposition to ObamaCare. We *do* believe it reduces the states to mere administrative units of the federal government. We *do* believe it effectively repeals the Tenth Amendment. And we believe it is radical and dangerous.

How can I defend states' rights, it might be asked? After all, don't we recall that it was the late Strom Thurmond who ran for President in 1948 on a so-called States' Rights ticket? In that year, Thurmond's definition of States Rights meant denying to black Americans their fundamental civil rights. Those disenfranchised black Americans, we now know, included Thurmond's own daughter.

I believe that James Madison in 1787 understood states' rights better than Strom Thurmond did in 1948.

I believe that the use of "states' rights" to defend slavery and Jim Crow segregation was a gross injustice—and it was *unconstitutional* as well. James Madison argued powerfully that the states *and* the federal government were both created by the people to protect fundamental rights.

The abolition of the states by ObamaCare is a threat to the liberties of all. That's what's fueling the Tea Party movement and the swelling chorus of the Union

protesting these radical assaults on the Constitution. I believe the people are right to oppose the “re-founding” of this Great Republic. And I believe in the wisdom of James Madison when he said: “The people are right to take alarm at the first advance on their liberties.”

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