



FRIENDS OF THE MIDDLE NEWSLETTER #104 — MAR. 28, 2012

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Obamacare Deep in SCOTUS Trouble

(posted by Steven W. Baker / SteveB, May 28, 2012)

I hope this correspondent is wrong about how the Obamacare case went in court yesterday. This is such an important decision. How I wish Clarence Thomas were not a justice!

Mid-Coronary Artery Bypass Surgery



"Obamacare's Supreme Court Disaster" by Adam Serwer, Mother Jones

Mar. 27, 2012, (<http://motherjones.com/mojo/2012/03/obamacare-supreme-court-disaster>)

Solicitor General Donald B. Verrilli Jr. should be grateful to the Supreme Court for refusing to allow cameras in the courtroom, because his defense of Obamacare on Tuesday may go down as one of the most spectacular flameouts in the history of the court.

Stepping up to the podium, Verrilli stammered as he began his argument. He coughed, he cleared his throat, he took a drink of water. And that was before he even finished the first part of his argument. Sounding less like a world-class lawyer and more like a teenager giving an oral presentation for the first time, Verrilli delivered a rambling, apprehensive legal defense of liberalism's biggest domestic accomplishment since the 1960s—and one that may well have doubled as its eulogy.

"What is left?" Justice Antonin Scalia demanded of Verrilli, "if the government can do this, what can it not do?" Verrilli's response to this basic and most predictable of questions was to rattle off a few legal precedents.

Justice Samuel Alito asked the same question later. "Could you just—before you move on, could you express your limiting principle as succinctly as you possibly can?" Verrilli turned to precedent again. "It's very much like *Wickard* in that respect, it's very much like *Raich* in that respect," Verrilli said, pointing to two previous Supreme Court opinions liberals have held up to defend the individual mandate. Where the lawyers challenging the mandate invoked the Federalist Papers and the framers of the Constitution, Verrilli offered jargon and political talking points. If the law is upheld, it will be in spite of Verrilli's performance, not because of it.

The months leading up to the arguments made it clear that the government would face this obvious question. The law's defenders knew that they had to find a simple way of answering it so that its argument didn't leave the federal government with unlimited power. That is, Obamacare defenders would have to explain to the justices why allowing the government to compel individuals to buy insurance did not mean that the government could make individuals buy anything—(say, broccoli or health club memberships, both of which Scalia mentioned). Verrilli was unable to do so concisely, leaving the Democratic appointees on the court to throw him life lines, all of which a flailing Verrilli failed to grasp.

"I thought what was unique about this is it's not my choice whether I want to buy a product to keep me healthy, but the cost that I am forcing on other people if I don't buy the product sooner rather than later," said Justice Ruth Bader Ginsburg. Verrilli responded gratefully: "That is—and that is definitely a difference that distinguishes this market and justifies this as a regulation."

Time and time again, conservative attorneys and judges fine-tuned their argument to fit existing legal precedent, arguing that the mandate was an unconstitutional use of Congress' authority to regulate commerce because it forces individuals into the stream of commerce, rather than regulating economic behavior already underway. Former Solicitor General Paul Clement, who argued against the constitutionality of Obamacare, ably responded to questioning from the Democratic appointees on the court, all of whom offered more persuasive defenses of the mandate than the man who had come to the court to do so.

Most of the conservative appointees on the court appeared to sign on to the argument—advanced by Judge Henry Hudson in his decision striking down the mandate—that the view the individual mandate regulates economic "inactivity" rather than economic activity. That argument was designed by foes of the law to circumvent a previous opinion written by Scalia, where he wrote that "where Congress has the authority to enact a regulation of interstate commerce, it possesses every power needed to make that regulation effective." Scalia seemed to sign onto Hudson's reasoning during oral arguments.

"Here you're regulating someone who isn't covered," Scalia said. "You are saying that some people who aren't in [the insurance market] must be in it and that's different from regulating in any manner commerce that already exists out there." Chief Justice Roberts, when asking questions of Verrilli, seemed to be speaking for himself. By contrast, when addressing the law's opponents, he twice identified the government as the source of the counterargument. Even Justice Anthony Kennedy, considered to be a potential swing vote, seemed open to the inactivity/activity argument. "The reason this is concerning is because it requires the individual to do an affirmative act," Kennedy said.

Yet Kennedy appeared somewhat sympathetic to the government's position that the health care market was unique, though he curtly observed that if upheld, he fully expected that the government would apply the mandate to other industries.

Verrilli was given five minutes for a final rebuttal and offered a stronger performance than he had in the previous hour he had been given.

"Everyone subject to this regulation is or will be in the insurance market," Verrilli said. Citing the legendary Chief Justice John Marshall, he concluded that "the provisions of the Constitution needed to be interpreted in a manner that would allow them to be effective in addressing the great crises of human affairs that the Framers could not even envision."

It may not have been enough.

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20120327-01	08:09	SteveB	Fw: From the Right: Why Gun Restrictions Face Tough Battles
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from *Guns & Patriots*:

After complex Capitol Hill machinations, some of which I shared with you and some I have not, senators John R. Thune (R.-S.D.) and David Vitter (R-La.) filed March 20 the "Respecting States' Rights and Concealed Carry Reciprocity Act."

The bill intends to guarantee the rights of gun owners to carry concealed weapons across state lines in accordance with the laws of individual states, ending the absurd patchwork of state laws for travelers.

While asserting the national purpose intended in the Bill of Rights, the bill balances the constitutional rights protected by the Bill of Rights with the rights of each state to enforce its own laws regarding concealed firearms.

Thune said he was pleased to file a bill that strikes the balance between the sovereignty of the states and the spirit of the Second Amendment.

"Rather than establish a national standard, our bill will ensure that law-abiding citizens are able to carry concealed firearms while at the same time respecting the laws of the respective states they visit," he said.

In this issue, our good friend John Velleco writes about the Thune-Vitter bill from the perspective of Gun Owners of America.

The bill is also supported by the National Rifle Association.

Thune and Vitter are great champions for restoring our gun rights. Please encourage your senators to support their effort. If passed, it would be paired with the Stearns-Shuler bill that passed in November and the differences would be worked out in conference committee manned by members of both chambers. That new conference bill would then need to be approved by each chamber before being sent for the president's signature.

Another champion for gun owners is Sen. Gerald W. "Jerry" Moran (R-Kansas). Moran stepped up March 20 to file the "Second Amendment Sovereignty Act," which prohibits federal officials from using the "voice, vote, and influence" of the government during its participation in talks for the United Nation's proposed Arms Trade Treaty in

any way that would compromise Second Amendment rights of U.S. citizens, including regulation of civilian firearms and ammunition.

The U.N. expects the Arms Trade Treaty to be completed by July 2012.

"Our country's sovereignty and firearm freedoms will not be infringed upon by an international organization made up of many countries with little respect for gun rights," Moran said. "Our Second Amendment rights are not negotiable."

It is refreshing to bring you good news from Washington. I will continue to keep you posted in this space as news develops. Until next week, please check out this week's roster of articles.

Enjoy, Neil W. McCabe, Editor, Guns & Patriots

20120327-02	10:45	Dale	Who Are the Racists? & Video: "Black Panthers Offer Bounty for Teen's Shooter"
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The rush to "hang" the shooter just might...MIGHT.....MIGHT be premature.

I don't know what happened in this incident and I'm not defending the actions of the shooter, but it seems to me the knee-jerk reaction is as racist a response as I have ever witnessed.

IF, a white militant organization published a wanted poster for a black person, with a reward, what would happen? How would the media treat it?

What would you say? If thousands of white folks marched through the streets and organized rallies protesting a reverse incident....you would call it bigotry and hate. Wouldn't you? Where is the backlash, when Jesse Jackson and Al Sharpton show up to inflame the hate.

I don't know how this case will turn out, but I am ashamed of the way many are reacting...not proud. Racism and bias are not right and I feel terrible about the pain the parents are experiencing. I can even understand and forgive their need to seek some kind of retribution for their loss, but that doesn't excuse the "rush to judgement" by everyone else.

In my opinion.

Video: http://www.cnn.com/video/?hpt=hp_t3#/video/bestoftv/2012/03/26/ac-black-panther-bounty-zimmerman.cnn.

20120327-03	10:52	SteveB	Re: Who Are the Racists? (reply to Dale, above)
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Thank you for this, Dale. I don't necessarily agree, but I think we have to learn all the facts before judging.

I know it seems like the left is judging this vigilante and some obviously are, but mainly what is being judged is the situation where, **if the gun had not been present, it's more likely no lives would have been lost.** I know we don't know that for sure, but that's the supposition, and it seems much closer to the truth to me than that Zimmerman is guilty of murder. Either way, it's a tragedy.

And I would still have been happier had the dude been arrested, at least for a while. Not doing so seems unseemly to me.

20120327-04	11:46	MarthaH	Poll: How Do You Interpret the Constitution?
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Visit our Facebook page to weigh in on the effect the individual mandate will have on the U.S. economy:
<https://www.facebook.com/NBCPolitics>.

The Supreme Court today is hearing arguments on the individual mandate included in the health care reform law. Do you think the Constitution gives Congress the power to require Americans to purchase health insurance? Total of 4,322 votes:

- Yes, since Congress has the power to regulate commerce it can enact the insurance mandate and solve a national problem.
Results: 1840 votes = 42.6%.
- No, Congress has no power to command any American to enter into commerce, for example, to buy insurance.
Results: 2,346 votes = 54.3%.
- Maybe, but the text of the Constitution isn't clear on this point, so a constitutional amendment is.
Results: 136 votes = 3.1%.

[Surprising results, to me. Isn't it agreed that Congress has the right to make us buy seatbelts in our cars? State legislatures make us buy helmets to ride motorcycles and insurance to drive a vehicle. I am made to buy homeowners insurance on my house by the stupid bank, fer cryin' out loud. Why would the government not be able to do the same with health insurance? I find the arguments ludicrous, yet the government seems to have flubbed its SCOTUS case (see lead article today). Social Security and Medicare also force us to engage in commerce—with the government, at least. How could it be deemed more intrusive on freedom to simply involve private enterprise in a similar endeavor? In mean, if the high court actually rules against this, aren't these other programs history too, and then what? Either true socialism or true fascism must surely follow. Tread warily, SCOTUS! –SteveB]

20120327-05	15:11	Art	Re: What Are Conservatives Trying to Conserve? (reply to SteveB. FotM Newsletter #103)
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Hi SteveB, Great lead article. Here's something I sent a Spanish friend (Barcelona) a few days ago. A little shorter but, perhaps not too surprisingly, similar:

The United States is going through a challenging period as we adjust to a fast moving demographic change coupled with our being displaced as the economically and politically most powerful nation in the world. The mostly white lower middle class is not adjusting to what is happening and wants to go back to the way it was. To most of them politically that means the President Reagan era, which is as far back as most of them can remember, when they dream "things were different then". It's not really true, of course, but people believe what they want to believe. It is combined with a nasty continuing streak of racism, that still exists in many parts of this nation, and will make for an extremely ugly election this time. I don't know how it will come out for either the Republican nomination process or the general election, but I do think it will be critical for the future path of the nation.

20120327-06	15:42	SteveB	Re: What Are Conservatives Trying to Conserve? (reply to Art, above)
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I think you are about completely parallel. It is an important election. I hope President Obama is very well guarded! I worry. He is one important man right now and historically, I believe.

I love Barcelona (and the whole south of Spain and Portugal). One of my favorite cities, though I only got to spend a few days there.

20120327-08	16:30	Art	Re: What Are Conservatives Trying to Conserve? (reply to SteveB. FotM Newsletter #103)
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You know that is what I worry about the most. Most of the Republicans have stirred up so much hate, someone is bound to try, especially if polls this summer show him leading.

Agree Spain is fascinating and loaded with history. I have spent most of my time in Granada, but have found interesting things everywhere.

20120327-09	16:32	SteveB	"Healthcare Jujitsu"
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Obamacare vs. the SCOTUS...

"Healthcare Jujitsu" by Robert Reich, NationofChange

Mar. 27, 2012, (<http://www.nationofchange.org/healthcare-jujitsu-1332856521>)

Not surprisingly, today's debut Supreme Court argument over the so-called "individual mandate" requiring everyone to buy health insurance revolved around epistemological niceties such as the meaning of a "tax," and the question of whether the issue is ripe for review.

Behind this judicial foreplay is the brute political fact that if the Court decides the individual mandate is an unconstitutional extension of federal authority, the entire law starts unraveling.

But with a bit of political jujitsu, the President could turn any such defeat into a victory for a single-payer healthcare system – Medicare for all.

Here's how.

The dilemma at the heart of the new law is that it continues to depend on private health insurers, who have to make a profit or at least pay all their costs including marketing and advertising.

Yet the only way private insurers can afford to cover everyone with pre-existing health problems, as the new law requires, is to have every American buy health insurance – including young and healthier people who are unlikely to rack up large healthcare costs.

This dilemma is the product of political compromise. You'll remember the Administration couldn't get the votes for a single-payer system such as Medicare for all. It hardly tried. Not a single Republican would even agree to a bill giving Americans the option of buying into it.

But don't expect the Supreme Court to address this dilemma. It lies buried under an avalanche of constitutional argument.

Those who are defending the law in Court say the federal government has authority to compel Americans to buy health insurance under the Commerce Clause of the Constitution, which gives Washington the power to regulate interstate commerce. They argue our sprawling health insurance system surely extends beyond an individual state.

Those who are opposing the law say a requirement that individuals contract with private insurance companies isn't regulation of interstate commerce. It's coercion of individuals.

Unhappily for Obama and the Democrats, most Americans don't seem to like the individual mandate very much anyway. Many on the political right believe it a threat to individual liberty. Many on the left object to being required to buy something from a private company.

The President and the Democrats could have avoided this dilemma in the first place if they'd insisted on Medicare for all, or at least a public option.

After all, Social Security and Medicare require every working American to "buy" them. The purchase happens automatically in the form of a deduction from everyone's paychecks. But because Social Security and Medicare are government programs financed by payroll taxes they don't feel like mandatory purchases.

Americans don't mind mandates in the form of payroll taxes for Social Security or Medicare. In fact, both programs are so popular even conservative Republicans were heard to shout "don't take away my Medicare!" at rallies opposed to the new health care law.

There's no question payroll taxes are constitutional, because there's no doubt that the federal government can tax people in order to finance particular public benefits. But requiring citizens to buy something from a private company is different because private companies aren't directly accountable to the public. They're accountable to their owners and their purpose is to maximize profits. What if they monopolize the market and charge humongous premiums? (Some already seem to be doing this.)

Even if private health insurers are organized as not-for-profits, there's still a problem of public accountability. What's to prevent top executives from being paid small fortunes? (In more than a few cases this is already happening.)

Moreover, compared to private insurance, Medicare is a great deal. Its administrative costs are only around 3 percent, while the administrative costs of private insurers eat up 30 to 40 percent of premiums. Medicare's costs are even below the 5 percent to 10 percent administrative costs borne by large companies that self-insure, and under the 11 percent costs of private plans under Medicare Advantage, the current private-insurance option under Medicare.

So why not Medicare for all?

Because Republicans have mastered the art of political jujitsu. Their strategy has been to demonize government and seek to privatize everything that might otherwise be a public program financed by tax dollars (see Paul Ryan's plan for turning Medicare into vouchers). Then they go to court and argue that any mandatory purchase is unconstitutional because it exceeds the government's authority.

Obama and the Democrats should do the reverse. If the Supreme Court strikes down the individual mandate in the new health law, private insurers will swarm Capitol Hill demanding that the law be amended to remove the requirement that they cover people with pre-existing conditions.

When this happens, Obama and the Democrats should say they're willing to remove that requirement – but only if Medicare is available to all, financed by payroll taxes.

If they did this the public will be behind them — as will the Supreme Court.

20120327-07	16:26	Art	Our American Business (Leaders)???
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This is the time of year for those of you who hold stocks in American Companies separately, to start received annual financial statements and Proxy Shareholder statements. For a number of years I have always tried to find to compensation statements for the senior leadership and it has gotten harder and harder to understand each year, but I know it is a lot.

Below is a portion of what I received today from Duke Energy. One of the items to vote on was listed "the approval of the Duke Energy's Corps. named executive officer compensation". OK, I thought, what is that compensation. Seemed a reasonable question to ask. After a bit of a search I found an table of contents for the annual report that referred me to page 228. PAGE 228, not page 5 or 6 but buried way in there. This is what I found on page 228 in the Annual Report:

ITEM 11. EXECUTIVE COMPENSATION. Duke Energy will provide information that is responsive to this Item 11 in its definitive proxy statement or in an amendment to this Annual Report not later than 120 days after the end of the fiscal year covered by this Annual Report, in either case under the caption "Executive Compensation," and possibly elsewhere therein. That information is incorporated in this Item 11 by reference.

OK, I thought, let's go look at the proxy statement. Again more search but finally a table of contents that referred me to "Executive Compensation" page 20. Here is what I found:

As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), we included two shareholder votes on named executive officer compensation in last year's annual proxy statement. In those votes, which were advisory and non binding, our shareholders approved the compensation of our named executive officers as disclosed in the annual 2011 proxy statement (commonly referred to as a "say-on-pay" vote) and approved the recommendation of our Board of Directors to hold future say-on-pay votes on an annual basis.

As a result, we are providing our shareholders with the opportunity to approve, on a non binding, advisory basis, the compensation of our named executive officers as disclosed in this proxy statement. This proposal gives our shareholders the opportunity to express their views on the compensation of our named executive officers. In connection with this proposal, the Board of Directors encourages shareholders to review in detail the description of the compensation program for our named executive officers that is set forth in the Compensation Discussion and Analysis beginning on page 35, as well as the information contained in the compensation tables and narrative discussion in this proxy statement.

As described in more detail in the Compensation Discussion and Analysis section, the guiding principle of our compensation philosophy is that pay should be linked to performance and that the interests of our executives and shareholders should be aligned. Our compensation program is designed to provide significant upside and downside potential depending on actual results as compared to predetermined measures of success. A significant portion of our named executive officers' total direct compensation is directly contingent upon achieving specific results that are important to our long-term success and growth in shareholder value. We supplement our pay-for-performance program with a number of compensation policies that are aligned with the long-term interests of Duke Energy and its shareholders.

We are asking our shareholders to indicate their support for the compensation of our named executive officers as disclosed in this proxy statement by voting "FOR" the following resolution:

RESOLVED, that the shareholders of Duke Energy approve, on an advisory basis, the compensation paid to Duke Energy's named executive officers, as disclosed pursuant to Item 402 of Regulation S-K of the Securities Act of 1933, as amended, including the Compensation Discussion and Analysis, the compensation tables and the narrative discussion in Duke Energy's 2012 proxy statement.

Because your vote is advisory, it will not be binding on the Board of Directors, the Compensation Committee or Duke Energy. The Compensation Committee, however, will review the voting results and will take them into consideration when making future decisions regarding the compensation of our named executive officers.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" THE APPROVAL OF THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS AS DISCLOSED IN THIS PROXY STATEMENT.

????????? What???????

From page 35 you need to read on to about page 54 with more and more blaa blaa. Finally on Page 54 I did find a chart that seems to indicate the CEO will make about \$8.7M this year - a very nifty \$2M raise from 200,9 I might add (business has really suffered under this Administration). But wait, there is still more about stock options etc. etc

for another 20 some pages. No wonder I never get a dividend and the company never seems to make any money. I still have no idea what the CEO of Duke Energy makes.

A lot has been claimed in this election run up about how unions have ruined American Companies and made them too expensive. I think we may be on to another big problem: Self-serving business leadership whose only aim is to line their own pockets, and it is so bad they are ashamed to openly admit to us—their stock holders—just how bad they are ripping off the company and us, the shareholders. They try their best to hide the actual salaries in layer after layer of confusion and hope we will just give up.

Oh by the way, these folks also need a tax break. Not me, not you, just them.

Needless to say I voted, NO.

My recommendation, if the Board of Directors recommends it, just say no.

[20120327-10](#) 21:14 SteveB Fw: Avaaz Petition: Save the Rhino!

from Avaaz:

The rhino is being hunted into extinction and could disappear forever unless we act now. Shocking new statistics show 440 rhinos were brutally killed last year in South Africa alone -- a massive increase on five years ago when just 13 had their horns hacked off. **European nations could lead the world to a new plan to save these amazing creatures** but they need to hear from us first!

Fueling this devastation is a huge spike in demand for rhino horns, used for bogus cancer cures, hangover remedies and good luck charms in China and Vietnam. Protests from South Africa have so far been ignored by the authorities, but **Europe has the power to change this by calling for a ban on all rhino trade** -- from anywhere, to anywhere -- when countries meet at the next crucial international wildlife trade summit in July.

The situation is so dire that the threat has even spread into British zoos who are on red-alert for **rhino killing gangs! Let's raise a giant outcry** and urge Europe to push for new protections to save rhinos from extinction. When we reach 100,000 signers, our call will be delivered in Brussels, the decision-making heart of Europe, with a crash of cardboard rhinos. Every **50,000 signatures will add a rhino to the crash -- bringing the size of our movement right to the door of EU delegates** as they decide their position. **Sign the petition below, then forward this email widely:**

http://www.avaaz.org/en/save_rhinos/?v

So far this year one rhino has been killed every day in South Africa, home to at least 80% of the world's remaining wild rhinos. Horns now have a street value of over \$65,000 a kilo -- more expensive than gold or platinum. The South African Environment Minister has pledged to take action by putting 150 extra wardens and even an electric fence along the Mozambique border to try and stem the attacks -- but **the scale of the threat is so severe that global action is required.**

Unless we act today we may lose this magnificent and ancient animal species permanently. **Some Chinese are loudly lobbying for the trade in horn to be relaxed, but banning the trade in all rhinos will silence them.** With the EU's leadership, we can bring these international gangsters to justice, put the poachers in prison, and push for public awareness programmes in key Asian countries -- and end this horn horror show for good.

In the next few weeks, the EU will be setting its agenda for the next big global meeting in just a few months -- our best chance of turning the tide against the slaughter. We know that rhinos will be on their agenda, but **only our pressure can ensure they challenge the problem at its source. Let's build a giant outcry and deliver it in a spectacular fashion -- sign now** and together we can stop the slaughter across Africa.

In 2010, Avaaz's actions helped to stop the elephant ivory trade from exploding. In 2012, we can do the same for the rhino. When we speak out together, we can change the world -- last year was the worst year ever for the rhino, but this can be the year when we win.

With hope, Iain, Sam, Maria Paz, Emma, Ricken and the whole Avaaz team

More Information:

"Few Rhinos Survive Outside Protected Areas" (WWF):
<http://www.worldwildlife.org/species/finder/rhinoceros/rhinos.html>.

"South Africa Record for Rhino Poaching Deaths" (BBC): <http://www.bbc.co.uk/news/world-africa-15571678>.

"'Cure for Cancer' Rumour Killed Off Vietnam's Rhinos" (*The Guardian*):
<http://www.guardian.co.uk/environment/2011/nov/25/cure-cancer-rhino-horn-vietnam>.

"British Zoos on Alert as Rhino Poaching Hits the UK" (*International Business Times*)
<http://www.ibtimes.co.uk/articles/289792/20120130/british-zoos-uk-alert-rhino-poaching-hits.htm>.

20120327-11 23:59 SteveB Photo: Rhino

<http://medcaresolutions.us/surgery-centers>

African Rhino



—Friends of the Middle,
Steven W. Baker (SteveB), Editor/Moderator

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