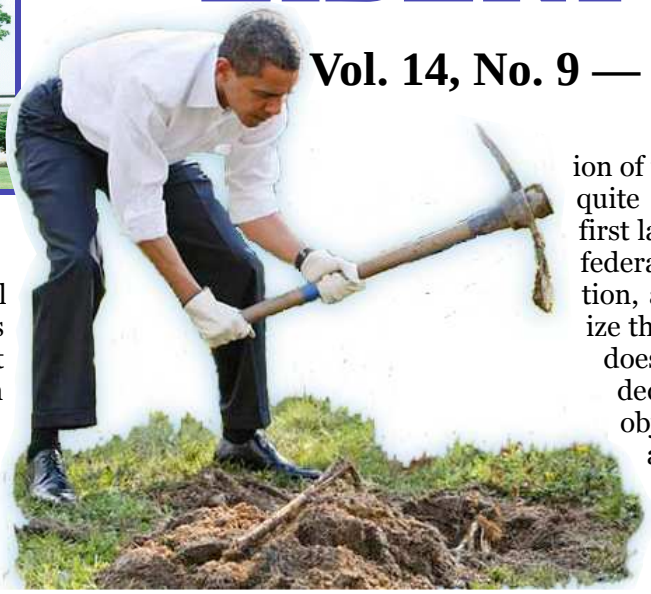
LIBERTY TREE

Vol. 14, No. 9 — September 2012



The ObamaCare cases: DIGGING IN

By Dick Greb

This month, I will begin a series of articles examining the recent Supreme Court decision in the case *National Federation of Independent Business v. Sebelius*, (No. 11–393), which challenged certain provisions — *i.e.*, the "individual mandate" and the expansion of Medicaid — of the Patient Protection and Affordable Care Act (P.L. 111 - 148).[1] As most of you probably know, a majority of the black-robed liberty thieves sitting on the federal court of last resort found nothing wrong with the government forcing everyone to buy a particular product, even against their will, or else suffer substantial financial punishment. They also decided that the federal government could not withhold the current funding provided to the states under the unconstitutional Medicaid program as a way to coerce them to go along with its planned expansion of that program to cover everyone below a certain income threshold. That ObamaCare was substantially upheld by the court really isn't much of a surprise; in fact, it's more of a surprise that they invalidated even a small part of it.[2]

The amount of sophistry exhibited in the majority opinion of this case, written by Chief Justice Roberts, is quite astounding, especially considering that he first lays out the case for the limited powers of the federal government, as delegated by the Constitution, and then bends over backwards to rationalize the legitimacy of undelegated powers. Roberts does this by building on prior Supreme Court decisions, which "pursu[e] invariably the same object, ... the establishment of an absolute tyranny over these states."[3] As we shall see in later installments, he often comes right out and admits that the court has allowed the expansion of the delegated powers over the years, and seems perfectly willing to continue doing so.

NO FREE LUNCHES

To begin, it is instructive to look at the setup for the argument for the individual mandate:

> According to the Government, the health care market is characterized by a significant ***cost-shifting problem***. Everyone will eventually need health care at a time and to an extent they cannot predict, ***but if they do not have insurance, they often will not be able to pay for it***. Because ***state and federal laws nonetheless require hospitals to provide a certain degree of care to individuals without regard to their ability to pay***, hospitals end up receiving compensation for only a portion of the services they provide. To recoup the losses, ***hospitals pass on the cost to insurers through higher rates, and insurers, in turn, pass on the cost to policy holders in the form of higher premiums***. (p. 16)[4]

Right away, you should see that the identified "cost-shifting problem" is caused by government meddling in the marketplace, by enacting laws which force hospitals to provide services for those who can't pay for them. Naturally, those services still need to be paid for (or else hospitals would soon be out of business), and since the recipient isn't paying, the hospitals must increase the prices they charge their paying customers, many of whom are covered by insurance. And if insurance companies must pay higher prices to the hospitals, they too must charge higher prices to their customers. Thus, as is so often the case with such government intervention, some people are forced to pay for something they don't receive so that others can receive

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1. Knowing Congress' penchant for acronyms, it's interesting that this act could be designated the *PaPA Care Act*.
2. The expansion of the program itself wasn't disallowed, only the withholding of current Medicaid funding to force the states to accept the expansion.
3. The condition which the Declaration of Independence identifies as justifying throwing off such a government.
4. All quotations are from the *National Federation of Independent Business v. Sebelius* case unless otherwise noted. Likewise, unless noted, all emphases are added, and internal citations may be removed for clarity.

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what they don't pay for. So, what's to be done to fix this government-created problem? Why, more government meddling, of course!

ARE YOU SEEING A PATTERN YET?

Another aspect of the health care "crisis" is that insurance companies, whose business depends on accurately evaluating the risks involved in the contracts they enter into, along with the likelihood and amount of any pay-outs they will have to make in honoring them, rightly charge higher premiums to higher risk people — such as those who *already* need expensive medical treatments because of currently existing health conditions — or refuse to insure them altogether. Obviously, such people have a hard time finding any company willing to insure them, so Congress "fixed" their problem by "*prohibit[ing] insurance companies from* denying coverage to those with such conditions or *charging unhealthy individuals higher premiums than healthy individuals*." (pg. 16) Of course, forcing insurance companies to provide their services to people who can not pay for them simply forces them to increase their rates on everyone. As health insurance becomes more expensive across the board, it becomes less of a bargain for healthy people, who will then be less likely to want to purchase it — at least while they're still healthy. Because, as the court correctly noted, "the reforms ... provid[e] an incentive for individuals to delay purchasing health insurance until they become sick, relying on the promise of guaranteed and affordable coverage." (pg. 16) The solution, as you probably guessed, is even more government intrusion.

DOUBLESPEAK, ANYONE?

We now come to the meat of the argument:

> The individual mandate was Congress's solution to these problems. By requiring that individuals purchase health insurance, ***the mandate prevents cost-shifting by those who would otherwise go without it.*** In addition, the mandate forces into the insurance risk pool more ***healthy individuals, whose premiums on average will be higher than their health care expenses. This allows insurers to subsidize the costs of covering the unhealthy individuals the reforms require them to accept***. (p. 17)

As quoted at the top of this article, "the health care market is characterized by a significant cost-shifting problem," in that the costs incurred by hospitals for the services they are forced to provide for people who cannot afford them (ostensibly because they do not have insurance), are shifted — through manipulation of premiums by insurance companies — onto those people who *do* have insurance. And, according to the government's argument, the mandate *prevents such cost-shifting* by forcing *everyone* to buy health insurance. Thus, the mandate doesn't (and could never) prevent *all* cost-shifting, only the cost-shifting by *uninsured* people (by forcing them to buy insurance). The cost-shifting will continue on exactly as before, as is admitted in the very next sentence, onto "healthy individuals, whose premiums on average will be higher than their health care expenses." And obviously it will be the same people who are shifting the cost of their health care to others, *after* the reform, as it was before — that is, the ones who receive more care than they can afford.

Robert's opinion goes on to claim that the mandate allows *insurers* to subsidize the costs of unhealthy people, but that's just doublespeak. Instead, once again it *forces* healthy people, who must pay for more services than they will receive, to subsidize the costs of unhealthy people, who receive more services than they will pay for.

WHEN YOU'RE IN A HOLE, STOP DIGGING

The bottom line remains the same. The so-called cost-shifting problem exists because government forces health care providers to provide their services to those who can't afford them. It exacerbates the problem when it forces insurance companies to provide their services to people who can't afford them. But since those services must still be paid for, government then forces the general public to bail out those industries by paying for the services received by the people who couldn't afford them. In this light, the real answer to the whole problem becomes clear — the government should get out of the health care market! It should repeal the mandates that force hospitals to provide services to people who can't afford them, along with all the rest of their misguided laws of interference.

This is not to say that there would be no more cost-shifting. Indeed, the insurance industry is pretty much built on that principle. There must always be more paid in premiums than is paid out in benefits; that's the only way they can generate a profit. Thus, there will always be some in the "risk pool" who ultimately subsidize the benefits paid out to others, but that is the risk to which they each voluntarily agreed. So too, hospitals might still voluntarily provide free services to those in need of them, and subsidize such charity by increasing the fees they charge to their paying customers. Or, they may want to subsidize more expensive procedures by similar increases in others, to make them more widely available. But they would have to implement such cost-shifting at their own risk — the risk of pricing themselves out of the market, for instance.

THE RIGHT TO HEALTH CARE

All of this brings us back to the original problem seized upon by Congress — people who are denied health care solely on the basis of their inability to pay. Isn't this akin to denying the poor their right to health care? Of course not! Because the poor, just like the rich, have no *right* to health care, other than the right to obtain whatever care they can

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Structured for THEFT, *Part II*

What's up with Currency Transaction Reports?

In May, 29,500 frns[1] were stolen from farm-market business South Mountain Creamery, LLC, (SMC) via the asset-forfeiture machinations of one Stefan D. Casella, Assistant U.S. Attorney. Casella claimed in court filings that owners Randy and Karen Sowers had "structured" their PNC Bank transactions by depositing cash amounts of 10,000 frns or less at a time. This, Casella claimed, was for the purpose of "evading" a requirement to make "currency transaction reports" (CTRs) for deposits greater than 10,000 frns.[2] In other words, *if* the Sowerses had deposited *more* than 10,000 frns at a time, *someone* would be required to fill out a CTR each time, so by regularly depositing amounts less than that, they were "evading" the requirement.

The Sowerses allegedly violated 31 USC §5324(a), which makes it a crime to "structure or assist in structuring ... any transaction with one or more domestic financial institutions" with the "purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section."

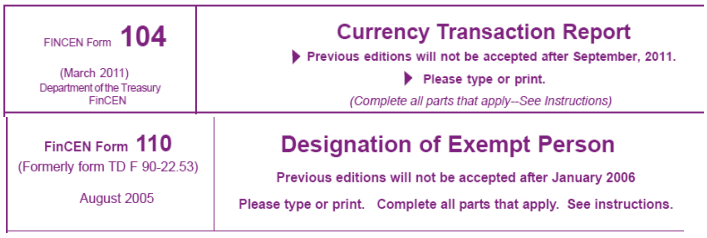
What exactly are the reporting requirements of 5313 (a)?[3]

> (a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and *any other participant in the transaction the Secretary may prescribe* shall file a report on the transaction at the time and in the way the Secretary prescribes. ...

Note that Congress passed the law above to allow the Treasury Secretary to make his own laws, in violation of Art. I, Sec. 1 of the Constitution. Congress didn't bother to set the amounts for reportable transactions, nor to designate all persons required to make reports. It also allowed the Secretary to extend the "requirement" to any monetary instrument he desires, as well as set the time and even the contents of such reports. In fact, unless the Secretary makes pertinent regulations, it can be fairly stated that Congress passed *no requirement* whatsoever.

Faced with such blatant unconstitutional surrender of its law-making power to a figurehead controlled by the banking interests[4] — who can still deny that Congress is merely servant to the money powers?

As for the "requirement" to file a CTR, then, we must find the *Secretary's* "law"; it is set forth at 31 CFR § 1010.311, "Filing obligations for reports of transactions in currency":



FINCEN Form **104**
(March 2011)
Department of the Treasury
FinCEN

Currency Transaction Report
▶ Previous editions will not be accepted after September, 2011.
▶ Please type or print.
(Complete all parts that apply--See Instructions)

FinCEN Form **110**
(Formerly form TD F 90-22.53)
August 2005

Designation of Exempt Person
Previous editions will not be accepted after January 2006
Please type or print. Complete all parts that apply. See instructions.

> Each *financial institution* other than a casino *shall file a report of each deposit*, withdrawal, exchange of currency or other payment or transfer, by, through, or *to such financial institution which involves a transaction in currency of more than $10,000*, except as otherwise provided in this section. ...

"Financial institution" is defined at 31 CFR § 1010.100 (t) to include a bank, broker or dealer in securities, money services business, telegraph company, casino, card club, "person subject to ... state or Federal bank supervisory authority," futures commission merchant, introducing broker in commodities, or mutual fund. It's clear that "financial institution" does not include most American businesses, and certainly not an ag business such as SMC. Further, although Congress seemingly gave the Secretary authority to make "any other participant in the transaction" required to file CTRs, the Secretary has *not* "otherwise provided" anywhere for anyone but the financial institution to file CTRs. The CTR instructions on FinCen Form 104 confirm that "each financial institution" must file, and the form provides a signature line for the "approving official" from the institution.

Thus the reporting "requirement" with respect to 31 U.S.C. § 5313(a) has been imposed only upon the bank involved, *not* the Sowerses. It is impossible for the Sowerses to legally *comply with* or *fulfill* a requirement imposed only upon their bank; it is similarly impossible for them to *evade* that same requirement.[5] They are already free from the requirement; charging them with avoiding or escaping a requirement from which they are *already free* is the height of absurdity; adding the phrase "by structuring" cannot alter this basic fact.

Nevertheless, let's also examine what it might mean to "structure" a transaction. Search as we might, we can find no instance of Congress defining the term.[6] Since Congress never fixed the amounts to be reported to FinCEN,[7] it's not surprising that it couldn't establish what "structuring" a reportable transaction might be. Again, the Treasury Secretary is free to make up his own law: 31 CFR § 1010.314 says "no person shall for the purpose of evading [CTR] requirements ... (c) Structure (as that term is defined in § 1010.100(xx)) ... any transaction with one or more domestic financial institutions." The definition at 31 CFR § 1010.100 (xx) is a petty tyrant's dream:

> ... a person structures a transaction if that person, act-

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1. Federal Reserve Notes, a.k.a. currency or cash.
2. For the details of the story, please see the August 2012 *Liberty Tree*.
3. 31 U.S.C. § 5325 relates to purchases of money orders or checks sold for 3000 or more frns (not at issue in the Sowerses' case). Please note all citations' emphases are added.
4. Since 2006, Treasury Secretaries come straight from banks: Hank Paulson is former CEO of Goldman Sachs; Timothy Geithner, former president of the Federal Reserve Bank of New York.
5. Webster's New World Dictionary (1982), defines the transitive verb *evade* as "to avoid or escape from by deceit or cleverness" or "to avoid doing or answering directly; get around; get out of."
6. Please inform SAPF if you can find any definition in the law.
7. The "Financial Crimes Enforcement Network," a division of Treasury.

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> ing alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under [§]1010.311 ... "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions at or below $10,000. ...

This definition is so broad that nearly *any* cash deposited into a bank could be considered eligible to be forfeited. For example, depositing 1,000 frns a month for four months would constitute a "series of currency transactions ... below $10,000" deposited "on one or more days." Still, all such deposits — no matter what amount or frequency — must be "for the purpose of evading the reporting requirements," and as already shown above, the Secretary has *failed* to prescribe a requirement for any "participant in the transaction" other than the bank. As in the Sowerses' case, however, this lack of requirement does not deter the federales from seizing all bank funds.

For a bank dealing with a cash business such as SMC (some 300,000 frns last year), the paperwork involved in filing a CTR for each qualifying deposit can be tedious, yet the bank can be penalized anywhere from $25,000 to $100,000 for a "willful violation" of the requirement.[8] Is it inconceivable that tellers, to avoid the CTR hassle, inform customers that the bank reports to the IRS' FinCEN every time they deposit more than 10,000 frns? Most customers would be uncomfortable with that fact, and be inclined to make deposits under the reporting threshold. They don't realize that a habit of depositing lower amounts sets them up to lose *all* their funds to seizure under the "structuring" scam run by Treasury. And once their funds *are* seized, they face ruination through litigation or conviction, so they settle with the federales.

Yet the Secretary *has* prescribed a way for a bank to exempt *itself* from the CTR requirement, one business at a time. 31 CFR § 1020.315 states: "No bank is required to file a report otherwise required by §1010.311 [CTRs] with respect to any transaction in currency between an *exempt* person and such bank, ..." One type of "exempt person" is defined as a commercial enterprise, organized under the laws of a State, maintaining an account for at least two months, and making frequent currency transactions over $10,000. Even sole proprietorships may be designated "exempt." To be sure, there are types of businesses *forbidden* to be designated as "exempt" — *e.g.,* pawn shops or vehicle dealers — but agricultural LLCs such as SMC are *not* excluded from being declared "exempt" by a bank.

To exempt itself from filing CTRs on a business, the bank must file a FinCen Form 110 within 30 days after the first reportable currency transaction occurs. Thereafter, the bank is no longer required to file CTRs for the business, but it must conduct an annual review to satisfy itself that the business is not engaged in money laundering, and it must document the steps it has taken, as a "reasonable and prudent" bank, to comply with the Secretary's rules.

Don't miss this: once the FinCen Form 110 is filed, the bank *no longer has any requirement* to file CTRs for that business. And when no reporting requirement exists at all, it is not possible, even by the DOJ's (il)legal standards, for Stefan D. Casella's goons to seize that business' funds under the spurious charge of "evading" by "structuring," *no matter what cash amounts are deposited or when.*

PNC Bank, then, had an opportunity to inform and *protect* SMC, its customer, from seizure and theft. Instead — as hard experience has taught many who transact with banks — PNC Bank demonstrated no real interest in safe-keeping its customers' funds. But ... isn't that what banks are for? ... keeping your money *safe*? Emphatically NOT. Most financial institutions are ready accomplices to government larceny,[9] if not outright thieves themselves.[10]

A business needing to make cash deposits or payroll withdrawals should demand its bank designate it as exempt (if regulation permits) — FinCEN itself "encourages banks to use the exemption procedure to the fullest extent."[11] Even South Mountain Creamery might find it's not too late to protect themselves — if they still want to use a bank.

8. 31 CFR § 1010.820(f).
9. Witness how easily banks turn over funds to the IRS upon the mere presentation of a "Notice" of Levy.
10. For example, the recent theft by MF Global of some $891 million from "segregated" customer accounts to pay for its own trading losses.
11. See FinCen Form 110.

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afford (and that someone is willing to provide them).[5] Certainly, there can be no right to *free* health care. Yet, that is the only basis on which the whole compulsory treatment/insurance scam can logically rest. If it seems unfair to you that more poor folks would die from an inability to obtain life-saving surgeries or procedures, then you are free to subsidize their care to whatever extent you can personally afford. But you are *not free to force others* to pay for your attempted altruism.

It must also be seen that fairness works both ways. There is only so much of everything to go around, and giving it away to those who *can't* pay for it only deprives those who *can* pay from getting it. Consider heart transplants for example. If there's just one heart, but two potential recipients who will die without a transplant, is it more fair to save the life of the person who can afford to pay for his operation, or to let him die by giving the heart to the one who can't pay for it? Financial considerations operate in every aspect of our lives. Rich people live in big houses, drive fancy cars, visit exotic places, and eat expensive foods, and poor people don't. Certainly nobody can believe that the poor should be provided with these things that they can't afford. It should be no different with health care services. Let the free market work.

Next month we will begin looking at government's various assertions of power to enact ObamaCare.

5. Here again, it is government interference in the free market of nutrition supplements, natural foods, etc. which infringes on this right to care for our own health as we see fit.