



THE INDIVIDUAL MANDATE IS CONSTITUTIONAL

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MYTH VS. FACT: THERE IS NOTHING IN THE CONSTITUTION THAT ALLOWS CONGRESS MANDATE THAT AMERICANS HAVE HEALTH INSURANCE

Myth

There are over a dozen court cases challenging the constitutionality of federal health reform. While these cases are brought by a variety of different plaintiffs—states, individuals, provider associations—the central argument of these suits is the same: Congress does not have the authority under the constitution to require that Americans purchase health insurance or pay a tax if they choose to go without.

Article 1, section 8 of the United States Constitution defines the power of Congress to enact laws. Clause 3 of article 1, section 8 gives Congress the authority “[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” This is often called “the Commerce Clause” and has consistently been interpreted by courts as permitting Congress to regulate any activity that directly impacts economic activity.

The crux of the question whether the mandate is constitutional: is the purchase of health care an economic activity?

The challengers of reform, including state Attorney General Mark Shurtleff, argue that it is not. As evidence, they compare the individual mandate to activity the Supreme Court has held as being *non-economic* or not directly effecting economic activity, such as carrying firearms within sight of a school or allowing victims of domestic violence to sue in federal court.¹

However, health insurance is not like a handgun or domestic violence. It is fundamentally economic in nature because it addresses the when and how of paying for health care (a market commodity that almost all Americans will purchase at some point, either because they plan to or because of an unforeseen event). While requiring Americans attain health coverage can be argued as a “heavy handed” regulation, nothing in the Constitution requires that Congress use a light touch.

As a result, these court challenges are likely to fail.

¹ In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that Congress had no authority under the Commerce Clause to pass a federal criminal statute that forbids individuals from carrying a firearm within 1,000 feet of a school because such action had no direct effect on interstate commerce; In *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court held that a federal law that provided a civil remedy to victims of gender-motivated violence (e.g. domestic violence) unconstitutional because such violence had no direct effect on economic activity.