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Through the Eyes of the Constitution

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Health care reform has been a century-long theme of Democratic politics in America. In 1944, Franklin Roosevelt put forward an economic bill of rights, which included a right to adequate medical care. Just a year later, President Harry Truman proposed a national health insurance administered by the federal government. In 1965, Lyndon Johnson signed into law the Medicare and Medicaid programs.

Nearly 45 years later, President Barack Obama signed into law the next significant legislative step toward a government-sponsored health insurance program. Moments later, Florida’s Attorney General, Bill McCollum, announced his plans to challenge in federal
court the constitutionality of the new law. As of this writing, 20 states have announced their support of Florida’s suit. These actions — and the bill that provoked them — naturally raise several questions.

Why are some states challenging the health care reform?
While the new law does many things, one particular element has irked states from Washington to Florida. Eventually, all Americans must purchase health insurance, either through their employer or independently. If citizens do not have health coverage, they will be fined. The legal question is whether or not Congress has the power, according to the U.S. Constitution, to require Americans to purchase anything, especially health coverage. Traditionally, states, and not the federal government, have had the power and responsibility to protect their citizens’ health and safety. This is why states can require motorists to purchase auto insurance — to protect all drivers from costs associated with accidents involving uninsured drivers. The argument against the law, then, is that it steps into a legal area that belongs to the states. In essence, it undermines the intentions and boundaries of the Constitution.

The Constitution was structured to limit the powers of the federal government and to put the primary burdens of regulation and protection on the states. The framers of the Constitution did this intentionally so that the government most involved in our lives would be close to us and more accountable and responsive. They separated state and national power so that our liberty would be more fully protected.

Does Congress have the power to mandate health insurance?
Supporters of the legislation have provided three responses to this question. First, the Constitution does give Congress the power to regulate interstate commerce. Since the health care industry is national in scope and is already regulated by federal laws, they believe it is but a short step to require all Americans to purchase health insurance. There is no dispute that the health care industry can be regulated under the interstate commerce clause, but this still does not address the issue of whether Congress can, by the force of law, require a very particular kind of participation in that industry. To give Congress the power to do so would, in effect, allow Congress to coerce citizens into a commercial transaction so as to then regulate them under the new health care law. We, as a society, have not previously granted the federal government this kind of power over personal financial decisions.

Second, supporters of the law believe the Supremacy Clause in Article VI of the Constitution means states must accept federal laws; any opposition to the law is, in a way, unconstitutional. They are correct in their understanding of the clause, but only if the federal government is operating in its proper authority. If the Supreme Court decides the government has overstepped its constitutional role, the Supremacy Clause becomes irrelevant.

Third, the preamble to the U.S. Constitution contains language about the “general welfare” of all Americans. Some supporters argue that health care coverage provides for the basic needs of all Americans and will certainly benefit their general welfare. The problem with this is that the preamble is a ceremonial statement of purpose and was never meant to define or expand the power of Congress. If the preamble allows Congress to pass whatever laws it deems necessary to contribute to our “general welfare,” the only limitation on its power would be Congress’s own imaginary definition of “general welfare.” If the Constitution’s authors intended this, then why would they spend so much time and energy outlining, sometimes in painful detail, the things Congress can and cannot do in other parts of the document?

What will the Supreme Court do?
There are not many legal precedents to this case because of the unique nature of the health coverage mandate. The Supreme Court has generally allowed Congress great latitude to regulate interstate commerce in America,
which suggests the Court will uphold the health care reforms. The Court has allowed the government to limit how much grain farmers can grow (Wickard v. Filburn), determined that businesses that purchase only a fraction of their goods from out of state are subject to federal regulation under the interstate commerce clause (Daniel v. Paul), and has allowed states (but not the federal government) to mandate vaccinations (Jacobson v. Massachusetts).

On the other hand, in U.S. v. Lopez, the Court ruled that Congress did overstep its boundaries when it used the interstate commerce clause to ban handgun possession in and around schools. The Court found that regulating handgun possession was too far removed from interstate commerce for Congress to make it illegal. Also, the Supreme Court has previously struck down large portions of major legislation (like the National Industrial Recovery Act of 1933 and the Bipartisan Campaign Reform Act of 2002), suggesting the Court could strike down at least parts of the health care reform law.

What the Court actually does may depend on which direction Justice Anthony Kennedy leans, since he is a common swing vote. He sided with the majority in the Lopez case, which suggests he might be sympathetic to states’ concerns with the law. But veteran Court-watchers know better than to assume Kennedy will be consistent in his handling of the two cases.

There is no question the recent health care reforms are historic and might redefine citizens’ relationship to government. Since the Constitution defines that bond, the Supreme Court must weigh the law’s fidelity to our founding document. Some critics have argued that if the Court nullifies portions of the law, it will merely reveal a Court drunk with the power of judicial activism, replacing the will of the people with its own policy preferences. Nothing could be further from the truth. The Court must ponder this law through the eyes of the Constitution, and only then will it fulfill its obligation to our scheme of government.

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