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Constitutionality of the Affordable Care Act

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Why the Mandate?

- **Nathan's son, Thomas, was born with hemophilia. Nathan's employer's insurer raised the price for all employees to offset Thomas' treatments. Then Thomas exceeded the \$1 million cap. One social worker suggested that Nathan divorce his wife so that Thomas could qualify for Medicaid.**
 - *Implementing Health Care Reform: A Roadmap For Colorado, prepared by the Director of Health Reform Implementation for the State of Colorado, December 2010*

Is it Constitutional? Reason 1

- **The mandate is necessary to ensure affordable coverage for pre-existing conditions.**
 - **ACA finding: “the requirement is essential to creating effective health insurance markets in which products that are guaranteed issue and do not exclude coverage of preexisting conditions can be sold.**

Is It Constitutional? Reason 2

- **It reduces cost-shifting and “free-riding.”**
 - **Uncompensated treatment of uninsured patients costs >\$43 billion annually.**
 - **Increases premiums for average family by >\$1,000 per year.**

Is It Constitutional? Reason 3

- **Federal law requires hospitals to treat uninsured individuals in need.**
 - **Former Massachusetts Governor Mitt Romney: “free-riding on the government is not libertarian.”**
 - **Federal judge jeffrey sutton: “when congress guarantees a benefit for all, it may regulate that benefit.”**

Why Is It Constitutional?

- **Congress's Interstate Commerce Power authorizes regulation of 17.6% of national economy.**
 - **Chief Justice John Marshall (1824):** Covers that “commerce which *concerns* more states than one, which extends to or affects other states.”
 - **Justice Anthony Kennedy (1995):** “Congress can regulate on the assumption that we have a single market and a unified purpose to build a stable national economy.”

Why Is It Constitutional?

- **Constitution’s “necessary & proper” clause empowers congress to choose the most cost-effective means to achieve valid goals.**
 - **Chief Justice John Marshall (1819):** It is not in the “nation’s interest,” was not the framers’ “intention,” to “clog and embarrass execution” of Congress’ commerce power “by withholding the most appropriate means.”
 - **Justice Antonin Scalia (2005):** “congress possesses every power needed to make [a law validly regulating commerce] effective.”

A Conservative Judge's Bottom Line

- **“Time will assuredly bring to light the policy strengths and weaknesses of using the individual mandate as part of this national legislation, allowing the people’s political representatives, rather than their judges, to have the primary say over its utility.”**
 - *Opinion by Judge Jeffrey Sutton, United States Court of Appeals for the Sixth Circuit, upholding the constitutionality of the ACA “mandate”, June 29, 2011*

Recent Opinions

- **“[N]o one is forced to do anything . . . you can’t say the law requires you to buy it, the law just penalizes you if you don’t.”**
 - *Federal Judge Jeffrey Sutton, during oral argument over the constitutionality of the ACA individual “mandate”*

Colorado Ideas

- **“All Coloradans pay for the uninsured, as premiums rise to cover care for those who cannot pay.”**
- **“All have a share in the responsibility; all will share in the benefits.”**
- **“Because most Coloradans have insurance, we should build on the strengths of the current system.”**
 - *Final Report to the Colorado General Assembly of the Blue Ribbon Commission for Health Care Reform, January 31, 2008*

Federal Rights Project

- The Federal Rights Project, an initiative of the National Senior Citizens Law Center, seeks to keep Federal courts open to justice. The Project advocates, educates, litigates, and informs to ensure that people retain the right to enforce basic guarantees to health care, economic security and civil rights.

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