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Obamacare gives Congress license to micromanage every facet of our lives

The Obama administration has never offered a principled explanation of how to square the health-care law's individual mandate with the Constitution. If Congress can force us to buy health insurance, what can't it order us to buy?

By Timothy Sandefur

The US Supreme Court today heard arguments today on what may be the most important constitutional case in a generation. Some of the nation's top attorneys are debating the Patient Protection and Affordable Care Act, often known as Obamacare.

The eventual ruling could chart the boundaries of federal power for generations to come - not only for health care, but across the policy spectrum.

A major focus of the Supreme Court hearings is the individual mandate - the law's requirement that almost all Americans who aren't covered by employers must purchase a health-care plan, whether they want to or not.

The plaintiffs - including 26 states as well as individuals and businesses - argue that Congress has no authority to force people to buy insurance. Most Americans agree: A recent Gallup poll found that 72 percent - including 56 percent of Democrats - consider the mandate unconstitutional.

Obama administration attorneys counter that Article I, Section 8 of the Constitution, known as "the commerce clause" - giving Congress power to "regulate commerce among the several states" - is more than expansive enough to validate the mandate.

They rely on a list of Supreme Court precedents that stretch the definition of "interstate commerce" pretty far.

In the 1940s, the court allowed Congress to punish a farmer for growing wheat on his own land for his own use, on the theory that wheat prices would be affected if everyone did that. In the 1960s, the court classified civil rights laws as "regulations of commerce" even when they involved businesses that did practically no interstate business. And in 2005, the court ruled that Congress could prohibit someone from growing marijuana in her yard for her personal medical use, because federal laws against drugs are a kind of economic regulation.

Still, the court has never held that the federal government may compel people to participate in commerce. And this is what makes the individual mandate unprecedented: Never before has Congress presumed to order average Americans to purchase a good or a service in the marketplace.

Simply from the standpoint of semantics, the law's defenders face a challenge. As ordinarily understood, the word, "regulate," implies rules for activity that people have freely chosen to engage in (running a business, for instance). The word doesn't imply forcing people, say, to start a business in the first place.

Likewise, "commerce" implies economic activity - but someone who fails to buy health insurance is not engaged in economic activity.

Beyond these disputes over definitions lies a fundamental question about the extent of federal power: If Congress can force us to buy health insurance, what can't it order us to buy?

Practically any individual decision to buy something, or not to do so, has some theoretical effect on the economy as a whole. And if that's all that's needed to justify federal intrusion, limitless dictates could be imagined. For example, what's to stop Congress from forcing us to buy spa memberships - or electric cars - in the name of making us healthier, or more fuel-efficient, consumers?

As Federal District Court Judge Henry Hudson, who ruled in favor of Virginia's challenge to the individual mandate in December 2012, put it: The argument for the mandate's constitutionality "lacks logical limitation."

Remarkably, the Obama administration has never offered a principled explanation of how to square the mandate with constitutional principles of limited federal government.

Instead, Americans are offered more semantic games. We're told the mandate only moves forward a purchase that would have happened in any case. People will now pay up-front for health care that they would have eventually paid for, on their own, when they received it.

But again, this is a rationale without "logical limitation." Some version of this argument could be offered for practically any kind of forced purchase. If Congress commands you to buy something because lawmakers deem it "good for you," then almost by definition, it's something you might have bought on your own, eventually - so, voila, the mandate isn't really a mandate at all!

Bottom line: Upholding the individual mandate would set a treacherous precedent by licensing Congress to start micromanaging every facet of our lives.

Striking down the mandate, on the other hand, could pressure Congress to finally get creative about reforming America's ailing health care delivery system. With the mandate off the table, Congress could be forced to de-emphasize rigid bureaucratic prescriptions in favor of market-based reforms to expand competition and consumer choice.

So this case is not just a pulse check for constitutional principles of limited

government. The health of health care could also be on the line.

Timothy Sandefur is a principal attorney with Pacific Legal Foundation. Along with the **Cato Institute** and other limited government advocates, PLF submitted a brief urging the Supreme Court to hold the individual mandate unconstitutional. Mr. Sandefur is author of "The Right to Earn a Living: Economic Freedom and the Law" (**Cato Institute**, 2010), on unconstitutional restrictions on free enterprise.