

Brief Amici Curiae Of The CATO Institute, et al., Supporting Plaintiff-Appellee/Cross-Appellant And Affirmance

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Summary: While two lower courts have struck down Obamacare in whole or in part, three others have ruled it constitutional, including a D.C. District Court opinion that claimed for the federal government the right to regulate the "mental activity" of decision-making. As litigation progresses to the appellate level, this latter decision has proven to be more a hindrance to Obamacare's supporters than a help, its Orwellian pronouncement being hard to ignore while the government downplays the significance of the power Congress is asserting. Nevertheless, Obamacare's constitutionality — with a focus on the individual health insurance mandate — remains an open question until ruled upon by the Supreme Court. Cato's latest amicus brief is in the Fourth Circuit, in the case brought by Virginia Attorney General Ken Cuccinelli. In this case, unlike in the Sixth Circuit (in which we also filed a brief), it is the federal government that appealed an adverse district court decision that struck down the individual mandate. In our brief, joined by the Competitive Enterprise Institute and Prof. Randy Barnett (the "intellectual godfather" of the Obamacare legal challenges), we argue that the outermost bounds of existing Commerce Clause jurisprudence prevent Congress from reaching intrastate non-economic activity regardless of whether it substantially affects interstate commerce. Nor under existing law can Congress reach inactivity even if it purports to act pursuant to a broader regulatory scheme. Allowing Congress to conscript citizens into economic transactions is not only contrary to existing Commerce and Necessary and Proper Clause doctrine — as broad as that doctrine is — but it would fundamentally alter the relationship between the sovereign people and their supposed "public servants." The individual mandate "commandeers the people" into Congress's brave new health care world. If Obamacare is allowed to stand, the only limit on federal power will be Congress's own discretion.

Please see full amicus brief below for more information.