

SUPREME COURT DEBATE PART II: DOES OBAMACARE VIOLATE THE CONSTITUTION?

Obamacare Gives Government Unlimited Power, Violates Constitution

Dave Kopel
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Let's start with first principles — as the Supreme Court did in the 1995 *Lopez* case, which held that Congress cannot use its power “To regulate Commerce ... among the several States” as a pretext to ban guns near schools. By enacting the Constitution, the People created a national government of limited powers. The People did not follow the model of England or France, in which the national government was given the full powers of sovereignty. Instead, the People granted the new government *some* sovereign powers, while leaving other sovereign powers with the States or with themselves.

Thus, the federal government is given, among others, the sovereign powers to declare war, and to raise and support armies. Other sovereign powers — such as the power to define marriage law, or the power to set the rules of property transfers — remained with the States and the People.

If a proposed constitutional theory would mean that the national government would have unlimited powers (rather than limited, enumerated powers), then that constitutional theory is necessarily wrong. It is the equivalent of a math formula in which one step is dividing by zero. It is plainly wrong, because it violates the essential structure of the system. Here is example: “Because the President is

Commander in Chief of the Army and Navy, he can take any action which he believes will help the national defense.” This interpretation of the Commander in Chief clause is wrong because it has no limiting principle. It turns the President into a ruler with omnipotent powers, rather than with limited powers.

The above argument fails even though the Constitution would still have some specific prohibitions on the President. For example, the First Amendment would prohibit him from censoring speech. The Bill of Rights would provide a few islands in a sea of presidential omnipotence. That is the opposite of the constitutional scheme. Federal powers are supposed to be finite; they are islands, although they may sometimes be very large islands. The sea is the reserved powers of the States and the People, powers which were never granted to the federal government.

In the health control law, Congress has claimed for itself a new power to force people to enter into contracts with private corporations. Does this asserted new power have a limiting principle? Or would this new power give Congress, in effect, unlimited powers? At the oral argument on Tuesday, the Solicitor General’s main response to questions on this subject was “health care/insurance is unique.” This response was, obviously, not persuasive to the majority of the Court. Some of the Justices on the Court’s left wing tried to help out the Solicitor General by offering arguments about why health care/insurance is unique.

Here’s one way that the health control law really is unique: Never before in American history have a majority of states sued to have a federal law declared unconstitutional. The people of the United States, speaking through their elected state officials, have made it very clear that they consider this unique law is not an exercise of power which the Constitution granted to Congress, but rather a usurpation of powers which were never granted. If the Constitution meant to give Congress the power to order everyone to enter into expensive contracts with private corporations, the Constitution would have said so.