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Yes, ObamaCare's Mandate Compels People to Buy Health Insurance

Posted by Peter Suderman on Monday Mar 26th at 4:17pm

The Obama administration has repeatedly and somewhat counterintuitively argued that the individual mandate to purchase health insurance is not, in fact, a requirement that compels anyone to purchase health insurance. Arguing the case in front of an appeals court in Atlanta, Neal Kumar Katyal, the Obama administration's former acting solicitor general, [told judges that the government](#) is "not asking people to buy something they otherwise might not buy."

Eventually, Katyal argued, everyone will need health care. Requiring individuals to purchase health insurance merely regulates how that care will be financed.



Katyal and other defenders of the mandate have used this idea that the provision merely regulates financing as a response to the concerns about the mandate's novelty and the scope of congressional action it might allow. Congress already regulates the financing of health care, the argument goes; this would simply be a new way to regulate that financing. By minimizing the provision's novelty, the law's defenders can sidestep concerns about the breadth of power granted to Congress under the Commerce Clause should the mandate be ruled constitutional.

It also masks a crucial distinction. There is an important difference between regulating commerce that an individual has chosen to engage in and compelling someone to engage in a specific form of commerce when they have not.

Yet Katyal has stuck by the assertion. As the Cato Institute's Michael Cannon notes, Katyal repeated a similar line on [NPR last week](#). With the mandate, "the government is regulating financing," Katyal said. "It's not the government coming in and saying, oh, consume this product you wouldn't otherwise consume."

This may come as a surprise to anyone who ends up forced to purchase health insurance under the law should it be upheld. And I think it is safe to suggest that this is not how most people understand the mandate.

At minimum, however, it is fairly clear that this is not how President Obama, who signed the law and fought for its passage, claimed to understand the mandate when he opposed it on the campaign trail in 2008. Instead, he understood it as a policy that *forced people to buy a product*. Indeed, that's part of why he said he opposed it.

Criticizing Hillary Clinton for her support of the mandate, Obama [said](#) that "she believes we have to force people who don't have health insurance to buy it." At another debate, candidate

Obama [stressed](#) the importance of understanding what it means to mandate health insurance: “A mandate means that in some fashion everybody will be forced to buy health insurance.” The government, in other words, would be asking people to buy something they otherwise would not buy.

The mandate does not merely *regulate* commerce—it *requires* it. In 2008, President Obama understood this distinction. In 2012, his administration is pretending the distinction does not exist.

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