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## Where Does It Say You Can't Spark a Doobie?

By **A. BARTON HINKLE**

Small-government conservatives angry over Obamacare's individual mandate have lashed out at the president and big-government liberals. But they should save a good chunk of their fury for another culprit: big-government conservatives. The latter laid the foundation upon which the individual mandate was built.

So says David Rittgers, a policy analyst for the Cato Institute, in a tart piece for National Review. Not so long ago, he reminds readers, some conservatives were saying of federal power precisely what liberals say now. Only the issue was different: national drug policy.

Liberals defending the individual mandate hang their hat on the Commerce Clause, which gives Congress the power to regulate interstate commerce. Now, not buying insurance is not an act of interstate commerce. But according to the big-government right, that might not matter. In the 2005 case *Gonzales v. Raich*, the Supreme Court said the federal Controlled Substances Act still applied to Angel Raich's use of medical marijuana despite a California law legalizing the medicinal use of pot.

Why? Because "marijuana is an economic commodity, with a large and well-defined national market. Second . . . marijuana grown in one state can easily find its way to other states, necessitating a national system of regulation . . . The fact that [marijuana] may be used for alleged medical purposes certainly does not remove it from 'commerce'; on the contrary, there are few commercial markets larger than that for 'medical' products. In 2002, Americans spent over \$1.3 trillion on personal health care and health care products . . ."

So argued several conservative Republicans, including Indiana's Dan Burton and Oklahoma's Ernest Istook, in an amicus brief siding with the federal government. They contended federal intervention in local and even personal decisions could be justified if they were necessary to manage the larger national market -- precisely what liberals contend now about the individual insurance mandate.

This line of reasoning is far from ancient history. Earlier this month Californians narrowly defeated a referendum that would have decriminalized recreational pot-smoking. In September, the Heritage Foundation cranked out a lengthy memorandum urging its defeat. Among other things, Heritage tried to shoot down the argument from federalism:

"Marijuana advocates claim that federal enforcement of drug laws, particularly in jurisdictions that allow the use of medical marijuana, violates states' rights. The Supreme Court, however, has held otherwise . . . .In 2006, the Supreme Court held in *Gonzales vs. Raich* that the Commerce Clause confers on Congress the authority to ban the use of marijuana, even when a state approves it for 'medical purposes' and it is produced in small quantities for personal consumption. Many legal scholars criticize the Court's extremely broad reading of the Commerce Clause as inconsistent with its original meaning, but the Court's decision nonetheless stands."

To which liberals might respond: Great! Thanks for dispensing with the individual-mandate challenge.

The Heritage paper goes far beyond the narrow question of Raich's scope. It presents a full-throated defense of the idea that the federal government should tell you what you can do with your body. "In 1982, President Ronald Reagan adopted a national drug strategy that took a comprehensive approach," it says. "Reagan was right to make drug control a major issue of his presidency. Illegal drugs such as marijuana are responsible for a disproportionate share of violence and social decline in America."

Well, yes. But from the fact that drugs cause misery, it does not follow that the federal government has the power to prohibit their use.

About a year ago, conservatives hooted and high-fived when a reporter asked Nancy Pelosi: "Madam Speaker, where specifically does the Constitution grant Congress the authority to enact an individual health insurance mandate?" Perhaps they should pause to ask: Where specifically does the Constitution grant Congress the authority to forbid personal drug use? And how can they read that power into the Constitution, without at the same time reading into it the power to impose the individual mandate? If the government can make you put down a honey blunt, can it make you pick up a health policy?

As Cato's Rittgers writes, "a principled stand on the limits of federal power does not begin and end with health care." So far, many conservatives outraged over Obamacare do not seem to have reconsidered their enthusiasm for national drug prohibition. Whether they do so could provide a good indication as to whether they're standing up for a principle -- or merely against the president.

My thoughts do not aim for your assent -- just place them alongside your own reflections for a while. -- Robert Nozick.

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