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Two Yalies — Sterling Professor of Law and Political Science Akhil Amar ’80 LAW ’84 and acting Solicitor General Neal Katyal LAW ’95 — are publicly defending the constitutionality of Obamacare.

Amar’s Feb. 6 piece in The Los Angeles Times, “Constitutional Showdown,” argued that Congress has the power to regulate the national health care industry. This was his second piece in the L.A. Times, and it followed two National Public Radio segments and a television appearance that also touched on Obama’s health care legislation. While Amar’s former student, Katyal, will defend President Barack Obama’s health bill in the appellate courts, the Yale professor’s defense has also provoked a chorus of attacks from conservative legal scholars.

In addition to his op-ed, Amar told the News he intends to write a scholarly “case comment” on the two federal district court decisions that have called Obama’s health bill unconstitutional: Judge Henry Hudson’s in Virginia and Judge Roger Vinson’s in Florida.

“I want to write this case comment because in my view the [constitutionality of health care] is not a close or hard question, and yet two judges have weighed in on the other side,” he said. “It is extremely disheartening to me that there are so many people, including judges, making what I consider to be ridiculous arguments.”

Amar’s points about Obama’s bill focus on the written contents of the U.S. Constitution. His most recent article responds to Vinson’s Jan. 31 ruling that the individual mandate provision of Obama’s health care bill is unconstitutional because it regulates economic inactivity, penalizing people for choosing not to engage in commerce. Vinson argued that since the individual mandate cannot be separated from the Patient Protection and Affordable Care Act, the whole statue is unconstitutional.

But in his piece, Amar argued that health care concerns cross-state boundaries and can therefore be regulated under the Commerce Clause of the Constitution.

“When uninsured Connecticut residents fall sick on holiday in California and get free emergency-room services, California taxpayers, California hospitals and California insurance policyholders foot the bill,” he wrote. “This is an interstate issue, and Congress has power to regulate it.”

He also argued that the central question in the Obamacare case is how much power the Constitution gives Congress, for which he cites Justice John Marshall’s famous 1819 opinion in “McCulloch vs. Maryland.” Marshall argued that judges should defer to

members of Congress, and that Congress should have the power to enact laws that fall within its “basic mission.”

The 1819 case concerned the constitutionality of a federal bank.

“Though the words ‘federal bank’ nowhere appear in the Constitution’s text, Marshall explained that Congress nevertheless had the power to create such a bank to facilitate national security and interstate commerce,” Amar said. “Obamacare is no different.”

Amar described his student Katyal, who will defend healthcare in the appeal, as one of the “most brilliant” he has had.

“He wowed me and the entire class literally in his first week at law school, which no one had ever done before,” Amar said. “Neal was brilliant from day one.”

Although Amar said he and Katyal co-authored articles together while Katyal was a student and have remained close, he clarified in his recent op-ed that his views are based not on his relationship with Katyal, but rather on the Constitution’s first principles.

Katyal declined to comment because he is a government official and the matter is pending litigation.

But not everyone agrees with Amar and Katyal. Two legal scholars at the Cato Institute, a libertarian think tank, said they think punishing people for what they called “economic inactivity” is unconstitutional.

Timothy Sandefur, principal attorney at the Pacific Legal Foundation and adjunct scholar at the Cato Institute, wrote a post on the Pacific Legal Foundation Liberty blog last Sunday criticizing Amar’s op-ed. He said Amar’s argument dodged the question of whether or not a law that compels people to engage in commerce qualifies as a regulation of commerce.

“Congress can’t force people to engage in commerce,” he wrote. “Why not? Because the framers wanted to create a government of limited, specified powers, and if Congress can force us to buy things, it can do anything, without limit.”

Sandefur told the News Thursday that he thinks the main issue centers around the meaning of the word “regulate,” which he thinks has to do with dictating the terms of some action a person was already intending to take — not forcing them to take an action.

“Regulation is not used to make you do something,” he said. “It has to do with how, not what.”

In his op-ed, he also accused Amar of using false analogies, ignoring Vinson’s arguments and resorting to “childish name-calling.” Amar did not give ground to criticism. He told

the News Wednesday that he has read Sandefur's article but still stands by "every word" of his piece.

"My most recent op-ed had a certain attitude, but that's because when judges misbehave, how else can society respond?" he said. "They have life tenure and don't deserve impeachment just because they've argued something outrageous, so the only proper response is for experts to actually subject ridiculous claims to ridicule."

Laurence Tribe, a Harvard Law School professor, has joined Amar in publishing an op-ed on the constitutionality of the health bill. His appeared in The New York Times this Monday, titled, "On Health Care, Justice Will Prevail." He wrote that the Supreme Court justices will likely find Obama's healthcare reforms to be constitutional, since the court has "consistently held that Congress has broad constitutional power to regulate interstate commerce" since the New Deal.

The New York Times reported that the insurance mandate does not take effect until 2014. Vinson decided not to suspend the law, waiting instead for appeals, which could take up to two years.