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White House: Buy health insurance or be poor

Published: Wednesday, June 08, 2011, 6:00 AM

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The latest round in some states' fight against the U.S. government's health care reform will be held in a federal court today in Atlanta.

By Ilya Shapiro

The federal appellate court in Atlanta will hear arguments today on the constitutionality of the Patient Protection and Affordable Care Act (Obamacare), including the government's latest position that the law doesn't really require people to buy health insurance at all. We have the option instead of earning less money. Not only is this bad lawyering, it's un-American. It suggests Congress can do anything it wants to us because we always have the "opt out" of renouncing our worldly possessions



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and heading for the hills.

Unfortunately, it has come to that: Desperate to defend the Affordable Care Act against increasing legal onslaughts, the government's top lawyers claim that a law forcing people to buy a particular product is no different than forcing businesses to sell their wares to all comers. Just as restaurants or hotels are free to go out of business if they don't want to serve black people, the argument goes, individuals are free to take a vow of poverty if they don't like "Obamacare."

The government knows that Congress' unprecedented assertion of the power to force people to buy stuff is unpopular, but it also recognizes that the lawsuits challenging the law's constitutionality are serious. At a hearing last week in one of the numerous cases challenging Congress' power to compel people to buy insurance, the solicitor general — the government's head appellate lawyer — compared the individual mandate to anti-discrimination laws.

Yet the very basis of the federal government's authority over restaurants and hotels — as the Supreme Court said in a series of cases in the 1960s — is that people voluntarily choose to create and operate businesses that, in the aggregate, have a substantial effect on interstate commerce.

If you want to run a business catering to travelers who ultimately and inevitably cross state lines, you have to abide by Congress' constitutional power to regulate interstate commerce.

But nobody has to become a hotelier or restaurateur; if you don't like the rules the government applies to those businesses — anti-discrimination laws or otherwise — you can engage in some other kind of trade or profession. That option isn't available to those who want to avoid the individual mandate's economic burdens; there's a difference between having to follow business regulations if you run a business — or even to buy car insurance if you choose to drive — and having to buy health insurance simply by being alive (and earning an income a few percentage points above the poverty line).

Moreover, individuals are not economic enterprises. Just because we engage in economic activity that, in the aggregate, has a substantial effect on interstate commerce, it doesn't mean the federal government can tell us what to do in every aspect of our lives. Because everything we do, including all decisions we make — including every single decision not to do or buy something — has an effect on interstate commerce.

That cannot possibly be the standard by which the federal government gets to regulate us, and indeed the Supreme Court has never found Congress' regulatory authority to reach individuals not already engaging in the economic activity being regulated.

No, this latest argument further illustrates the contortions the government's lawyers need to make to justify a law that plainly violates both the letter and spirit of the Constitution.

Upholding the power to impose economic mandates — your money or your life as you know it — would fundamentally alter the relationship of the government to the people. Nobody would ever again be able to claim plausibly that the Constitution limits federal power.

Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the Cato Supreme Court Review. He has filed six briefs in the various cases challenging the health care reform, including in the 26-state lawsuit that the government is appealing this week before the 11th Circuit in Atlanta.

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Health insurance has been allowed to become a legal shell game, but instead of losing 20 dollars at three card monty, you could lose your life...even with private coverage. Had the government not allowed our civilians to be held hostage by the industry, we would not need National Health care.

I would argue that allowing an insurance company to deny or delay claims is ALSO a violation of the Constitution. I would further argue that since no other remedy has been applied, something MUST happen to protect the citizens. Doing nothing, while people pay to die is not a solution.

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