

Obamacare's Top 10 Constitutional Violations

By Ilya Shapiro

Two years ago this week, I published an op-ed called "[President Obama's Top 10 Constitutional Violations](#)." Although it didn't go into depth about any particular issue, it struck a chord (note to aspiring pundits: readers and media bookers like lists, particularly at year's end).

There's so much material to choose from for an updated piece on which I'm long overdue, but in the meantime the House Judiciary Committee had an [important hearing](#) last week on the president's constitutional duty "to take care that the laws be faithfully executed."

My colleagues [Michael Cannon](#) and [Nicholas Quinn Rosenkranz](#) testified, as did GW law professor [Jonathan Turley](#) (who voted for Obama in 2008 and is not known to be libertarian or conservative), and their devastating testimony is a collective tour de force regarding this administration's incredible and unconstitutional power grab. (My friend and frequent sparring partner [Simon Lazarus](#) of the Constitutional Accountability Center also testified, on the other side, offering a valiant if ultimately insufficient defense.)

Given the state of current affairs, the hearing focused on Obamacare, whose problematic rollout should have come as no surprise to those who follow this blog. Quite apart from the healthcare.gov fiasco – incompetent, sure, but it's not unconstitutional to have a bad website – you simply cannot require expansive health "insurance" for all without regard to preexisting conditions and expect insurers not to cancel nonconforming policies or increase premiums. (Forget never running a business or caring about the Constitution; has nobody in the White House ever taken an economics class?)

After watching [snippets](#) of the hearing and reading [the written testimony](#), I thought maybe I should start my "top 10 constitutional violations" update with the Affordable Care Act alone. But it seems that I'm not the only one thinking along these lines. Hot off the presses, at 10am today, the office of Senator Ted Cruz (R-TX) released its [second report](#) on "The Obama Administration's Attempts to Expand Federal Power" – [the first](#) was on the Supreme Court's unanimous rejection of the Justice Department's more outlandish positions, a trend I've [written about](#) as well – titled "The Administration's Lawless Acts on Obamacare and Continued Court Challenges to Obamacare."

Here are the seven items the new Cruz report highlights:

Category One: Implementation Contrary to Statutory Text

1. Unilateral grant of a one-year delay on all Obamacare health insurance requirements.
2. Unilateral delay of the employer mandate.
3. Unilateral delay of out-pocket caps.
4. Allowing congressional staff to continue on government-subsidized health care.

Category Two : Pending Court Challenges

1. **Violates the [Origination Clause](#) because it's a revenue-raising bill that originated in the Senate.**
2. Contraception/abortifacient mandate [violates](#) religious liberties.
3. [Expansion](#) of employer mandate's penalty through IRS regulation.

Add to those the individual mandate (which the Supreme Court [struck down](#) before Chief Justice Roberts rewrote and upheld the provision as a tax), the coerced expansion of Medicaid (which the Court made voluntary), and the [Independent Payment Advisory Board](#) (litigation ongoing), and you've got an even ten. And that's without straining to find the constitutional defects buried in thousands of pages of legislation and hundreds of thousands of pages of regulations.

Forget PPACA, ACA, and Obamacare; what people really ought to call the healthcare law is the "Constitutional Scholar Full Employment Act."