

To the Editor:

Laurence H. Tribe is a great scholar, but his analysis of the individual mandate's constitutionality is flawed.

First, this is indeed a "novel" issue for the Supreme Court: Never before has the federal government asserted the power to require people to engage in economic activity under the guise of regulating commerce.

Second, those challenging the law do not question Congress's power to regulate the "multitrillion-dollar health insurance industry," but rather distinguish such regulation from a command for individuals to purchase that industry's products.

Third, the difference between activity and inactivity is anything but "illusory"; if Congress can regulate mere decisions, then it can tell me, for example, that I shouldn't spend time writing letters to the editor.

And finally, imagining that Justice Antonin Scalia would support the government here because he previously ratified prohibitions on the production and consumption of marijuana is to remove the very activity-inactivity distinction that he recognized in that earlier opinion.

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