

[Our Amicus Brief in the Thomas More Law Center Individual Mandate Case](#)

[Ilya Somin](#) • December 30, 2010 10:21 pm

For those who may be interested, I have written an amicus brief in *Thomas More Law Center v. Obama*, one of the cases challenging the constitutionality of the Obama health care bill's individual mandate. I wrote the brief on behalf of the [Washington Legal Foundation](#) and twelve members of the House of Representatives. It is available [here](#). The case is currently before the Sixth Circuit Court of Appeals.

Because of space constraints, we chose to focus only on the federal government's two main arguments — the claims that the mandate is justified by Congress' powers under the Commerce Clause and the Tax Clause. The brief includes a detailed refutation of what has become the government's central argument under the Commerce Clause: the assertion that the mandate is constitutional because going without health insurance is an “economic decision” (pp. 14–18). I first presented the key arguments in this section [right here on the VC](#), though of course the brief goes into much greater detail.

Although we could not cover the federal government's Necessary and Proper Clause argument in this brief, it was the main focus of the [excellent amicus brief](#) filed by co-blogger Randy Barnett and the Cato Institute. WLF and I presented our own take on the Necessary and Proper Clause issues in [the amicus brief I wrote for them and a group of prominent constitutional law scholars in the Virginia anti-mandate case](#).

Categories: [Commerce Clause](#), [Federalism](#), [Health Care](#), [Individual Mandate](#), [Taxes](#), [Taxing and Spending Clause](#)

59 Comments