

Federal health care mandate and the Commerce Clause



By Jim Stergios

November 2nd, 2009

Robert Levy, chairman of the CATO Institute, is a brilliant guy. He was talking today in Asheville about the fact that conservatives and liberals both abuse the interstate commerce clause in the US Constitution, for their own purposes. Liberals have used it to clamp down on everything from growing your own produce (in FDR's time) to promoting any number of regulations on businesses, even those that only operate within a single state's boundaries.

Conservatives have been pushing, and continue to push, tort reform through federal action. Levy's argument is that both abuse the commerce clause. But then he noted something I hadn't thought of:

What allows the federal government to establish a mandate to purchase health care insurance? Even though the federal government has allowed states to erect all sorts of nasty barriers on the insurance market, rendering insurers unable to market their wares nationally (ostensibly not, ahem, in line with the interstate commerce clause's spirit...), we will see the feds point to the interstate commerce clause as the justification for a federal mandate.

What is especially striking, however, is that it will be the first time the clause is used to force individuals to buy a product.

A republic of laws when supreme law (the Constitution) is this abused? I would prefer to see experiments such as our own continue, and see us at the state level continue to try and fix them so that they work.