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Is ObamaCare Constitutional?

Damon W. Root | November 25, 2009

The Cato Institute's Gene Healy has a [great column](#) in today's *DC Examiner* explaining why Congress has no legitimate authority to force every American to buy health insurance:

In answer to the question "by what authority?" Reid's bill offers the Commerce Clause -- the go-to provision for friends of federal power. That clause gives Congress the power "to regulate Commerce ... among the several states."...

In its "Findings" section, Reid's bill hits all the jurisprudential buzzwords: The individual mandate "substantially affects interstate commerce," and regulates "activity that is commercial and economic in nature." Activity like standing around without health insurance? Apparently so....

But members of Congress swear an oath to uphold the Constitution -- not the court's funhouse-mirror version of it.

Supporters of national health care are counting on congressmen not to take that obligation very seriously. Their attitude toward the rule of law echoes that famously expressed by FDR in 1935. Trying to push through a key New Deal measure, Roosevelt wrote to an important congressman: "I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation."

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Neu Mejican | 11.25.09 @ 12:23PM | #

But members of Congress swear an oath to uphold the Constitution -- not the court's funhouse-mirror version of it.

Remind me what the constitution says about the court's role in constitutional questions.

[reply to this](#)

the constituion | 11.25.09 @ 12:25PM | #

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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[reply to this](#)**MP** | 11.25.09 @ 12:34PM | <#>

Neu,

I'm surprised as well that Gene tossed that shot out there. He knows full well that Congress is going to ride *Stare Decisis* all the way. To even suggest that they constrict themselves beyond the boundary set by the court is sheer fantasy.

[reply to this](#)**Tulpa** | 11.25.09 @ 12:51PM | <#>

It doesn't say anything about the court's role in constitutional questions. The doctrine of judicial review was put in place by a post-Constitutional court decision.

If you're going to play the know-it-all, NM, make sure you know what you're insinuating is actually correct.

[reply to this](#)**Gilbert Martin** | 11.25.09 @ 1:48PM | <#>

Indeed so.

And it just so happens that in that case the sitting chief justice of the Supreme Court had been personally involved in the creating the grievance that caused that case to be brought to trial in the first place and he should have recused himself from judging it.

But he didn't.

[reply to this](#)**Neu Mejican** | 11.25.09 @ 1:58PM | <#>

It doesn't say anything about the court's role in constitutional questions.

Hmm..."The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;"

I'm not so sure I agree. I realize that it is not explicitly mentioned, but I am not sure how you can't construe "judicial power" related to "all cases arising under this constitution" not to include constitutional review. The fact that it was a power immediately taken up by the court and recognized and accepted prior to 1800 makes me think the framers thought it so obvious that an explicit mention was not needed.

[reply to this](#)**Neu Mejican** | 11.25.09 @ 2:05PM | <#>

A balanced look at this issue.

<http://caselaw.lp.findlaw.com/.....03/13.html>

Also important is the Judiciary Act of 1789 which does explicitly give the power, iirc.

[reply to this](#)**Tulpa** | 11.25.09 @ 2:37PM | <#>

You don't recall correctly, then. "iirc" is the biggest cop-out there is on the internet. If you don't know whether it's true, either look it up or don't post it.

[reply to this](#)**Tulpa** | 11.25.09 @ 2:39PM | <#>

The fact that it was a power immediately taken up by the court and recognized and accepted prior to 1800 makes me think the framers thought it so obvious that an explicit mention was not needed.

Dude, you don't know what you're talking about. I hate to go all Gunnels on you, but read a book on the subject you're pretending to be the expert on, before you embarrass yourself further.



[reply to this](#)**Neu Mejican** | 11.25.09 @ 3:04PM | #

You have an odd definition of "pretending to be an expert."

That said, you might read section 25 and tell me how it doesn't do what I claim.

As for internet "cop-outs," I am pretty sure empty claim that "you don't recall correctly" is about as weak as things get. Prove me wrong or go back to your practice of ignoring me.

[reply to this](#)**Neu Mejican** | 11.25.09 @ 3:15PM | #

I wonder if Tulpa will claim that I am using sophistry here by referencing verifiable facts.

Will Tulpa do this while at the same time pretending that Tulpa is "an expert" that "knows" what the right answer is (without providing any support for the claim beyond simple accusations that I am incorrect)...while accusing me of being lazy for not providing a link to something that everyone who is interested can readily google and verify.

[reply to this](#)**What Tulpa is saying** | 11.25.09 @ 3:18PM | #

Translation: my opinion on the matter is different than yours.

[reply to this](#)**What Tulpa may not recognize** | 11.25.09 @ 3:23PM | #

The difference between a person stating their opinion and a person making a factual claim.

It may be confusing for Tulpa when an opinion is based on an interpretation of the actual textual evidence rather than some appeal to authority.

[reply to this](#)**Apostate Jew** | 11.25.09 @ 3:29PM | #

Gary Gunnels?

Long time since I've seen that name on this here blog.

[reply to this](#)**Neu Mejican** | 11.25.09 @ 7:11PM | #

It certainly predates Tulpa by a good stretch...wonder what the former handle was...

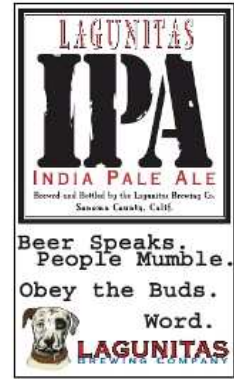
Anyway, I see, as usual, Tulpa drops some content free ad-homs and skips out without attempting to prove a point.

It is a truly fascinating behavior. Too bad. I thought, based on the tone of the first comment that Tulpa might have some information that would allow me to learn something about the issue that I didn't already know. It has been a long time since I took an American History course. It's always fun to get a refresher from those that pay more attention.

Too bad if it was, again, just Tulpa posturing.

[reply to this](#)**prolefeed** | 11.25.09 @ 8:31PM | #

"Judicial power" can not be reasonably construed to mean "the Constitution means whatever the hell 5 or more SCOTUS members want it to say, regardless of the actual wording, without any recourse by any other part of the government"

[reply to this](#)

Neu Mejican | 11.25.09 @ 8:51PM | #

Indeed. Which is what I believe was being implied by the "fun house mirror" comment.

[reply to this](#)

Nancy Pelosi | 11.25.09 @ 12:25PM | #

Are you serious? Are you serious?

[reply to this](#)

JB | 11.25.09 @ 12:29PM | #

Come to my door Nancy and try to fine me for not buying health insurance.

See how serious I am.

[reply to this](#)

sage | 11.25.09 @ 12:25PM | #

But health care is a RIGHT. It's right there in the constitution, just like food, clothing, shelter, a job, and cheap gasoline. You have to squint really hard to see it.

[reply to this](#)

Sean Healy | 11.25.09 @ 12:56PM | #

And by 'right', we mean 'requirement'.

[reply to this](#)

Tony | 11.25.09 @ 12:28PM | #

Nate Silver handles this question too.

[reply to this](#)

Art-P.O.G. | 11.25.09 @ 12:43PM | #

Ooh, good sophistry.

[reply to this](#)

junior | 11.25.09 @ 1:10PM | #

wow, nate silver's entire argument is complete and total garbage. not one coherent thought. i'm not at all surprised that you're willing to associate yourself with that level of thinking.

I especially love the part where he states that constructionists are inconsistent, and then asks the reader to "imagine if" and "do you think" that other totally unrelated group would have a consistent view.

dumbass

[reply to this](#)

Hazel Meade | 11.25.09 @ 2:37PM | #

There's a difference between arguing that congress doesn't have the power to fund health care, and arguing that congress doesn't have the power to force individuals to buy a specific product - especially one which it is not in their interest to buy.

[reply to this](#)

Paul | 11.25.09 @ 7:42PM | #

Speaking of the Bill of Rights in particular, every last one of them is framed within the context of a limit to government power. Anyone here remind me of how forcing americans to buy insurance limits government power over the individual?

[reply to this](#)

Commerce Clause to Pols | 11.25.09 @ 12:38PM | #

Do what thou wilt shall be the whole of the Law.

[reply to this](#)

Frater Perdurabo | 11.25.09 @ 12:47PM | #

* smiles wistfully *

[reply to this](#)

Hazel Meade | 11.25.09 @ 2:38PM | #

Fucking neopagans.

[reply to this](#)

aelhues | 11.25.09 @ 12:41PM | #

Oh come on, we all know the general welfare trumps any and all restrictions on the jurisdiction of congress.

Ignore the rest of those pesky words, they really mean nothing.

[reply to this](#)

TrickyVic | 11.25.09 @ 1:10PM | #

Yeah, I doubt they can understand the difference between general welfare and individual welfare.

[reply to this](#)

Warty | 11.25.09 @ 12:44PM | #

Shut the fuck up, Tony. You smell and no one likes you.

[reply to this](#)

coprophile | 11.25.09 @ 12:52PM | #

I like him!

[reply to this](#)

aelhues | 11.25.09 @ 1:02PM | #

Yes, but who says you count as someone? You're likely not real.

[reply to this](#)

aelhues | 11.25.09 @ 1:03PM | #

Ok, yeah...missed the name...you're right, you do.

[reply to this](#)

Tulpa | 11.25.09 @ 2:41PM | #

I am invisible to all but the Chosen One until I magically appear on the lawn Christmas morning!

[reply to this](#)

Musca Domestica | 11.25.09 @ 1:08PM | #

I like him too!

Tony is like an obstetrical ward for my family.

[reply to this](#)

OMG | 11.25.09 @ 1:07PM | #

Retarded Fetus, Ruth Marcus, has an op-ed in WAPO today basically arguing to the effect of "of course there is authority for an individual mandate, ever hear of the CC".

Put aside the fact that the CC has basically been twisted into a pretzel that bears no resemblance to that which it was originally intended to address. Government restrictions and regulations are meant to regulate positive actions that people choose to take. Don't want to pay income tax, don't earn an income; don't want to buy car insurance, don't drive; don't want to send your children to school, don't have children. This will be the first time in the history of our country (other than the draft), where by sheer dint of the fact that you are alive and breathing, the government can force you (at penalty of imprisonment) to DO something.

Does that not mean anything to anyone. If it has that power, why stop at the individual mandate; why not extend it to anything.

Also, the idea that medical commerce crosses state lines and therefore can be government by the CC

is crazy - EVERY aspect of our lives from taking a shit to saving for retirement is an endeavor that some one or another has decided to try to make a buck at (i.e. "Commerce") and happens widespread (interstate). By this logic there is NO activity that we engage that cannot be construed as interstate commerce. If this was what the founders intended, why wouldn't they have just gotten to the point and had an article to the effect that "the Federal Government shall have the right to regulate all matters, whatsoever, of every aspect of everyone's life"

I'm leaving.

[reply to this](#)

Hacha Cha | 11.25.09 @ 1:09PM | <#>

is Obamacare constitutional? no

[reply to this](#)

sage | 11.25.09 @ 1:16PM | <#>

THEY DON'T CARE. The constitution is 200+ year old toilet paper to them.

[reply to this](#)

Sudden | 11.25.09 @ 6:53PM | <#>

I actually got into an argument with a curator at the Constitution Center in Philly because they didnt have Article 1 Section 8 on display in one of their original;y published copies.

[reply to this](#)

Nick | 11.25.09 @ 1:19PM | <#>

If the welfare clause was intended to provide universal health care, how come we haven't had universal health care in this country since 1789? Oh yeah, because that was not the intention of the clause, ergo UHC advocates can suck a fat dick.

[reply to this](#)

OMG | 11.25.09 @ 1:28PM | <#>

Because the Constitution is a "living" document, meant to change with our times. Convenient argument when the change has only gone in one direction, expanding government powers

[reply to this](#)

OMG | 11.25.09 @ 1:33PM | <#>

And when our whole system of government was designed around the theory of limited government power

[reply to this](#)

Hazel Meade | 11.25.09 @ 2:41PM | <#>

It's a living document in that "Oh my God the letters are moving!" acid-trippy way.

Congress needs it's supply of Salvia Divinorum revoked.

[reply to this](#)

anonymous | 11.25.09 @ 3:47PM | <#>

Yes, hence the amendment process.

[reply to this](#)

Commerce Clause | 11.25.09 @ 1:58PM | <#>

Nick, I'm just a slow starter.

[reply to this](#)

Tom | 11.25.09 @ 2:00PM | <#>

If the welfare clause was intended to provide universal health care, how come we haven't had universal health care in this country since 1789?

Thanks for this. Sometimes I feel like I'm the only one who finds this to be one of the most intuitive (and compelling) arguments in the whole matter.

The proponents of government-run health care -- what, exactly, do they think is the reason we

haven't had it all these years? Because we used to be dumber? More selfish? Lazy? Held back by evil forces? So, really, it's been constitutional all along -- it just so happened that we never got around to it, and now there's something magical about this particular moment in time.

It's such a misapprehension about the nature of the American experiment and what this country was founded to be. If they want to throw the whole thing away, then fine -- but just *say* so. Don't come up with these convoluted arguments to mask what's going on.

[reply to this](#)

Tony | 11.25.09 @ 2:47PM | <#>

Well we got Medicare and Medicaid, single-payer systems for select populations. And various governments have tried to enact universal healthcare for 100 years. It didn't just so happen that it hasn't been enacted yet--there have been powerful forces acting against it.

[reply to this](#)

Tom | 11.25.09 @ 2:50PM | <#>

Got it. So we can officially put you in the "Held back by evil forces" column, yes?

[reply to this](#)

Tony | 11.25.09 @ 3:01PM | <#>

Is that next to the "Congress hasn't done it yet, therefore it can't do it" column?

[reply to this](#)

Tom | 11.25.09 @ 3:03PM | <#>

No, and you're bad at metaphors and logic. It's next to the "people were dumber," "more selfish" and "lazier" columns.

[reply to this](#)

Paul | 11.25.09 @ 7:50PM | <#>

They just haven't gotten around to it. Next up, obesity legislation.

Oh wait.

[reply to this](#)

Danny | 11.25.09 @ 1:40PM | <#>

Will someone please stick a fork in this ridiculous meme?

Congress can "force" the purchase of health insurance by a simple income-tax two-step, without ever invoking the welfare clause, the commerce clause, or any other enumerated power: (a) impose an income surtax in the amount of X dollars; (b) provide a tax credit in the amount of X dollars to anyone who buys approved health insurance.

Tadaaaa! Can we move on now?

[reply to this](#)

Commerce Clause | 11.25.09 @ 1:57PM | <#>

Off my turf, IRS dudes.

[reply to this](#)

Bobster0 | 11.25.09 @ 3:16PM | <#>

Congress can "force" the purchase of hookers by a simple income-tax two-step, without ever invoking the welfare clause, the commerce clause, or any other enumerated power: (a) impose an income surtax in the amount of X dollars; (b) provide a tax credit in the amount of X dollars to anyone who buys approved hookers.

[reply to this](#)

help | 11.26.09 @ 6:56AM | <#>

Thank you for this reply to this asshat comment. Your formulation works for almost anything. In fact, its fun:

project - try this morons formulation with any number of behaviors. I like your hooker one,

let's try another:

Congress can "force" the purchase of pot by a simple income-tax two-step, without ever invoking the welfare clause, the commerce clause, or any other enumerated power: (a) impose an income surtax in the amount of X dollars; (b) provide a tax credit in the amount of X dollars to anyone who buys approved hookers.

[reply to this](#)

prolefeed | 11.25.09 @ 8:43PM | #

Not everyone has income. So this attempt would exclude anyone not currently gainfully employed -- who are, not coincidentally, disproportionately people not covered by health insurance.

[reply to this](#)

hellp | 11.26.09 @ 6:53AM | #

You miss the point ... they propose to levy a tax on people with no incomes; you live up in the mountains, grow your own vegetables, have no contact with society and no income. But your breathing. Pay the tax.

[reply to this](#)

Jordan | 11.25.09 @ 1:42PM | #

If the Commerce Clause and General Welfare Clause were meant to be this broad, then the Framers wouldn't have bothered writing anything else because they invalidate the whole fucking document.

[reply to this](#)

hellp | 11.26.09 @ 6:57AM | #

+1

[reply to this](#)

Old Mexican | 11.25.09 @ 1:48PM | #

In answer to the question "by what authority?" Reid's bill offers the Commerce Clause[...]

The CC is the lazy man's answer for all constitutional matters. And truth be told, there is no one I know who's more intellectually lazy than Sen. Harry Reid - with the exception of Nancy "Are you serious?" Pelosi.

[reply to this](#)

Tony | 11.25.09 @ 2:46PM | #

There is nothing more intellectually lazy than declaring a policy unconstitutional just because you're against it.

[reply to this](#)

A Different Bill | 11.25.09 @ 2:56PM | #

Hey Tony, how about the practice of recognizing an unconstitutional act for what it is - plainly unconstitutional?

Or is that just as intellectually lazy as defending the act as constitutional just because your in favor of it?

[reply to this](#)

Tony | 11.25.09 @ 3:01PM | #

It's not your job or mine to declare a policy unconstitutional. If healthcare passes, take it up with the courts. Good luck with that.

[reply to this](#)

robcc | 11.25.09 @ 3:23PM | #

It is my job in fact.

[reply to this](#)

Old Mexican | 11.25.09 @ 3:26PM | #

Re: Tony,

It's not your job or mine to declare a policy unconstitutional. If healthcare passes, take it up with the courts. Good luck with that.

Now THAT'S laziness. You're basically relieving yourself and the rest here from the responsibility of making sure YOUR and OUR representatives in Congress and the Senate follow the letter of the Constitution. You are basically just delegating that responsibility towards the Courts and whoever decides to take the matter to them.

Again, that is laziness.

[reply to this](#)

Tony | 11.25.09 @ 6:59PM | <#>

Yeah well what are you gonna do about it? You are among a really small minority that doesn't support some recognizable form of this legislation. The system you are a part of recognizes the court's authority on deciding whether something is constitutional, not the authority of you or the antigovernment fringe. Someone will probably challenge this legislation in court. If it makes it through the court system without being declared otherwise then it is by definition constitutional. As I said, good luck with that!

[reply to this](#)

prolefeed | 11.25.09 @ 8:46PM | <#>

You are among a really small minority that doesn't support some recognizable form of this legislation.

You need a link to back up that assertion.

[reply to this](#)

prolefeed | 11.25.09 @ 8:48PM | <#>

Especially since about 40%-45% of Congress doesn't support this legislation. Do you define "really small minority" as "anything less than 50% of the sample population, if it is legislation I want enacted?"

[reply to this](#)

juris imprudent | 11.25.09 @ 10:27PM | <#>

Actually when it's legislation he wants, it doesn't matter if 90% are opposed to it - they are the tiny minority.

[reply to this](#)

The Libertarian Guy | 11.26.09 @ 9:36PM | <#>

Seriously, Tony... the SCOTUS dropped the ball and shat upon the First Amendment when they green-lighted McCain-Feingold.

You want government to have this dangerous power because your twisted logic equates "promote the general welfare" with pretty much any goddamned thing your party wants to foist on the populace.

Fuck the Tenth Amendment, eh, Tony?

[reply to this](#)

Tony | 11.27.09 @ 12:10AM | <#>

The 10th amendment was fucked by the courts long before I got here. What you think it says is that whatever you personally deem is acceptable for the federal government to do is constitutional and everything else isn't. It's fine to appreciate the 10th amendment but you have to understand what the rest of the constitution says are the powers of the federal government before deciding whether it can do something.

[reply to this](#)

RHSwan | 11.25.09 @ 3:20PM | #

It is just as intellectually lazy to declare something constitutional because you are for it.

[reply to this](#)

Old Mexican | 11.25.09 @ 3:23PM | #

Re: Tony,

There is nothing more intellectually lazy than declaring a policy unconstitutional just because you're against it.

Could it be that a person can be against a certain bill because it is unconstitutional?

The Constitution does not grant Congress the power to SUPPLY health services. The Interstate Commerce clause only gives Congress the power to stop States from placing protectionist rules that impair the free flow of goods from State to State.

[reply to this](#)

Sudden | 11.25.09 @ 6:58PM | #

Tony, there is nothing more intellectually lazy as claiming that someone "declares something unconstitutional" because they're against it when the reality is that they'er against it BECAUSE its unconstitutional.

[reply to this](#)

Congress | 11.25.09 @ 7:51PM | #

Or declaring it constitutional just because you're for it.

[reply to this](#)

help | 11.26.09 @ 6:58AM | #

There is nothing more intellectually lazy then claiming that anyone trying to discuss the constitutionality of potentially unconstitutional legislation calling other people lazy.

Hey, I like that line of argument - its so philosophically sound that we can all pack up our toys and go home now. Nothing to discuss

[reply to this](#)

juris imprudent | 11.26.09 @ 11:33AM | #

Well, tony, Sen. Reid may be lazy, but he isn't stupid - he didn't cite "the general welfare" coupled with "necessary and proper".

Of course he used the incredible elastic commerce clause - not because of what is actually written in the Constitution, but because even Scalia will support "comprehensive systems of regulation" hanging from it.

[reply to this](#)

Commerce Clause | 11.25.09 @ 1:57PM | #

I'm like water, the universal solvent.

[reply to this](#)

LibertyCowboy | 11.25.09 @ 2:20PM | #

Obamacare doesn't force anyone to buy health insurance. It is just a tax increase, and the fact that there are offsetting deductions is irrelevant. After all, you don't have to have "dependents" even though there is a deduction for that and you don't have to be unemployed even though you have to pay for unemployment insurance tax.

[reply to this](#)

P Brooks | 11.25.09 @ 2:39PM | #

If the President wants it done, it's not unconstitutional.

[reply to this](#)

King George | 11.25.09 @ 2:43PM | #

If I'd known what I was doing, I'd have forced you all to buy tea.

[reply to this](#)**hellp** | 11.26.09 @ 7:01AM | #

+1

[reply to this](#)**A Different Bill** | 11.25.09 @ 3:04PM | #

Regarding Congress's and the Court's powers and duties regarding the Constitution - each branch of the fed gov is obligated to evaluate the constitutionality of its own actions and assure that what it does falls within the sphere of its powers.

You know - that quaint, passe little oath thingy all Congress critters, Presidents and justices take upon assuming office? Something about uphold and defend the Constitution? Seems that most of them add a little, "as I see fit" to the end. Sorta like a signing statement."

Unfortunately, too often these days, each branch abdicates its constitutional responsibility to an other one. Congress figures, "well if this bill is fucked up and unconstitutional, someone will file a lawsuit and SCOTUS will fix it." SCOTUS says, "well, that's a legislative question and we have to defer to the will of Congress." The executive says, "Well, I'll just keep doing this until someone files a lawsuit based on a violation of the Constitution, or until Congress steps up and passes a law telling me I can't."

The fact that Congress critters - notably that bitch Pelosi - can't even fathom the perfectly sound and reasonable questioning of the constitutional power under which they purport to pass this cluster fuck is a sad and pathetic testament to the sad and pathetic people we have allowed to take over our country.

"Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction."
--Thomas Jefferson to Wilson Nicholas, 1803.

[reply to this](#)**Neu Mejican** | 11.25.09 @ 3:27PM | #

I concur.

However, the concept of checks and balances is there for when one branch either neglects this duty, or makes an error in their application. It seems.

[reply to this](#)**James Ard** | 11.25.09 @ 3:20PM | #

Drats, beaten to the "are you serious, are you serious" post.

[reply to this](#)**Read a Book** | 11.25.09 @ 3:25PM | #

The worst cop out in the modern age is a claim that my expert is better than your expert.

Think for yourself.

[reply to this](#)**Barry** | 11.26.09 @ 9:43PM | #

I am THE expert and I am better than you.

[reply to this](#)**Karl Marx** | 11.26.09 @ 10:17PM | #

Don't forget, chocolate-colored comrade... I came up with it first. You are seriously lagging in implementing my glorious workers' paradise in your country. So quit Stalin.

[reply to this](#)**Cisco Kid** | 11.25.09 @ 3:54PM | #

I have yet to see this can of worms opened. If it is unconstitutional to prohibit an elective medical procedure on the grounds that there is a right to privacy, how can it possibly be constitutional to require people to buy health insurance. KEEP YOUR LAWS OFF OF MY BODY!!! :-)

[reply to this](#)

Hazel Meade | 11.25.09 @ 4:22PM | <#>

Good point. As I've said elsewhere, socialized healthcare opens the can of worms that once someone is paying for your care, that person can claim that anything you do to your body potentially imposes costs on him. So he has a right to control it.

For example, there are those who already argue that people should be prohibited from smoking because the costs of treating lung diseases is imposed upon society.

Likewise, riding without a bike helmet, mountain climbing, using recreational drugs, and promiscuous sex, all potentially increase one's risk of health care expenses.

I can see the day when people get fined for not using condoms, because STD and pregnancy impose costs upon society.

[reply to this](#)

MNG | 11.25.09 @ 4:36PM | <#>

Hazel

Excellent point.

There was a decent article in the WaPo last Sunday by a liberal asking fellow liberals why in the world they would want the government to control health care when the government will for sure often be run by conservatives. Liberals who don't like conservative administration's policies on abortion, contraception etc., imagine how they are going to feel when such an administration is in charge of all health care...It's really something liberals need to think about.

[reply to this](#)

juris imprudent | 11.25.09 @ 10:29PM | <#>

I've found that few liberals are willing to imagine that. Most prefer to delude themselves that the "right people" will always be in power.

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Hazel Meade | 11.26.09 @ 12:37AM | <#>

Yes. Like Tony's wierd beleif the other day that if people were correctly informed about the necessity of mammograms they wouldn't vote for unnecessary mammograms to be covered by public funds.

In liberal la-la land all that's required for democracy to produce perfect, fair, equitable, and just outcomes is for the public to be "educated" with "the truth". And then they will naturally vote for the good, fair, just, perfect, solution to every problem.

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The Libertarian Guy | 11.26.09 @ 9:37PM | <#>

Tony thinks food is a human right. No point in arguing with someone THAT insane.

But it is fun, no?

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hellp | 11.26.09 @ 7:06AM | <#>

Thank you for finally seeing some sense. But don't you see that this is why libertarians in general are skeptical of government power and believe in leaving the maximum amount of liberty with the individual that is concomitant with an ordered society necessary to preserve that liberty.

The argument that you make can be extended to many things that the government partakes in - wish that you would apply the rule of thumb more broadly.

[reply to this](#)

Apostate Jew | 11.26.09 @ 11:13AM | <#>

Some, many, the majority of Republicans thought they were creating a permanent majority.

Maybe it's because all humans are equipped with roughly similar brains? "Pride goeth before destruction, and a haughty spirit before a fall"* or some such.

*From the Old Testament not the newfangled one the heretics like.

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James Anderson Merritt | 11.26.09 @ 4:15AM | <#>

"For example, there are those who already argue that people should be prohibited from smoking because the costs of treating lung diseases is imposed upon society."

For example, my own County Supervisor, who, a couple of years ago, voted with the majority to ban all tobacco use (including snuff) within County Parks. When I wrote in protest (being a non-smoker and non-tobacco-user myself, but a supporter of the Constitution and its presumption of liberty), this politician defended his position by citing that very justification. Basically, "we're paying a lot of money to treat tobacco-caused illnesses, so we have an obligation to prohibit the behavior that causes those illnesses."

The pols get away with it because smokers have been made into pariahs. We need to hold "anti-pariah" laws to a higher standard. It's all well and good to kick the pariahs around, but in doing so we usually lose some of our own freedom. I know! Let's make STUPID POLITICIANS and their supporters the pariahs. Then send them to Gitmo.

[reply to this](#)

Jim Treacher | 11.25.09 @ 6:14PM | <#>

ConstaWHAT???

[reply to this](#)

The Libertarian Guy | 11.26.09 @ 9:38PM | <#>

Oh, you know... that musty ol' document written by rich white slaveowners. It's just a piece of shitwipe paper now that Democrats have the majority.

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Mad Max | 11.25.09 @ 6:33PM | <#>

'I have yet to see this can of worms opened. If it is unconstitutional to prohibit an elective medical procedure on the grounds that there is a right to privacy, how can it possibly be constitutional to require people to buy health insurance. KEEP YOUR LAWS OFF OF MY BODY!!! :-)'

I've lost count of how many times people who aren't me have engaged in abortion threadjacks.

[reply to this](#)

Art-P.O.G. | 11.26.09 @ 4:43AM | <#>

Mad Max, this thread isn't about abortion...quit threadjacking! ;)

[reply to this](#)

Harry Reid | 11.25.09 @ 11:02PM | <#>

The Interstate Commerce clause only gives Congress the power to stop States from placing protectionist rules that impair the free flow of goods from State to State.

Exactly so: the Constitution grants Congress the power to SUPPLY health services.

[reply to this](#)

juris imprudent | 11.26.09 @ 11:36AM | <#>

Not to worry Senator, Scalia's got your back on that - unless you federally recognize medical marijuana.

[reply to this](#)

Hobo Chang Ba | 11.26.09 @ 1:12PM | <#>

Hmm...using an clause that regulates interstate commerce to regulate a trade that is not interstate? Politicians are obviously logical beasts.

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