

Richmond Times-Dispatch

OPINION: | [Editorials](#) | [Letters](#) | [Commentary](#)

Wednesday, October 7, 2009 |

[Chesterfield, VA 75°](#) Feels Like: 75° Clear [View Warnings/Advisories](#)

Hinkle: Individual Mandate on Health Care Resembles a Peacetime Draft

Text size: [small](#) | [medium](#) | [large](#)

A. BARTON HINKLE STAFF COLUMNIST

Published: October 6, 2009

Critics of the various health care reform proposals currently before Congress have focused on a variety of flaws, from the extraordinarily high costs to the stealthy nature by which some of them seek to bring about a single A. BARTON

HINKLE

payer system. But not enough obloquy has been heaped on the most pernicious proposal of all: the mandate requiring every American to buy insurance.

This is a dangerously sweeping expansion of federal power with no precedent outside of war.

Such a mandate would be challenged in court. Unfortunately, it probably would be sustained, owing to the infinitely elastic interpretation of the Commerce Clause that has governed jurisprudence at least since *Wickard v. Filburn*. And that could open the door for any number of other mandates that trample on individual liberty.

Americans are required to do many things, from having a driver's license to paying taxes. But all of those requirements are contingent, not absolute: You need a driver's license if you wish to drive -- but not if you choose to live in a big city and content yourself with the common combination of public transportation plus perambulation. You must pay taxes, but only if you earn income.

The health insurance mandate would be the only case of an affirmative federal requirement imposed on everyone for no other reason than one's presence in the United States -- as the Congressional Budget Office has certified. "A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action," the CBO says. "The government has never required people to buy any good or service as a condition of lawful residence in the United States."

For sheer sweep, no other form of federal compulsion even comes close. (Slavery was infinitely more heinous, yet the federal government, while notoriously permitting the cruel institution, did not require it.) Even wartime conscription applied to only a small segment of the populace, and even then it allowed for exceptions. It also ended when the national emergency ended.

Nevertheless, wartime conscription became the foundation upon which a whole host of other intrusive government policies were built. If the government could take your liberty and life, the reasoning went, then it

certainly could take whatever else it wanted to. For instance, in a Supreme Court ruling that upheld residential rent controls, Justice William O. Douglas wrote: "A nation which can demand the lives of its men and women in the waging of . . . war is under no constitutional necessity of providing a system of price control on the domestic front which will assure each landlord a 'fair return' on his property."

Likewise, the high court ruled that Washington could renegotiate wartime contracts to eliminate "excess profits" because "in total war it is necessary that a civilian make sacrifices of his property and profits with at least the same fortitude as that with which a drafted soldier makes his traditional sacrifices of comfort, security, and life itself."

Policies justified because, after all, conscription was justified set the stage in turn for even greater intrusions and infringements on the public liberty. After WWII, historians note, America did not revert to a peacetime Constitution; the war had the effect of conferring upon Congress "a legislative power of indefinite scope."

Forcing everyone to buy an insurance policy is not wartime military conscription, of course. It is economic conscription, analagous to a peacetime draft. And it is not hard to see how the logic applied to military conscription could be applied to economic conscription as well. If the federal government can require you to buy health insurance, then surely it can require you to buy any other good or service it chooses. What's more, the individual mandate implies a corporate mandate -- since, as the Cato Institute's Michael Cannon notes, "when government makes health insurance compulsory, it must define a level of coverage that satisfies the mandate, so that people will know if they are complying with the law." Countless decisions now made consensually in the marketplace, such as whether to cover gastric-bypass surgery, will become political decisions to be imposed by congressional fiat.

Some will argue that, while the above might be true, the individual mandate is driven by the exigencies of health care reform, and reform is driven by what William Pitt referred to as "the plea for every infringement of human freedom" -- necessity. Advocates will say the unprecedented step of a national insurance mandate will help attain universal coverage, and that is a good thing.

No doubt. But those who insist on universal compulsion in the service of universal coverage should be enjoined from objecting, ever again, when social conservatives try, as liberals commonly complain, to "impose their values on the rest of us."

If we could read the secret history of our enemies, we should find in each man's life sorrow and suffering enough to disarm all hostility. --Henry Wadsworth Longfellow

Contact A. Barton Hinkle at (804) 649-6627 or bhinkle@timesdispatch.com .