



COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES

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"HEALTHCARE FREEDOM ACT" TO CHALLENGE OBAMACARE

Q. Will an Obamacare health Czar decide how you spend your income, or will you?

A. Obamacare requires individuals to purchase private health insurance fashioned and approved by the Obama Administration or be fined \$1900, face a year in jail and pay penalties up to \$25,000 (half the median income of American families). Penalties can start if a single, monthly payment is missed.

Yet, the primary responsibility for the economic welfare of families and adult individuals rests with families and adult individuals, not Washington politicians. Our Declaration states that governments receive their "just power from the consent of the governed," and further, that it is "the Right of the People," not elected or appointed officials, to structure government, "in such form, as to them shall seem most likely to effect their Safety and Happiness." Obamacare proponents in Congress are proposing health care "solutions" which abolish our natural right of self-determination to make primary decisions for our own economic welfare. America's Founders held that it was both the right and duty of citizens to resist Government which usurps rights given to us by our Creator.

Obamacare is not a battle over health insurance. It is a struggle over whether America will remain a nation of self-directing citizens or docile, powerless serfs.

Q. Do citizens and states have the constitutional authority to challenge Obamacare?

A. Yes. The Ninth and Tenth Amendments to the US Constitution affirm a supremacy of rights reserved to the people and to the states: Amendment 9: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Amendment 10: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Moreover, the natural right of contract existed long before our Constitution, and is a fundamental right of citizens and a free people. American courts do not enforce involuntary contract promises.

Q. How can citizens and state legislatures challenge Obamacare mandates?

A. The "Health Care Freedom Act," HB 10, has been introduced in the Virginia General Assembly to challenge Obamacare. It can be introduced in other state legislatures in 2010. Passage of HB 10 ensures that Virginia and other states will take up this challenge of defending Liberty on behalf of citizens who refuse to submit to the illicit demands of Obamacare.

HB 10 states: "No law shall restrict a person's natural right and power of contract to secure the blessings of liberty to choose private health care systems or private plans. No law shall interfere with the right of a person or entity to pay for lawful medical services to preserve life or health, nor shall any law impose a penalty, tax, fee, or fine, of any type, to decline or to contract for health care coverage or to participate in any particular health care system or plan, except as required by a court where an individual or entity is a named party in a judicial dispute. Nothing herein shall be construed to expand, limit or otherwise modify any determination of law regarding what constitutes lawful medical services within the Commonwealth."

Q. If Congress passes Obamacare, how does this square with the obligation of Congress to represent their constituents and not impose obligations on citizens against their will?

A. Congress' ONLY duty is to serve citizens under the express powers of the US Constitution. Congress' own staff concluded (see below) that the proposed insurance mandates are novel and unprecedented in the 220 years since Congress was established in 1789! Forcing citizens to purchase private health insurance violates the compact between elected representatives and citizens reducing government "of, by and for the people," to demands of lords over subjects. The Declaration of Independence affirmed "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it." It is the usurpers in Washington who propose to alter self government under the guise of health care reform.

Q. But Congress already mandates tax payments for Social Security and Medicare. What's so different about Obamacare?

A. Congress has never attempted to force individuals to purchase anything in the private sector. An August, 1994, Congressional Budget Office report by Robin Seller, written re: Hillary-care, states: "A mandate requiring all individuals to purchase health insurance would be

an unprecedented form of federal action. The government has never required people to buy any good or service as a condition of lawful residence in the United States. An individual mandate would have two features that, in combination, would make it unique. First, it would impose a duty on individuals as members of society. Second, it would require people to purchase a specific service that would be heavily regulated by the federal government."

Q. Congress compels registration for the military draft, and state governments require the purchase of auto insurance, so can't Obamacare require insurance purchases?

A. The power to raise an army to provide for the common defense is an enumerated power given to the national government. The mandating of health insurance is not a power granted to Congress. Forty-seven states impose liability insurance to drive on public, tax-paid roads. No insurance is needed to drive at any speed on one's own property. Liability insurance is required to compensate and protect others from injuries. Though it is a widely granted privilege and a practical social necessity, courts have held that driving on a public road is not a right. It is subject to conditions imposed by state legislatures which are empowered to enforce general police and welfare powers.

Q. What else could Congress mandate of citizens if health mandates go unchallenged?

A. Congressmen and Senators could disingenuously tell citizens they will not raise taxes before an election, but then impose spending "mandates" on all Americans to achieve the same goal after they are elected. If Congress can force all Americans to buy health insurance, then Congress can mandate, under heavy penalty of jail or fines, that citizens purchase new windows or insulation to save the environment. Congress could compel states to not register automobiles older than 2005 to minimize air pollution. The potential for abuse is unlimited. Further, the Congressional Budget Office in 1994, stated Congress would be exercising a dangerous power: "a decision to exclude the costs of an individual mandate to purchase health insurance from the budget could lead policymakers to impose other mandates on individuals ... to use mandates to control the allocation of a large portion of the nation's resources without the cost of those actions being controlled through the federal budget process."

Q. Does the "Health Care Freedom Act," protect businesses?

A. Yes, HB 10 protects both individuals and "entities" from mandatory health care purchases. Obamacare requires every company with an annual payroll of \$500,000 or more to insure its workers with private plans, approved by the Obama Administration, or pay an 8% payroll tax. Obamacare also requires companies that do provide health insurance to pay 72.5% of an individual's premium, and 65% of a family plan. While Congress has passed laws pertaining to minimum wage, overtime, workplace safety, family leave, and workman's compensation, it never required companies to offer non-wage related or "fringe benefits" such as health insurance. Companies are not required to offer retirement plans, but if they do, they must conform to ERISA laws. Companies may, but are not required to, offer health insurance.

Q. Are there reputable legal scholars who think the Congress may NOT have the constitutional authority to compel health insurance purchase mandates?

A. Yes, "*the health care mandate does not purport to regulate or prohibit activity of any kind, whether economic or noneconomic. ... To the contrary, it purports to "regulate" inactivity by converting the inactivity of not buying insurance into commercial activity. ...*" In recent years, the Court invalidated two congressional statutes that attempted to regulate noneconomic activities. In *United States v. Lopez* (1995), it struck down the Gun-Free School Zones Act, which attempted to reach the activity of possessing a gun within a thousand feet of a school. In *United States v. Morrison* (2000), it invalidated part of the Violence Against Women Act, which regulated gender-motivated violence. Because the Court found the regulated activity in each case to be noneconomic, it was outside the reach of Congress's Commerce power, regardless of its effect on interstate commerce. To uphold the insurance purchase mandate, the Supreme Court would have to concede that the Commerce Clause has no limits, a proposition that it has never affirmed, that it rejected in *Lopez* and *Morrison*, and from which it did not retreat in *Raich*. ... Congress may ... not regulate the individual's decision not to purchase a service or enter into a contract."

(Heritage Foundation by Georgetown University law professor Randy Barnett can be found at: <http://www.heritage.org/Research/LegalIssues/lm0049.cfm>; also see American Law and Justice at http://www.aclj.org/media/pdf/Constitutionality_of_Individual_Mandate_Memo.pdf)

HB 10 has been introduced by Virginia State Delegate Bob Marshall (13th House of Delegates District) for the 2010 Virginia General Assembly session. If you live in Virginia, ask your own state representative to cosponsor HB 10. If you do not live in Virginia, ask your state representative to introduce HB 10 or a similar bill to challenge Obamacare. Questions? Email Bob at delegatebobmarsall@hotmail.com, also, see www.delegatebob.com.