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The Unconstitutional Healthcare Bill

On November 7, at the end of a 12-hour debate, the House of Representatives passed the implausibly named "Affordable Healthcare for America Act." A similarly revolutionary measure was introduced days later in the Senate and, thanks to a shameless display of haranguing and multi-million-dollar handouts, was put onto the calendar for deliberation by the entire membership.

The bills each run about 2,000 pages and cost an estimated $1.8 trillion dollars. Each measure aims at constructing a medical-care morass that taxes and regulates the dispensing of healthcare beneath the oversight of at least 100 new agencies and bureaucratic commissions.

We present here the rap sheet of crimes against the Constitution — which every Congressman has solemnly sworn to uphold — perpetrated by the schemes currently being deliberated and likely soon to be enacted by a Congress.

First, there is the fact that the federal government is a government of enumerated powers. Those powers are few and definite, and healthcare is nowhere to be found among them. Nor is this surprising, since the Founding Fathers believed both in limited government and in keeping government as close to home as possible. Only those few powers that, in the Founders' view, could not be effectively handled at the state level were delegated to the new federal government by the Constitution. Nor would the Founding Fathers have ever imagined putting government in charge of healthcare — giving it, ultimately, the power to make life-and-death decisions for its citizens.

Another constitutional conundrum facing the enactment of any of the proffered proposals is the pesky Tenth Amendment, which for any Doubting Thomases explicitly underscores the above point — that the federal government has no powers except those delegated to it.

It is of course true that the Tenth Amendment is ignored and violated again and again. Yet despite years of suffering one ignominious defeat after another, there are those yet willing to defend the Tenth Amendment and defiantly assert its protections against the assumption by the national government of powers reserved by the Constitution to the individual states or to the people. One such defender, Stother Smith of the 10th Amendment Foundation, vows that if President Obama signs a comprehensive national healthcare act, then lawyers retained by his organization will immediately file suit in federal court seeking to enjoin the enforcement of any aspects of the law that are inconsistent with the Tenth Amendment.

Of course, it never should reach that point, since every U.S. Representative and Senator has taken an oath to uphold the Constitution and is duty bound by that oath. But not only do most legislators ignore

the Constitution, they also refuse to admit that they are acting unconstitutionally.

Speaker of the House Nancy Pelosi, for instance, claims that the healthcare legislation is constitutional under the commerce clause. Essentially, Congress and the courts have claimed that any action taken within a state that may affect interstate commerce in any way may be regulated by Congress.

The Constitution grants Congress very limited and specific powers, and even in light of an interpretation of those powers most favorable to the extension of congressional control over all of interstate commerce, it would be an Olympian display of hermeneutical gymnastics to find any sanction of a federal law mandating that individuals must purchase a health-insurance policy.

But liberals have engaged in unconstitutional contortions to find (among other things) a "zone of privacy" in the shadows of the Constitution. In the landmark 1973 *Roe v. Wade* case, the Court decided that this right to privacy, which is nowhere to be found in the plain language of the Constitution, protects a woman's right to abort her baby. In the 1992 *Planned Parenthood v. Casey* case, the Court, elaborating upon the right to privacy, held that there are "choices central to personal dignity and autonomy" that are sacrosanct. Liberals like Pelosi are strong defenders of this so-called constitutional right to privacy.

But, if liberals really believe this, wouldn't they also believe that the healthcare legislation now before Congress is unconstitutional? After all, wouldn't life-and-death medical decisions be among those "choices central to personal dignity and autonomy" that must be shielded from federal intrusion? Of course, like their "interpretation" of the commerce clause, liberals twist the Constitution to fit their perfidious purposes rather than making sure their agenda fits the Constitution.

Republicans have declared their firm and fixed resolve to sabotage the measure at every turn. We'll see. Given the usual course of dealing between these two parties, the deliberations promise to be less a waging of holy war and more the forming of unholy alliances.