



Written by [Thomas R. Eddlem](#) on December 30, 2009

## Florida Attorney General Challenges Constitutionality of Healthcare Bill

Florida Attorney General Bill McCollum stated December 29 that the healthcare package the U.S. Senate passed on Christmas Eve contains an unconstitutional mandate requiring all Americans to purchase health care insurance.

In a [press release](#) on his website, McCollum stated: "I have grave concerns about the constitutionality of this mandate. Such a 'living tax' is worrisome because it would be levied on a person who does nothing, a person who simply wishes not to be forced to buy health insurance coverage. Upon initial review, this appears to be contrary to the freedoms we, as Americans, have enjoyed for the past 233 years. The mandate is especially troubling to Floridians who are guaranteed through the Florida Constitution to have 'the right to be let alone and free from governmental intrusion into [their] private life.'"



That last part was a quote from the declaration of rights in Florida's state constitution. Article I, Section 23 of the [Florida constitution](#) states: "Right of privacy. — Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

Indeed, a federal government mandate to require citizens to purchase such an expensive consumer item — health insurance often costs more than \$1,000 per month — has never been created in U.S. history, even in wartime. As the Heritage Foundation recently [asked](#): "Can Congress require all Americans to buy a new Buick every year or pay a tax equivalent to the price of a used LeSabre?" Such is the same power being claimed on behalf of the healthcare legislation. Here's what the principle the healthcare mandate means: The federal government could literally require individual citizens to purchase any product or service under such a federal power, provided that the economy or some other alleged public good is served. For example, under such a power Congress could also require all citizens to deposit their cash in certain banks (perhaps to avoid the bankruptcy of the banks).

The U.S. Constitution's [Fifth Amendment](#) guarantees citizens protection against their wealth being taken by the state: "nor shall private property be taken for public use, without just compensation." Such a constitutional provision clearly invalidates the healthcare mandate, as the requirement to purchase healthcare insurance constitutes a gigantic "taking" without any compensation from the federal government. The very purpose of forcing everyone to purchase the healthcare coverage — according to



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proponents of the legislation themselves — is to increase the size of the pool of insured so as to help subsidize the coverage of others. The mandate requires a transfer of wealth , i.e., "property," from some to others without compensation. Moreover, the requirement is not an enumerated power of the Constitution and it violates both the letter and spirit of the [Ninth and Tenth Amendments](#).

Defenders of the healthcare mandate claim that the authority resides in the Constitution's "[commerce clause](#)", under Article I, Section 8 of the Constitution: "Congress shall have the power ... to regulate commerce with foreign nations, and among the several states, and with the Indian tribes" However, "not buying" insurance coverage doesn't constitute commerce. It is the very antithesis of commerce. Regulating existing commerce under Article I, Section 8 is not the same power as the power to mandate an initiation of commerce. Congress' power to regulate commerce is limited to actual commerce "among the several states," i.e., commerce from one state to another. The lack of a transaction is not commerce "among the states," as no state border needs to be crossed for a transaction not to take place.

Proponents of the healthcare mandate clearly stand on obviously unconstitutional grounds.

McCollum is also organizing other state attorneys-general to oppose the healthcare legislation on constitutional grounds [because](#) "of a U.S. Senate bill provision that provides 100% federal Medicaid funding to only one state, Nebraska, without similar funding going to states like Florida." The special Nebraska subsidy was drawn up to buy the vote of "moderate" Nebraska Democrat Ben Nelson, who had threatened to support a Republican filibuster in the Senate debate on the bill. Because Nelson's vote constituted the magical 60th vote needed to break the Republican filibuster, the Senate gave Nelson's Nebraska special considerations in the bill.

McCollum claims that the favoritism in the bill constitutes unconstitutional favoritism, and is urging the other 48 attorneys-general to sue in federal court to remove the provision if it remains in the final conference report version of the bill.

*Photo of Florida Attorney General Bill McCollum: AP Images*



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