



Written by [Joe Wolverton, II, J.D.](#) on January 3, 2010

Senators Call Healthcare Bill Unconstitutional

In a signal example of being a day late and a trillion dollars short, several key senators have recently admitted that healthcare “reform” is unconstitutional. That’s right. Just in time to do absolutely nothing about it, several lawmakers have decided to cop to the fact that nowhere in the Constitution they have sworn to uphold is Congress (or any other branch of government, for that matter) empowered to establish a new healthcare system, overhaul an old healthcare system, or do anything at all regarding the purchase of insurance for medical treatment.



“It isn’t there. It isn’t there,” said Senator Orrin Hatch (R-Utah), ranking member of the Senate Judiciary Committee, when asked by reporters to point to the particular provision in the Constitution authorizing Congress to enact the controversial legislation that just recently passed the Senate. Proving that misery must genuinely love company, Senator Richard Lugar (R-Ind.) joined Senator Hatch in the confessional and agreed that the Constitution forbids Congress from doing what it just did. “Where does Congress find the authority to mandate that people purchase health insurance?” asked Lugar before answering himself, “I don’t have any idea.”

Senator Kay Bailey Hutchinson (R-Texas) sided with the aforementioned Senators in correctly identifying the act placed before her as an historic and horrifying display of unconstitutional meddling on the part of most of her colleagues. Senator Hutchinson remarked on her way to vote on some procedural issues that there is “no place in the Constitution” wherein one can justify enactment of the principles enunciated in the Senate bill. “Where in the Constitution do you think Congress is finding the authority to mandate that someone purchase health insurance?” she asked. Or, as she later told reporters, “There is no place in the Constitution that allows this trampling of individual rights, and I am going to make a point of order that it tramples on the 10th Amendment as well, the rights of states to regulate insurance. And, in my state, we have a self-insurance plan for state employees and teachers, and the federal government now has the right to intrude on that — and it’s not in the Constitution either.”

The Senate version of healthcare “reform” is laughably entitled the “Patient Protection and Affordable Care Act.” Everything about the act is unconstitutional, most notably the provision mandating that every American buy a health insurance policy either individually or through their employer. Anyone failing to comply with the order will incur a penalty in the form of a surtax ranging from \$500 to nearly \$1,500 per year.

To the credit of Senators Hatch, Hutchinson, and Lugar, they did vote in favor a parliamentary point of order, wherein it was argued that the compulsory purchase of health insurance violated the “Takings Clause” of the Fifth Amendment. The procedure was initiated by Senators John Ensign (R-Nev.) and Jim DeMint (R-S.C.) and was aimed at obliging their colleagues to go on record regarding their individual



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understanding of not only the document they swore to defend, but the constitutionality of the overall healthcare package on which they were about to vote. The result? Sixty senators voted to ignore the limits of constitutional power and carry on building the infrastructure for nationalized medicine.

"I am incredibly concerned that the Democrats' proposed individual mandate provision takes away too much freedom and choice from Americans across the country," Senator Ensign explained. "As an American, I felt the obligation to stand up for the individual freedom of every citizen to make their own decision on this issue. I don't believe Congress has the legal authority to force this mandate on its citizens." An obvious statement of this sort should not make news, but the fact that so many of America's elected representatives either willfully ignore or ignorantly abrogate the limits placed on their enumerated powers makes such a position revolutionary.

Senator DeMint co-sponsored the motion and stood there with Senator Ensign crying in the wilderness. "Forcing every American to purchase a product is absolutely inconsistent with our Constitution and the freedoms our Founding Fathers hoped to protect," he said, defying partisan disregard as his words of wisdom fell on about 120 deaf ears.

The source of congressional power is found in Article I, Section 8 of the Constitution. This article undoubtedly is the bane of so many whose wrists chafe under the shackles placed by its restrictions. Never fear, however. These petty tyrants aren't going to let some 200-year-old "parchment barrier" stand in the way of building a new world order, including an American government re-fashioned in a manner most accommodating to their notion of right and wrong. In fact, when CNSNews.com confronted Speaker of the House Nancy Pelosi (D-Calif.) last October and asked if she believed the House version of the healthcare bill was constitutional she disdainfully responded, "Are you serious? Are you serious?"

What exactly do these legislators (and presidents and judges, to be fair) find so offensive about this particular part of our founding document? It's probably the pesky enumeration of very limited and defined powers, nowhere in the text or spirit of which is found any authority to mandate the purchase of insurance or to punish the failure to do so.

Photo of Senator Orrin Hatch: AP Images



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