



Written by [Joe Wolverton, II, J.D.](#) on May 7, 2010

The ObamaCare Mandate: Constitutional Tax?

In a now famous admission of disregard for our nation's founding document, Speaker of the House Nancy Pelosi (D-Calif.), when asked where in the Constitution could be found authorization for the healthcare overhaul, asked in return, "Are you serious? Are you serious?" She then spun on her heel and moved on down the corridor. Representative Phil Hare (D-Ill.) conveyed similar constitutional sangfroid when he said, "I don't really worry about the Constitution on this, to be honest." Well, points for candor if not for constitutionalism.



It is the prevailing attitude of most bureaucrats, Congressmen, and Presidents that the limits placed on their power by the Constitution are irrelevant, especially when those barriers impede their press toward absolutism.

Contrary to the opinion of the petty tyrants, our Republic was built upon the twin pillars of specifically enumerated and limited powers, and federalism (the constitutional scheme whereby two or more sovereignties co-exist).

James Madison, author of *The Federalist Papers* and principal architect of the Constitution wrote in [The Federalist, number 39](#): "The proposed Government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects." Not much wiggle room left there by the man who knew the temple of our government better than any.

[As we have reported previously](#), at least 20 states have joined as plaintiffs in a lawsuit charging the federal government (specifically the executive branch) with having exceeded its constitutional authority with the passage of the Patient Protection and Affordable Care Act (ObamaCare). Particularly objectionable and inimical to the sovereignty of states, is the provision in ObamaCare that all Americans, regardless of income or preference, must purchase a qualifying health insurance policy (known as the "individual mandate").

Such an unusual demonstration of resistance to federal authority on the part of these state Attorneys General was no doubt precipitated by weariness with the cost of compliance with the manifold federal mandates already crippling the states and obliterating the ramparts of their sovereignty. The success of this litigation will have lasting impact on the future of the United States, the 10th Amendment, and the Constitution.

The national government created by the Constitution was restrained thereby, as well. The powers granted it therein are specific, limited, and designed to chain the beast down.

It goes without saying that the reason Speaker Pelosi rebuked the reporter enquiring about the constitutionality of ObamaCare is that she knows such authority does not exist.

Article 1, Section 8 of the Constitution of 1787 lists 17 powers with which the legislative branch



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(Congress) is endowed. They are devoid of any reference to bank bailouts, insurance company rescues, car company ownership, or healthcare mandates. The enumeration of powers made in Article 1 is about as precise as one could be and yet successfully fashion a central government that was able [“to control the governed”](#) and yet [“control itself.”](#)

While the efforts by proponents of ObamaCare to justify their socialism by reference to the Commerce Clause [has been previously deconstructed](#), they have recently struck those colors and have run the flag of “Tax and Spend” clause up the mast.

The aforementioned enumeration of legislative powers set forth in Article 1, Section 8 contains the following clause: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.”

There is no logical or jurisprudential basis for an open-ended interpretation of the “general welfare” portion of that clause as granting broad, unchecked authority. In fact, such a reading would betray the reasoning that informed the Founders’ insistence that the government was a necessarily evil and one that must be shackled.

As Thomas Jefferson (not present during the Constitutional Convention) explained, “The laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. [Congress is] not to lay taxes ad libitum [at one’s pleasure] for any purpose they please.”

He echoed a similar assessment made by his close friend and fellow Virginian, James Madison:

Such a view of the Constitution, finally, would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the General and the State Governments, inasmuch as questions relating to the general welfare, being questions of policy and expediency, are unsusceptible of judicial cognizance and decision.

As the states’ case wends its way along the long path of federal civil procedure, there is yet time for the American people to exercise their ultimate sovereignty and reclaim its right to restrain the federal government and force it to act only within the boundaries of the narrow sphere of influence carved for it by the Constitution. The highest expression of this sovereignty in a republic is the election of men and women unqualifiedly committed to retrenching the national government and to buttressing the parchment barriers erected by our Founding Fathers.



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