



WWW.ACLJ.ORG: WHY “OBAMACARE” SHOULD GO

Over the past year, we have continued to maintain on our website several clear reasons for why we believe Congress should repeal ObamaCare.

The Patient Protection and Affordable Care Act (“PPACA”) which *became law on* March 23, 2010 took an unprecedented and unconstitutional action. The PPACA requires nearly every American to purchase acceptable insurance or face a penalty from the IRS. Several states have filed lawsuits challenging portions of the PPACA, specifically the individual mandate, as unconstitutional. We have filed amicus briefs in both of the Virginia and Florida cases. We also represent five plaintiffs in federal court challenging the unconstitutionality of the law.

ObamaCare is an unconstitutional individual mandate:

This law was a *forced mandate that penalizes Americans who choose not to participate*. That is unconstitutional and we believe ultimately will be overturned by the courts. It is unarguable that the U.S. Constitution established a federal government with *limited powers*. The federal government lacks the general police power afforded to the states and cannot act unless it can trace that action back to a constitutional grant of power. For Congress, these are located in Article I, Section 8, which includes the Commerce and Taxing and Spending Clauses. The PPACA includes extensive congressional findings citing the effects of health care on interstate commerce. Nevertheless, the ‘individual mandate’ is far beyond even the commerce power. *As the Congressional Budget Office explained*: “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.”

ObamaCare violates the Commerce Clause:

The Commerce Clause, found in Article I, Section 8, clause 3 of the United States Constitution, is broad, but not limitless. Congress may regulate activity which involves the “channels” or “instrumentalities” of interstate commerce or individuals or things therein. It may also regulate activity substantially related to or affecting interstate commerce.¹ They may even regulate intrastate activity necessary and proper to effectuate general regulation of interstate commerce. *But, the individual mandate is not tied any economic activity and, in fact, no voluntary activity at all*. The mandate will compel nearly every American to act by purchasing insurance and then use this forced transaction as a basis to regulate their behavior.² If the Commerce Clause were to allow Congress to force Americans to purchase a good because they exist or face punishment, then the idea of a government of limited powers is a nullity.

ObamaCare violates the Taxing and Spending Clause of the U.S. Constitution:

Article I, Section 8, clause 1 of the United States Constitution, commonly referred to as the *Taxing and Spending Clause*, also fails to support the mandate. The individual insurance mandate is neither apportioned

¹ *Lopez*, 514 U.S. at 558-59 (emphasis added).

² *Id.*

among the states according to census data, nor is it levied against any source of income.³ If the mandate is characterized as a tax, it can only be seen as a direct tax on individuals or an excise tax.⁴ As a direct tax, the mandate fails to pass constitutional muster. It also fails as an excise tax. *By definition, excise taxes are placed on goods or things, such as licenses, not individuals as a condition of their existence.*⁵

ObamaCare Regulates Americans merely because they exist:

No matter which of its powers Congress purports to rely upon, the ultimate question is whether Congress may regulate or tax a person simply for being? And, in order to preserve the American ideal within a federalist system of limited government, the answer must be no.

ObamaCare was passed against the will of the people:

On Nov. 2, 2010, the American voters sent the Obama Administration a powerful message - rejecting the President's agenda while signaling a need to repeal the health care law that most Americans oppose. The outcome of the election underscored the fact that most Americans do not support ObamaCare, the government-run, pro-abortion health care law forced on the American people. Most Americans have said they want ObamaCare repealed. And, now with a sweeping change in Congress, it's time to do just that. We have started a nationwide petition campaign to demand that the new Congress repeal ObamaCare. ObamaCare was not the reform that America needs or deserves.

ObamaCare and Abortion

President Obama's insistence that "no federal dollars will be used to fund abortions" was a promise unkept when ObamaCare finally passed. His executive order brokered in the eleventh hour before the bill was finally rushed through for a vote did not guarantee that abortion won't become a mandatory health care "benefit" under the new health care law. We heard from more than 80,000 Americans calling on Congress to exclude abortion as a mandatory health benefit, and the abortion funding issue was never resolved – it could not have been without a specific exemption that should have been included in health care legislation. President Obama did nothing to alleviate the growing concern about turning health care into a government-run bureaucracy that will include an open door for transforming abortion into a mandatory health benefit. A specific exemption should have been included in the bill before it was passed to prohibit any mandate for abortion services in health care reform and to prohibit federal dollars from funding plans that include abortion services. And, without such an exemption, there's now a green light in place for making abortion services a mandatory health benefit funded by federal tax dollars. This was an unacceptable act that the American people did not want and that should now be reversed by Congress. It was vital that any health care reform plan explicitly exclude abortion services from any national health care coverage mandate and that did not happen.

The ACLJ's three-prong strategy to undo ObamaCare

1 – Lawsuit: We're engaging this issue in the federal courts. We've **filed our own lawsuit** challenging the

³ First Article I, Section 2 of the Constitution requires "direct taxes be apportioned among the several states . . . according to their respective numbers." In addition, Section 9 prohibits capitation or direct taxes "unless in proportion to the Census or Enumeration herein before directed to be taken." The only exception to the apportionment of taxes is contained in the 16th Amendment and is limited to taxes on income.

⁴ Black's Law Dictionary defines "excise" as "A tax imposed on the manufacture, sale, or use of goods (such as a cigarette tax), or on an occupation or activity (such as a license tax or an attorney occupation fee)." BLACK'S LAW DICTIONARY 585 (7th ed. 1999).

⁵ Ernest S. Christian & Betty Jo Christian, *Is Obama's Tax on Health Care Constitutional?*, TAX.COM, available at <http://www.tax.com/taxcom/features.nsf/Articles/5B9094E6AED5EF718525764900822CC8?OpenDocument>.

constitutionality of ObamaCare in federal district court in Washington, D.C.

2- Filed Amicus Briefs: We've also filed an **amicus briefs supporting Virginia's, Florida's, and Michigan's** challenges as states to the federal law. Our amicus brief supporting Virginia's legal challenge was filed on behalf of 28 members of Congress and more than 70,000 Americans in support Virginia's challenge. A federal judge recently heard arguments in that case and his decision declared the individual mandate unconstitutional. That is a significant victory. We have also filed an amicus brief, again representing members of Congress - backing the massive lawsuit spearheaded by Florida. We also just filed an amicus brief supporting a Michigan challenge to ObamaCare and we're urging a federal appeals court to overturn a lower court ruling and declare the individual mandate provision unconstitutional.

3- Nationwide Petition of Congress: With the significant political changes in Washington, we're also demanding that the new Congress repeal this dangerous law. There's growing political pressure to take action and that's why we have launched a **nationwide petition** - to demand legislative action as well.