

Last week the Supreme Court heard arguments concerning the constitutionality of the Obamacare law, focusing on the mandate requiring every American to buy health insurance or pay fines enforced by the IRS. Hopefully the Court will strike down this abomination, but we must recognize that the federal judiciary has an abysmal record when it comes to protecting liberty. It's doubtful the entire law will be struck down. Regardless, the political left will continue its drive toward a single-payer, government run health care system.

The insurance mandate clearly exceeds the federal government's powers under the interstate commerce clause found in Article I, Section 8 of the Constitution. This is patently obvious: the power to "regulate" commerce cannot include the power to compel commerce! Those who claim otherwise simply ignore the plain meaning of the Constitution because they don't want to limit federal power in any way.

The commerce clause was intended simply to give Congress the power to regulate foreign trade, and also to prevent states from imposing tariffs on interstate goods. In *Federalist Paper No. 22*, Alexander Hamilton makes it clear the simple intent behind the clause was to prevent states from placing tolls or tariffs on goods as they passed through each state-- a practice that had proven particularly destructive across the many principalities of the German empire.

But the Supreme Court has utterly abused the commerce clause for decades, at least since the infamous 1942 case of *Wickard v. Filburn*. In that instance the Court decided that a farmer growing wheat for purely personal use still affected interstate commerce--presumably by not participating in it! As economist Thomas Sowell explains in a recent article, the *Wickard* case marked the final death of federalism: if the federal government can regulate "anything with any potential effect on interstate commerce, the 10th

Amendment's limitations on the power of the federal government virtually disappeared."

It is precisely this lawless usurpation of federalism that liberty-minded Americans must oppose. Why should a single swing vote on the Supreme Court decide if our entire nation is saddled with Obamacare? The doctrine of judicial review, which is nowhere to be found in Article III of the Constitution, has done nothing to defend liberty against extra-constitutional excesses by government. It is federalism and states' rights that should protect our liberty, not nine individuals on a godlike Supreme Court.

While I'm heartened that many conservatives understand this mandate exceeds the strictly enumerated powers of Congress, there are many federal mandates conservatives casually accept. The Medicare part D bill-- passed under a Republican President and a Republican House--mandates that you submit payroll taxes to provide prescription drugs to seniors. The Sarbanes-Oxley bill, also passed by Republicans, mandates that companies expend countless hours of costly manpower producing useless reports. Selective service laws, supported by defense hawks, mandate that young people sign up for potential conscription. I understand the distinction between these mandates and Obamacare, but the bigger point is that Congress routinely imposes mandates that are wildly beyond the scope of Article I, Section 8.

Perhaps the most important lesson from Obamacare is that while liberty is lost incrementally, it cannot be regained incrementally. The federal leviathan continues its steady growth; sometimes boldly and sometimes quietly. Obamacare is just the latest example, but make no mistake: the statist are winning. So advocates of liberty must reject incremental approaches and fight boldly for bedrock principles. We must forcefully oppose lawless government, and demand a return to federalism by electing a Congress that legislates only within its strictly limited authority under Article I, Section 8.