



Fact Sheet

BYRON L. DORGAN
CHAIRMAN

DPC Staff Contact: Jacqueline Garry Lampert and Holly Teliska (202) 224-3232

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DPC Press Contact: Barry Piatt (202) 224-0577

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The Individual Responsibility Policy is Constitutional

Earlier this year, Congress passed and the President signed landmark health reform legislation, the *Patient Protection and Affordable Care Act (P.L. 111-148)* and the *Health Care and Education Reconciliation Act (P.L. 111-152)*. These two laws, together referred to as the *Affordable Care Act*, put control over health care decisions in the hands of the American people, not insurance companies, to ensure that all Americans have access to quality, affordable health insurance. To meet this goal, the legislation includes an individual responsibility policy, which, beginning in 2014, requires individuals who can afford to purchase insurance to maintain minimum essential coverage. This individual responsibility policy is essential to making important insurance market reforms that also take effect in 2014, such as guaranteed issue and the elimination of premium rating based on health status, while keeping premiums stable. To ensure that Americans are able to afford this coverage, the *Affordable Care Act* provides premium and cost-sharing tax credits to make health insurance more affordable for low- and middle-income Americans, and permits an exemption for those who would still face a hardship in purchasing health insurance. Other individuals who choose to remain uninsured will be subject to a financial penalty.

While several lawsuits challenge the constitutionality of the new law, in the first ruling on the substance of any of the complaints, a [District Court in Michigan recently upheld the *Affordable Care Act*](#). In addition, [many legal experts have concluded that the law is constitutional](#), pointing to Article I, Section 8 of the Constitution, which enumerates the specific but broad powers that provide the basis for Congress' enactment of the *Affordable Care Act*, including the Commerce Clause, the Power to Tax and Spend for the General Welfare, and the Necessary and Proper Clause.

Finally, it is important to remember that in addition to its strong constitutional basis, [the individual responsibility policy has received substantial bipartisan support](#).

Legal Challenges to the Law

Numerous frivolous lawsuits filed to detract attention from benefits of the *Affordable Care Act*. Within hours of the enactment of the *Affordable Care Act*, 13¹ state Attorneys General filed a frivolous lawsuit in Florida challenging the constitutionality of the new law. [Available [here](#)] Seven additional states and the National Federation of Independent Business

subsequently joined in the lawsuit, bringing the total number of participating states to 20.² [Amended complaint available [here](#)] Virginia's state Attorney General has also filed a lawsuit. [Available [here](#)] A third lawsuit was filed by the Thomas More Law Center, and additional lawsuits have been filed regarding the constitutionality of various provision of the *Affordable Care Act*. [TMLC complaint available [here](#)] The suits primarily argue that the individual responsibility policy is unconstitutional. However, these opponents of health care reform are merely creating a political sideshow to detract attention from the significant benefits that American families have begun experiencing and will continue to receive from this new legislation. Legal experts generally agree that the suits are without merit.

Federal judge upholds *Affordable Care Act*. In the first substantive ruling on the individual responsibility policy, Judge George Caram Steeh of the U.S. District Court, Eastern District of Michigan, determined that the *Affordable Care Act* is constitutional. In considering the Commerce Clause, Judge Steeh wrote: "Far from 'inactivity,' by choosing to forgo insurance plaintiffs are making an economic decision to try to pay for health care services later, out of pocket, rather than now through the purchase of insurance, collectively shifting billions of dollars, \$43 billion in 2008, onto other market participants." [Opinion available [here](#)] In dismissing the lawsuit Judge Steeh concluded: "The minimum coverage provision, which addresses economic decisions regarding health care services that everyone eventually, and inevitably, will need, is a reasonable means of effectuating Congress's goal."

Article I, Section 8 of the Constitution Grants Congress the Power to Enact the Individual Responsibility Policy

Article I, Section 8 of the Constitution enumerates the specific but broad powers that provide the basis for Congress' enactment of the *Affordable Care Act*, including the Commerce Clause (Art. 1, sec. 8, cl. 3), the Power to Tax and Spend for the General Welfare (Art. 1, sec. 8, cl. 1), and the Necessary and Proper Clause (Art. 1, sec. 8, cl. 18). Many legal experts, including Simon Lazarus, Erwin Chemerinsky, Robert Shapiro and Jack Balkin, have defended the constitutionality of the *Affordable Care Act*. [Simon Lazarus, "Mandatory Health Insurance: Is It Constitutional?" [12/09](#); *Politico*, [10/23/09](#); *The Atlanta-Journal Constitution*, [11/2/09](#); *New England Journal of Medicine*, [1/13/10](#).] Professor Jack Balkin has noted that it would be a "constitutional revolution" if the Court struck down the individual responsibility policy. [*New England Journal of Medicine*, [1/13/10](#)]

The Commerce Clause permits Congress to regulate matters with a substantial effect on interstate commerce. Congress was acting within its power when it enacted the individual responsibility policy because the policy will have a substantial effect on interstate commerce. The power of Congress to regulate interstate commerce under the Commerce Clause has been well settled since at least the time of the New Deal, when the Supreme Court upheld laws like the *Fair Labor Standards Act* to rule that Congress had the authority to outlaw child labor. Congress reasonably concluded that spending on health care has a substantial effect on interstate commerce because individuals buy and use health insurance across state borders, national health spending is projected to make up almost 18 percent of our nation's economy (**P.L. 111-148**, Sec. 10106(a)(2)(B), page 2099), and the costs of providing emergency medical services to the uninsured has a significant impact on health care costs.

When the Senate considered the *Affordable Care Act* last year, it explicitly adopted a set of findings, now the law, related to the impact of the individual mandate on interstate commerce. Specifically, 1) "health insurance and health care services are a significant part of the national

economy”; 2) the individual “requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased”; and 3) the “requirement is essential to creating effective health insurance markets.”

The Supreme Court has previously held that regulation of the insurance industry constitutes the type of activity that falls within Congress’ regulatory authority under the Commerce Clause. [Simon Lazarus, “Mandatory Health Insurance: Is It Constitutional?” [12/09](#)] In 1944, the Court found in *U.S. v. South-Eastern Underwriters Association* that Congress was empowered to regulate insurance. The Court noted that “perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does the insurance business.” Upholding congressional regulation of insurance under the Commerce Clause makes clear Congress’ action in passing the *Affordable Care Act* was an appropriate use of its Commerce Clause authority and is consistent with its power to regulate the insurance industry.

The General Welfare Clause permits Congress to tax and spend for the general welfare. This clause has been the basis for actions by Congress to provide for Americans’ social and economic security by passing Social Security, Medicare and Medicaid, the well-established foundations of its action in enacting the individual responsibility requirements. According to Erwin Chemerinsky, “in the last 70 years, no federal taxing or spending program has been declared to exceed the scope of Congress’ power.” [*Los Angeles Times*, “The Constitutionality of Healthcare,” [10/6/09](#)] Instead, the Clause has been interpreted as providing Congress broad latitude in securing the social and economic security of our citizens.

It is within Congress’ discretion to determine what constitutes the “general welfare.” The General Welfare Clause was relied upon to uphold the constitutionality of Social Security in *Helvering v. Davis*, decided more than 70 years ago. In that case, the Court wrote that the discretion to determine whether a particular matter impacts the general welfare falls “within the wide range of discretion permitted to the Congress.”

A court would have to turn back the clock to a time before the New Deal – and reject well-established policies like taxing to pay for Social Security and Medicare – in order to find that the individual responsibility policy exceeds Congress’ authority to promote the “general welfare” of Americans by enforcing the individual responsibility policy with a tax.

The Necessary and Proper Clause permits Congress to “make all laws necessary and proper for executing its power.” The Supreme Court settled the meaning of the Necessary and Proper Clause 190 years ago in Justice Marshall’s landmark decision in *McCullough v. Maryland*. That case established that the Necessary and Proper Clause does not limit the powers of Congress, but is “placed among the powers of Congress.” This clause goes hand in hand with the Commerce Clause to ensure congressional authority to regulate activity with a significant economic impact. Congress is permitted to “make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the United States.”

Similar cornerstones of the social safety net, like Social Security, Medicare and Medicaid, have long been upheld by the courts. Congress has enacted various requirements throughout the years, such as the requirement to register for the draft, pay minimum wages, and pay taxes, including the taxes deducted from paychecks to pay for Social

Security and Medicare. These are the well-established foundations for the individual responsibility policy enacted in the *Affordable Care Act*.

Bipartisan Support for Individual Responsibility

The individual responsibility policy is constitutional and has also enjoyed substantial bipartisan support. According to some health care experts, it was an idea first proposed by Republicans.

Republicans proposed individual responsibility in late 1980s. As Democrats considered options for health reform in the late 1980s, Republicans responded with a competing plan that “would preserve a role for markets but would also achieve universal coverage,” according to conservative health economist Mark Pauly. [NPR, [2/15/10](#)] “We called this responsible national health insurance,” Pauly continued. “There was a kind of an ethical and moral support for the notion that people shouldn’t be allowed to free-ride on the charity of fellow citizens.”

Republican Senators cosponsored, supported individual responsibility legislation.

In 1993, Senator John Chafee (R-RI) introduced legislation (**S. 1770**) which included an individual responsibility policy, that “each individual who is a citizen or a lawful permanent resident of the United States shall be covered under a qualified health plan or an equivalent health care program” (Section 1501). Nineteen Republican Senators cosponsored this legislation, including four sitting Senators, Senator Orrin Hatch (R-UT), Senator Charles Grassley (R-IA), Senator Robert Bennett (R-UT) and Senator Christopher Bond (R-MO). More recently, five Republican Senators cosponsored legislation introduced by Senator Wyden (D-OR) in February 2009, **S. 391**, which also included an individual responsibility policy. These Senators are Senator Lamar Alexander (R-TN), Senator Robert Bennett (R-UT), Senator Mike Crapo (R-ID), Senator Lindsey Graham (R-SC), and Senator Judd Gregg (R-NH).

Last summer, Senate Finance Committee Ranking Member Grassley affirmed his support for the individual responsibility policy. “But when it comes to states requiring it for automobile insurance, the principle then ought to lie the same way for health insurance, because everybody has some health insurance costs, and if you aren’t insured, there’s no free lunch. Somebody else is paying for it.” [Fox News Sunday, [6/15/09](#)] Senator Grassley concluded, “I believe that there is a bipartisan consensus to have individual mandates.”

¹ The original states are Florida, South Carolina, Nebraska, Texas, Utah, Louisiana, Alabama, Michigan, Colorado, Pennsylvania, Washington, Idaho, and South Dakota.

² The additional states are Alaska, Indiana, North Dakota, Mississippi, Nevada, Arizona, and Georgia.