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ObamaCare vs. the Constitution

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The health bills in Congress rob you of your constitutional rights. Here are five provisions (of many) that fail the constitutionality test and reveal Congress's disrespect for the public:

* Section 3403 of the Senate health bill, establishing a commission to cut Medicare spending, says the law can't be changed or repealed in the future. This whopper shows that Congress thinks its work should be set in stone. Wrong. The people always have the right to elect a new Congress to change or repeal what a previous Congress has done.

* A Senate health-bill amendment mysteriously allocates \$100 million to an unnamed facility that "shall be affiliated with an academic health center at a public research university in the United States that contains a state's sole public academic medical and dental school" (Sec. 10502, p. 328-329). Why not name the facility?

This pork deal was arranged by Sen. Chris Dodd for the University of Connecticut Health Center, although 11 hospitals in the nation technically meet these specifications. If Congress wrote the provision in Polish or Russian to keep the public in the dark, it would be unconstitutional. The language is a deception. The fact that legislators commonly do this makes it more damaging, not less so.

* The bills require you to enroll in a "qualified health plan," whether you want it or not. Forcing people to buy insurance obviously reduces the number of uninsured. But Congress doesn't have the authority to force people to buy a product.

Sen. Orin Hatch (R-Nev.) said on the Senate floor, "If Congress may require individuals to purchase a particular good or service . . . We could simply require that Americans buy certain cars . . . for that matter, we could attack the problem of obesity by requiring Americans to buy fruits and vegetables."

Some Congress members claim the "general welfare clause" of the Constitution empowers them to impose a mandate. But they're taking the phrase out of context. The

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Constitution gives Congress power to tax and spend for the general welfare, but not to make other kinds of laws for the general welfare.

The Senate bill (pages 320-324) claims the "interstate commerce" clause of the Constitution gives Congress this authority. But for half a century, states have regulated health insurance. In fact, individuals are barred from buying insurance in any state except where they live, the antithesis of interstate commerce.

Congressional majorities have frequently resorted to the commerce clause to justify their lawmaking. In FDR's first term, Congress cited it to pass the National Industrial Recovery Act, which gave the federal government power to micromanage local businesses, setting wages and hours and even barring customers from selecting their live chickens at the butcher. Two Brooklyn brothers, owners of Schechter Poultry Corp., a kosher chicken business, challenged that interference. In 1935, the US Supreme Court ruled the NIRA unconstitutional.

In 1995, the high court again admonished Congress against using the commerce clause as a basis for expanded lawmaking, even when the purpose is as worthy as keeping handguns out of a school zone (US v. Lopez). The court ruled that Congress must stick to its enumerated powers and leave states to police school zones (and, perhaps, mandate health insurance).

* Never before has the federal government intruded into decisions made by doctors for privately insured patients, except on narrow issues such as drug safety. Nothing in the Constitution permits it. But the Senate bill makes you enroll in a plan and then says that only doctors who do what the government dictates can be paid by your plan.

"Qualified plans" can contract only with a doctor who "implements such mechanisms to improve health-care quality as the [current or future] secretary [of Health and Human Services] may by regulation require" (Sec. 1311, p. 148-49). That covers all of medicine, from heart care to child birth, stents to mammograms.

* Finally, the "takings clause" of the Fifth Amendment bars government from taking your property without compensation. It should protect everyone, no matter how unpopular -- even insurance companies, but Congress ignored it in writing the health bill. The Senate version goes beyond reining in insurance-company abuses, a just cause, and actually caps insurance-company profit margins at well below current levels, robbing shareholders.

Next year, Congress could impose similar caps on profit margins of bodegas, pizzerias and grocers, by arguing that food -- also a necessity -- is too expensive. Your business could be next.

In 2010, ordinary citizens will have to stand up for their constitutional rights, just as the Schechter brothers did 75 years ago. Congress members swear to uphold the Constitution, but it appears many are ignorant of what it says. They should be mandated to take a

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course, as pilots and doctors are. Congress needs to be reminded that the Constitution defines and limits its powers.

Betsy McCaughey, a former New York lieutenant governor, is author of "Government by Choice: Inventing the United States Constitution."