

Health Insurance Reform Daily Mythbuster: 'Constitutionality of Health Insurance Reform'

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Reform opponents continue to spread myths about components of [America's Affordable Health Choices Act](#), including the nonsensical claim that the federal government has no constitutionally valid role in reforming our health care system—apparently ignoring the validity of Medicare and other popular federal health reforms.

MYTH: "Health insurance reform could be unconstitutional...or violate the 10th amendment."

FACT: As with Medicare and Medicaid, the federal government has the Constitutional power to reform our health care system.

The 10th amendment to the U.S. Constitution states that the powers not delegated to the federal government by the Constitution, nor prohibited by it to the states, are reserved to the states ... or to the people. But the Constitution gives Congress broad power to regulate activities that have an effect on interstate commerce. Congress has used this authority to regulate many aspects of American life, from labor relations to education to health care to agricultural production. Since virtually every aspect of the health care system has an effect on interstate commerce, the power of Congress to regulate health care is essentially unlimited.

The 10th amendment does not authorize states to constrict Congress' power under the commerce clause. As the Supreme Court has held, Congress can bar racial discrimination in Ollie's Barbeque in Alabama (*Katzenbach v. McClung*) or the growing and sale of medical marijuana in California (*Gonzales v. Raich*), even in the face of state laws permitting such behavior.

The 10th amendment does place one significant limit on Congress and the federal government: Congress cannot "commandeer" state officials to administer programs. It must get the consent of state officials who are asked, e.g., to run health programs for the poor or to help build highways. Typically, Congress obtains that consent by providing financial support to the states. A state is free to refuse the support and refuse to assist the federal government in administering the program, but Congress can authorize the federal government to administer the program on its own. Thus, Congress cannot force a state to administer a health insurance exchange, but it can authorize the federal government to administer such an exchange in any state that declines to do so.

One of the myth's most highly visible proponents has now "backed away from earlier statements" here in [an interview with ABC News' George Stephanopoulos](#):

STEPHANOPOULOS: So just to be clear, are you suggesting that any parts of the plan as the President has laid it out are unconstitutional?

Gov. PAWLENTY (R-Minnesota): Well, I wouldn't go so far as to say it's a legal issue. I was raising it as much as a practical matter, that there are some things that the federal government shouldn't do, doesn't do well, and should leave to the states."

On the shared responsibility requirement in the House health insurance reform bill, which operates like auto insurance in most states, individuals must either purchase coverage (and non-exempt employers must purchase coverage for their workers)—or pay a modest penalty for not doing so. The bill uses the tax code to provide a strong incentive for Americans to have insurance coverage and not pass their emergency health costs onto other Americans—but it allows them a way to pay their way out of that obligation. There is no constitutional problem with these provisions.