

Refuting The Bad “Health Insurance – Auto Insurance” Analogy: A Lesson In Federalism.

Defending Our Constitution From Its Domestic Enemies.

By Publius Huldah

It has been said, even by some law professors, that Congress can force Americans to buy *health* insurance because ...well, everybody knows that the “government” can force us to buy *auto* insurance.

Read on, and I will show you how such statements constitute a serious assault on “federalism” and our constitutional Republic. But first, let us hear from some of these professors.

Michael Seidman, professor of constitutional law at Georgetown University Law Center, appeared on November 14, 2009 on **Fox and Friends Saturday**. He said, in support of his affirmative answer to the question, “Can Congress force Americans to buy health insurance?”,

...the government, ah you know, the government requires us to buy car insurance, it requires us to to engage in to buy the social security to buy uh social security insurance essentially...

[transcribed to the best of my ability]

Nan Hunter, law professor at Georgetown’s O’Neill Institute for Global and National Health Law, gave the Introduction at a debate on **October 26, 2009** between Professor Seidman and constitutional attorney David Rivkin. The topic was “Are health care purchase mandates constitutional?”. After describing Seidman as “one of the ah leading constitutional law scholars in the nation”, Hunter said,

...it is clear that government can mandate the purchase of private insurance before one engages in certain activities, for example, driving. It can mandate the purchase of automobile insurance as a quid pro quo for ah legally being able to drive. However, individuals can elect not to drive and therefore obviously not have to purchase auto insurance...

Timothy Stoltzfuz Jost, law professor at Washington and Lee University, participated in Politico’s **September 18, 2009** forum on “Healthcare: Is ‘mandatory insurance’ unconstitutional?”. Jost wrote that while the “claim” that “health reform” is unconstitutional is a “talking point” “pushed” by “Republicans”, “former Bush officials” such as David Rivkin, Fox News Commentator Andrew Napolitano, town hall attendees, and tea party demonstrators, “[i]t is not...an argument taken seriously by constitutional scholars.” Jost went on to say,

The only plausible question is whether Congress has the authority under the Interstate Commerce Clause to require individuals to purchase health insurance. The primary difficulty here is that it is hard to think of a precedent where Congress (or for that matter the states, other than Massachusetts with its recent health care reforms) have required residents to purchase a particular product or service. Auto liability insurance mandates come to mind, but these are only imposed on persons who use the public roads.

Thomas J. Whalen, social science professor at Boston University, wrote on the Politico forum:

...the commerce clause seems sufficiently expansive enough [sic] to include mandatory health insurance for all Americans. After all, for some time now we've all been required to have auto insurance to operate our motor vehicles. And last time I checked, the Republic is still standing.

Apparently, Whalen is not a lawyer, though his **biography** informs us that he is an "expert". And Jost said it was "...correct to invite...political experts to respond, because this is not a serious legal issue..".

So! While social science professors who agree with Jost are qualified to opine on this constitutional issue; "Republicans", "former Bush officials" such as constitutional attorney David Rivkin, Judge Andrew Napolitano, town hall attendees and tea party demonstrators are most emphatically not. *Their* position, you see, is not "serious".

By their invocation of the auto insurance analogy, such "expert" and "scholarly" professors as Seidman, Hunter, Jost and Whalen show that they have no understanding of "federalism"; or they think *you* don't, and they are trying to take advantage of your supposed ignorance. So, is their metaphorical place under the dunce's cap, or is it Antenora in the Ninth Circle?

What is "federalism"? "Federal" refers to *the form* of our government: An alliance of Sovereign States associated together in a "federation" with a national government to which is delegated supremacy over the States *in specifically defined areas*.

James Madison, Father of the U.S. Constitution, illustrated "federalism" in **Federalist No. 45** (9th para):

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course

of affairs, concern the lives, liberties, and properties of the people....[italics added]

Madison explained "federalism" again in **Federalist No.39** (3rd para from end):

...the proposed government cannot be deemed a national one; *since its jurisdiction extends to certain enumerated objects only*, and leaves to the several States a residuary and inviolable sovereignty over all other objects...[italics added]

And in **Federalist No. 14** (8th para), Madison said:

... the general [federal] government is not to be charged with the whole power of making and administering laws. *Its jurisdiction is limited to certain enumerated objects...*[italics added]

This, Folks, is "federalism": The delegation *by* The People and their States of a few enumerated powers *to* the "federal" government; and THE RETENTION OF THE GENERAL POWERS – those which "concern the lives, liberties and properties of the people" – BY THE SOVEREIGN PEOPLE AND THEIR STATES.

Article I, Sec. 8, U.S. Constitution, shows that the **enumerated powers** delegated to the "federal" government are confined to war, a few aspects of **commerce** (strictly defined), immigration, delivery of our mail, and the establishment of a uniform commercial system (bankruptcy, a monetary system, punishment of counterfeiting, a standard of weights and measures, and issuance of patents and copyrights). That's basically it!

As Madison said, it is *the States* which retain an "inviolable sovereignty" over "the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people". *It is THE STATES which have required drivers to purchase auto insurance!* The federal government has no authority under The Constitution to require us to buy any kind of insurance.

By saying that Congress can force you to buy health insurance because "the government" can require you to buy auto insurance, these "scholarly" and "expert" professors are obliterating "federalism". Do they not understand what they are doing? Or, are they trying to deceive you?

The concept of "federalism" is so easy to grasp that surely these professors can understand it. After all, some non-lawyers among this writer's contacts – even those who attend tea parties and town hall meetings – seem to understand it quite well. PH

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