

## Health & Human Services v. Florida

We believe that the constitutionality of Obamacare should be decided not on the basis of what the judges think is law, but on what the law really is.

Reduced to the basics, what is at stake in the Obamacare fight is the meaning of four words: “regulate,” “proper,” “tax,” and “reserved.”

Article I, Section 8, Clause 3 states that Congress has the power to “**regulate** Commerce ... among the several states.” To regulate means to make the rules by which you and I are to be governed if we choose to engage in interstate commerce. To regulate does not mean that Congress has the power to “define” the meaning of commerce, nor to “engage” in commerce, as if the government exercises proprietary power over the people. But that is precisely what Obamacare does, dictating that no person who would decline to purchase the government-approved health care services and insurance products would do so on any basis other than money.

Article I, Section 8, Clause 18 states that Congress may “make all laws which shall be necessary and **proper**.” Obamacare rests upon the assumption that universal participation in its health care services and insurance product markets is “necessary” for its marketing scheme to work, and because it is necessary it must be “proper.” But proper is a limitation on congressional power, to ensure that the means chosen by Congress are truly governmental in nature and purpose, not proprietary.

Article I, Section 8, Clause 1 authorizes Congress “to lay and collect **taxes**.” Obamacare tells us that requiring a person to purchase the government’s unwanted health care service and health care insurance product is a “tax.” Ironically, if a person obeys this mandate he would be paying the money to an entity that the government insists is a private business. Is paying a private entity a “tax”? Only if a person does not pay this so-called “tax” is he liable, according to the Obamacare statute to pay the government a “penalty,” which the government now tells us is not really a “penalty,” but a “tax.” If this sounds like Alice in Wonderland -- it is.

The Tenth Amendment states that “[t]he powers not delegated to the United States by the Constitution ... are **reserved** to the States respectively, or to the people.” Whenever asked the question whether there is anything that Congress cannot constitutionally regulate, Government lawyers become tongue-tied. When they finally speak, their answer is no. Indeed, the Government’s position is, in essence, whatever Congress decides to reserve to the States or the people, are reserved to the States and the people. But the words of the Tenth Amendment plainly state that it is not Congress that does the reserving, but the Constitution. How can it do that if there is nothing to reserve?