

**CHICAGO BAR ASSOCIATION
MOOT COURT COMPETITION**

WINTER 2011 – PROBLEM AND ASSOCIATED DOCUMENTS

**Alexander McH. Memmen¹
Jonathan Amarilio²
Claudia Castro³**

The following documents constitute a work of fiction. The people and entities involved are fictional and any resemblance to real locations, people, laws or other facts are used solely for the procedural purposes of outlining and defining this moot court problem. The existence of any person or entity with the same name or likeness is coincidental. The fictional opinions of the lower courts and the statutes referenced herein should not be considered opinions of settled law, sound in their judgment and/or interpretation. Rather they exist solely for the exercise of argument before this Moot Court.

¹ **Alexander Memmen** is an attorney licensed in the States of Illinois and Wisconsin and is admitted to practice before the United States District Courts for the Eastern and Western Districts of Wisconsin and the Northern District of Illinois. He is a founding partner of the Din | Memmen law firm where he focuses his practice on personal injury litigation. Mr. Memmen attended the University of Wisconsin law school and received a Bachelor's degree in English from the University of Wisconsin.

² **Jonathan Amarilio** is an attorney licensed to practice in Illinois and Texas. He is an associate at Shefsky & Froelich, Attorneys at Law, and concentrates his practice on all facets of appellate and commercial litigation. Mr. Amarilio attended the University of Iowa College of Law and received a Bachelor's degree in political science from American University.

³ **Claudia Castro** is an Assistant State's Attorney with the Cook County State's Attorney's Office. She is currently assigned to the Community Justice Center-Central Office where she prosecutes cases of importance to the community and follows them from arrest all the way to trial. She also works with local law enforcement, schools, and community groups to help problem solve and find ways to prevent crime. Previously, she was assigned to the Juvenile Justice Bureau where she prosecuted juvenile delinquency cases and handled child abuse and neglect cases. She was also in the Seniors and Persons with Disabilities Unit where she prosecuted hearings to civil commitments and treatments orders for persons with mental health illnesses. She began her career prosecuting criminal misdemeanor cases as the first chair in the jury room while in the First Municipal Division.

While she has been an Assistant State's Attorney since November 2007 she has been with the Office for over 13 years. She began working as an administrative assistant in the felony trial division and moved her way up to the Executive Office. Claudia graduated from the Thomas M. Cooley Law School Weekend Program in Lansing, Michigan and completed her undergraduate degree from Loyola University Chicago where she majored in Criminal Justice.

Claudia is a member of the Chicago Bar Association, and the Women's Bar Association of Illinois. She sits on the Boards of the National Hispanic Prosecutors Association (NHPA) and the Hispanic Lawyers Association of Illinois (HLAI).

**IN THE UNITED STATES DISTRICT COURT
OF ILLINOIS, NORTHERN DISTRICT**

**AMERICAN SOCIETY OF
THOMAS AQUINAS, JAMES
SLATERY, MARGOT PESTOR,
STEPHEN DALNO,**

Plaintiffs,

v.

**BARACK OBAMA, KATHLEEN
SEBELIUS, ERIC HOLDER, and
TIMOTHY GEITHNER,**

Defendants.

Case No. 11-CBA-1113

JUDGMENT AND ORDER

INTRODUCTION

Plaintiffs bring this action challenging the constitutionality of the newly-enacted Patient Protection and Affordable Care Act, Pub. L. No 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 11-152, 124 Stat. 1029 (2010), (hereinafter “the Act”). Specifically, they challenge the Act’s requirement that all qualified persons must purchase minimum essential healthcare coverage under penalty of federal law (hereinafter the “Individual Mandate”). 26 U.S.C. § 5000A.

This matter is before the court on cross-motions for summary judgment. The parties agree that there are no factual disputes to be resolved by the court before the matter can be decided as a matter of law. At issue is whether the Individual Mandate is a proper exercise of Congress’s

commerce authority. For the following reasons, this Court holds that the Individual Mandate is not a proper exercise of Congress's authority under the Commerce Clause.

FACTUAL BACKGROUND

Plaintiffs James Slatery, Margot Pestor, and Stephen Dalno are United States citizens, Illinois residents, federal taxpayers, and members of the American Society of Thomas Aquinas, a nonprofit public interest organization that does not assert any injury to itself as an organization, but rather objects to the provision on behalf of its members. Plaintiffs seek declaratory and injunctive relief from the Act, arguing that the Individual Mandate and concomitant penalty exceeds Congress's authority under the Commerce Clause.

The Act itself is very lengthy, including 2,700 pages and numerous provisions, only one of which is at issue here. Specifically, the Individual Mandate, which, beginning in 2014, will require that all citizens obtain federally-approved health insurance or pay a monetary penalty. Congress deems this provision necessary to lower premiums (by spreading coverage across a much larger pool) and to meet a "core objective of the Act," which is to expand insurance coverage to the uninsured by precluding insurance companies from refusing to cover people with pre-existing medical conditions. According to Congress, without the Individual Mandate and penalty in place, people would simply "game the system" by waiting to buy health insurance until they get sick or injured, which would result in increased costs for the insurance companies. This result is known as the "moral hazard." The increased costs would ultimately be passed along to consumers in the form of raised premiums, thereby creating market pressures that would inevitably drive the health insurance industry into extinction.

ANALYSIS

Under the Commerce Clause, Congress may regulate: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities “affecting” interstate commerce. *Perez v. United States*, 402 U.S. 146 (1971). At issue here is whether the Individual Mandate is an authorized exercise of Congress’s authority under the third prong of this power.

Plaintiffs maintain that the Individual Mandate does not regulate activity affecting interstate commerce, but instead impermissibly regulates economic *inactivity*. Deciding *not* to buy insurance, according to Plaintiffs, is not economic activity, but inactivity. Because the Individual Mandate “compels all Americans to perform an affirmative act or incur a penalty, simply on the basis that they exist and reside within any of the United States,” Plaintiffs contend that it will deprive them of “their rights under State law to make personal healthcare decisions without governmental interference.” Thus, argue Plaintiffs, the Individual Mandate exceeds the Congress’s commerce power.

Defendants, meanwhile, contend that the appearance of inactivity here is an illusion because the people who decide not to buy insurance *are* participating in the relevant economic market. Defendants point to *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964), and *Katzenbach v. McClung*, 379 U.S. 294 (1964), in support of their claim that the Individual Mandate does indeed govern economic *activity*. However, as discussed below, *Heart of Atlanta* and *Katzenbach* are distinguishable from this case and do not point to an extension of the Commerce Clause as argued by Defendants.

Questions regarding the scope and breadth of Congress’s authority under the Commerce Clause are not new. The Supreme Court has grappled with the scope of the phrase “commerce...

among the several States,” since the early days of the Union. In *Gibbons v. Ogden*, the Court held that “commerce” included more than just the “traffic” of goods from one state to another; it also included the regulation of commercial “intercourse,” such as navigation of the country’s waterways. 22 U.S. 1, 89 (1824). Subsequent cases like *Heart of Atlanta Motel* and *Katzenbach v. McClung* expanded the Congress’s commerce authority to include purely local activity that directly and substantially affects interstate commerce, such as providing lodging accommodations or food to customers traveling between states. *Heart of Atlanta*, 379 U.S. at 251-52; *Katzenbach*, 379 U.S. at 298-305. In both cases, however, the plaintiffs had an affirmative choice to engage in commercial activity – activity the Supreme Court held that Congress could regulate. Here, Plaintiffs have made no such choice to engage in commercial activity, and for that reason, Congress has exceeded the limited powers granted to it under the Commerce Clause.

As cases such as *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), demonstrate, the Commerce Clause is not a *carte blanche* to Congress to legislate any activity. There are limits to Congress’s authority. For instance, *Lopez* involved a statute outlawing possession of a firearm in a local school zone. 514 U.S. at 551. In defending the constitutionality of the statute under the Congress’s commerce power, the Government argued that the ban was valid because possession of a firearm in a school zone substantially affected interstate commerce by increasing violent crime, which could be expected to affect the functioning of the national economy through the mechanism of insurance and by reducing the willingness of individuals to travel to areas within the country that were perceived to be unsafe. *Id.* at 563-64. The Government also argued that the presence of guns in schools posed a threat to the learning environment that would result in a less productive citizenry. *Id.* All

this, the Government argues, would have an adverse effect on the Nation's economic well-being. *Id.* In rejecting these arguments, the Supreme Court noted that “under the theories that the Government presents in support of [the firearms ban] it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education, where States historically have been sovereign. Thus if we were to accept the Government's arguments, *we are hard pressed to posit any activity by an individual that Congress is without power to regulate.*” *Id.* at 564 (emphasis added).

Further, in *Morrison*, the Supreme Court invalidated a law creating a federal private right of action for women violently assaulted in gender-based crimes, despite the fact that Congress made a host of explicit findings supporting its conclusion that such crimes affected interstate commerce. In striking down the law, the Court stated:

[T]he existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. As we noted in *Lopez*, “Simply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.” Rather, “whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than legislative question, and can be settled finally only by this Court.”

In these cases, Congress's findings are substantially weakened by the fact that they rely so heavily on a method of reasoning that we have already rejected as unworkable if we are to maintain the Constitution's enumeration of powers. Congress found that gender-motivated violence affects interstate commerce “by deterring victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved in interstate commerce; ... by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products.” Given these findings and petitioners' arguments, the concern that we expressed in *Lopez* that Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority seems well

founded. . . . If accepted, petitioners' reasoning would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit or consumption. 529 U.S. at 614-15 (internal quotations and citations omitted).

The slippery slope envisioned by the Supreme Court in *Lopez* and *Morrison* is directly applicable here. The Act does not regulate economic "activity," but rather the decision not to engage in commercial or economic activity. Put another way, the Act punishes economic "inactivity," and does so based solely on a person's status as a citizen. Those who fall under the Individual Mandate simply by virtue of their status as a citizen must either purchase health insurance or face a financial penalty. As the Congressional Budget Office concluded, this is "an unprecedented form of federal action. The government has never required people to buy any good or service as a condition of lawful residence in the United States." See Congressional Budget Office Memorandum, *The Budgetary Treatment of an Individual Mandate to Buy Health Insurance*, August, 1994.

There is a widely-recognized need to improve our healthcare system. However, Congress may not act beyond its authority even if the law it seeks to pass is well-intentioned. As the Supreme Court made clear in *Lopez* and *Morrison*, Congress is restrained by principles of federalism not to go beyond its discreet and enumerated powers. Under the Commerce Clause, Congress may regulate local economic activity only when doing so is an "essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the interstate activity were regulated." See *Lopez*, 514 U.S. at 561. This is the farthest reach of congressional commerce authority. The regulatory scheme of the Act, which seeks to reach economic inactivity, is beyond that limit. If it were otherwise, the federal government would

have the absolute and unfettered power to order private citizens to engage in affirmative acts as part of regulatory schemes designed to fix any problem imaginable.

Accordingly, Defendants' Motion for Summary Judgment is DENIED, and Plaintiffs' Motion for Summary Judgment is GRANTED.

THIS PAGE LEFT INTENTIONALLY BLANK

**In the
United States Court of Appeals
For the Seventh Circuit**

No. 11-CBA-1113
AMERICAN SOCIETY OF THOMAS AQUINAS,
JAMES SLATERY, MARGOT PESTOR, and
STEPHEN DALNO,

Plaintiffs-Appellees,

v.

BARACK HUSSEIN OBAMA, in his official capacity
as President of the United States; KATHLEEN SEBELIUS,
in her official capacity as Secretary, United States
Department of Health and Human Services;
ERIC H. HOLDER, JR., in his official capacity as
Attorney General of the United States; and
TIMOTHY F. GEITHNER, in his official capacity as
Secretary, United States Department of Treasury,

Defendants-Appellants.

Appeal from the United States District Court
For the Northern District of Illinois

ARGUED JULY 14, 2011 – DECIDED SEPTEMBER 1, 2011

OPINION

This is an appeal from the district court's determination that the minimum coverage provision of the Patient Protection and Affordable Care Act, Pub. L. No 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 11-152, 124 Stat. 1029 (2010), (collectively the "Act") is unconstitutional.

Plaintiffs include the American Society of Thomas Aquinas, a nonprofit public interest organization, and James Slatery, Margot Pestor, and Stephen Dalno, all of whom are members of Thomas Aquinas. The individual plaintiffs are United States citizens, Illinois residents, and federal taxpayers who claim that the minimum coverage provision, 26 U.S.C. § 5000A, also

called the "individual mandate," unconstitutionally compels them to purchase health insurance. They assert that the forced purchase of health insurance would cause them adjust their finances in ways they deem both impractical and undesirable. Thomas Aquinas does not assert any injury to itself as an organization, but rather objects to the provision on behalf of its members. Defendants are the following government officials, named in their official capacities only: Barack Obama, President of the United States; Kathleen Sebelius, Secretary of the United States Department of Health and Human Services; Eric Holder, Attorney General of the United States; and Timothy Geithner, Secretary of the Treasury.

In their complaint, plaintiffs sought a declaration pursuant to 28 U.S.C. §§ 2201-2202 that the minimum coverage provision of the Act is unconstitutional on its face, as well as an order enjoining its enforcement. Agreeing that there were no unresolved issues of material fact, the parties filed cross-motions for summary judgment. The district court held that the minimum coverage provision is unconstitutional under the Commerce Clause of the Constitution and accordingly granted summary judgment in favor of plaintiffs. Defendants appealed and, pursuant to their motion, the district court agreed to stay enforcement of its judgment pending appeal. For the reasons set forth below, we find that the minimum coverage provision is a valid exercise of congressional power under the Commerce Clause and therefore reverse the decision of the district court.

I. BACKGROUND

The Act was signed into law on March 23, 2010, as part of a comprehensive scheme to reform health care markets and insurance, and in so doing to provide medical coverage to the more than 50 million uninsured Americans. To that end, the Act removes barriers to insurance coverage such as the denial of coverage for preexisting conditions (42 U.S.C. 300gg-1(a), 300gg-

3(a)), creates benefit exchanges (42 U.S.C § 18031), provides expanded Medicaid access and funding (26 U.S.C. § 1396(a)), encourages small business to provide health insurance for their employees (26 U.S.C. § 45R), and requires large employers to offer health insurance to their employees (26 U.S.C. 4980H). Most importantly for our present purposes, beginning in 2014, the Act requires all nonexempt individuals to purchase and maintain health insurance. 26 U.S.C. § 5000A. It directs the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, to define the required essential health benefits (42 U.S.C. § 18022(b)(1)), and provides a number of exemptions. The parties agree that none of these exemptions apply to the instant plaintiffs. Any applicable individual who fails to obtain minimum essential coverage must include a "shared responsibility payment" – a penalty – with their federal tax returns. 26 U.S.C. § 5000A(b), (c).

In drafting the Act, Congress found that the minimum coverage requirement "regulates activity that is commercial and economic in nature." 42 U.S.C. § 18091(a)(2)(A). Congress explained that without this requirement, many individuals would choose to self-insure, and

"many individuals would wait to purchase health insurance until they needed care. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will minimize this adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums. The requirement is essential to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold." *Id.* § 18091(a)(2)(I).

In other words, without the minimum coverage provision, the guaranteed issue provision that is the heart of the Act would create an incentive for individuals to delay the purchase of insurance until they required medical care. This behavior would thereby aggravate the very problem Congress sought to address by making the near universal provision of health insurance financially unsustainable. Congress was therefore clear that the minimum coverage requirement

is an "essential part of this larger regulation of economic activity, and the absence of the requirement would undercut Federal regulation of the health insurance market." *Id.* § 18091(a)(2)(H).

II. ANALYSIS

The question presented on appeal is narrow. We consider only whether the Commerce Clause grants Congress the power to enact the minimum coverage requirement. In so doing, we review *de novo* the district court's grant of summary judgment in favor of plaintiffs. *Buie v. Quad/Graphics, Inc.*, 366 F.3d 496, 502 (7th Cir. 2004).

As with all congressional enactments, the minimum coverage provision is entitled to the presumption of constitutionality, and will be invalidated only upon a "plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). To prevail on their facial challenge to the constitutionality of the minimum coverage provision, plaintiffs must establish that " 'no set of circumstances exists under which the Act would be valid,' *i.e.*, that the law is unconstitutional in all its applications." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, 128 S.Ct. 1184, 170 L.Ed. 2d 151 (2008) (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

The Commerce Clause gives Congress the power "[t]o regulate commerce . . . among the several States." U.S. Const. Art. I, § 8, cl. 3. The Supreme Court has interpreted this grant broadly, explaining that it encompasses the power to regulate: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) "those activities having a substantial relation to interstate

commerce, . . . *i.e.*, those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995).

Defendants assert that the minimum coverage provision falls within Congress's power to regulate activities that substantially affect interstate commerce. Plaintiffs counter that the minimum coverage requirement is in fact an unprecedented attempt to use the Commerce Clause to regulate intrastate "inactivity," which, if upheld, would undermine basic concepts of federalism. While the emotional draw of this argument is undeniable, we find its legal and logical underpinnings are unsupported.

It is well established that Congress may regulate wholly intrastate economic activity that substantially affects interstate commerce. *Wickard v. Filburn*, 317 U.S. 125, 63 S.Ct. 82, 87 L.Ed. 122 (1942). " 'Economics' refers to 'the production, distribution, and consumption of commodities.' " *Gonzalez v. Raich*, 545 U.S. 1, 25, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005) (quoting Webster's Third New International Dictionary 720 (1966)). A health insurance policy is one such commodity, and as such is well within Congress's commerce power. *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 552-53, 64 S.Ct. 1162, 88 L.Ed. 1440 (1944). Plaintiffs do not deny this. Nor do they deny that they will, at one point or another, require medical attention. Indeed, the need for such attention is an inevitable consequence of the human condition. We all suffer injury. We all fall ill. We all die. Plaintiffs can decide to finance their future medical treatment by purchasing insurance or by self-insuring. This is plainly an economic decision, involving risk assessment and the prioritization of personal expenses.

In drafting the Act, Congress determined that the practice of self-insuring is also an economic activity that, in the aggregate, substantially affects interstate commerce. It was not without reason for reaching this conclusion. As defendants point out, the more than 50 million

uninsured Americans consume over \$100 billion in health care services annually. However, the vast majority of those who choose to forgo insurance are unable to pay for the cost of the services they receive. In fact, Congress calculated that aggregate cost of providing uncompensated care to the uninsured was \$43 billion in 2008. 42 U.S.C. § 18091(a)(2)(F). Inevitably, this cost is passed on to consumers in the form of higher premiums (*Id.*), which, in turn, push even more Americans into the ranks of the uninsured. *See 47 Million and Counting: Why the Health Care Marketplace Is Broken: Hearing Before the S. Comm. On Finance 110th Cong. 49 (2008) (Statement of Mark A. Hall)*. Given that the health care market plays an increasingly dominant role in the national economy, it is no exaggeration to say that this vicious cycle threatens not only the health of the citizenry, but the economic security of our nation. Given this stark reality, we agree that the practice of self-insuring, when viewed in the aggregate, directly affects interstate commerce and, therefore, is within Congress's power to regulate.

Assuming, *arguendo*, that self-insuring were not an economic activity with a substantial effect on interstate commerce, it remains within Congress's commerce power to enact the minimum coverage provision because Congress may regulate non-economic intrastate activity if doing so is essential to a larger scheme that regulates economic activity. *Wickard*, 317 U.S. at 128. It is settled law that Congress has the power under the Commerce Clause to regulate the price of products distributed in interstate commerce, and it has every power necessary to make that regulation effective. *United States v. Wrightwood Dairy, Co.*, 315 U.S. 110, 118-19, 62 S.Ct. 523, 86 L.Ed. 726 (1942). In exercising that power, Congress may give protection to sellers and purchasers of insurance. *Currin v. Wallace*, 306 U.S. 1, 11, 59 S.Ct. 379, 83 L.Ed. 441 (1939). By regulating premium prices and protecting purchasers from some of the insurance industry's worst practices, the Act falls squarely within this power. Further, for the reasons stated above,

Congress had a rational basis for believing that regulating the practice of self-insurance was a necessary part of its larger scheme to extend coverage and regulate insurance markets.

These points distinguish this case from those presented in *Lopez* and *Morrison*, where the Supreme Court struck down statutes that: (1) regulated non-economic activity that was not part of a larger regulation of economic activity; (2) failed to contain a jurisdictional hook limiting their application to interstate commerce; and (3) failed to include sufficient Congressional findings regarding the effects of the regulated activity on interstate commerce, and thus failed to establish a sufficient link between the regulated activity and interstate commerce. *See Morrison*, 529 U.S. at 601-15; *Lopez*, 514 U.S. at 561-67. The Act suffers from none of these constitutional infirmities.

As for plaintiffs' argument that the minimum coverage provision is an unprecedented attempt to regulate economic inactivity, as opposed to economic activity, we note that the Commerce Clause makes no such distinction and the Supreme Court has never relied on that distinction in striking down a statute on relevant constitutional grounds. As long as Congress refrains from exceeding the limits of the Commerce Clause, there is nothing in our jurisprudence to prevent it from regulating inactivity. As Congress had a rational basis for concluding that the practice of self-insurance has a substantial effect on interstate commerce, and that the minimum coverage provision is an essential part of the Act's broader regulatory scheme, the provision is within the power granted to Congress under the Commerce Clause. Further, we do not agree with the underlying premise of plaintiffs' assertion that Congress is attempting to regulate inactivity. As we stated above, everyone requires, and virtually everyone receives, medical attention at some point in his or her life. At first glance, it may seem as though plaintiffs' decision not to purchase insurance coverage constitutes inactivity. However, for the reasons stated above, it is

clear upon closer inspection that the decision to self-insure is, for the vast majority, merely a decision to delay participation in the system. There is a difference between deciding to stand on the sideline, and deciding to be a free rider. Far from being inactive, those who self-insure are merely passing the burden of that activity along to others, to the detriment of us all. In seeking to regulate that activity, Congress did not exceed the bounds of the powers granted to it under the Commerce Clause.

III. CONCLUSION

For the foregoing reasons, we reverse the trial court's finding of summary judgment in favor of plaintiffs and hereby enter summary judgment in favor defendants.

REVERSED.

DISSENTING

The proper resolution of this case requires neither legal innovation, nor an exhaustive review of precedent. It has been said that there is no constitutional right more sacred than the right to be left alone. For that reason, a long line of cases has recognized the individual's right to govern decisions concerning his or her own physical well-being. The decision not to purchase health insurance fits squarely within that precedent, and its maintenance is no less fundamental to our liberty now than in the past.

In regulating and punishing economic inactivity, Congress has gone beyond the established bounds of the Commerce Clause and put the nation on a very slippery slope. To conclude otherwise, as the majority does, "shocks the conscience" and illustrates, more than any other case in recent memory, that our most cherished liberties can be crushed under the weight of the best of intentions. While I do not doubt that the Act's purpose is to improve the health and welfare of the nation by making health insurance affordable and accessible to all its citizens, that laudable goal should not, and constitutionally cannot, be accomplished by mandating individuals purchase an expensive commodity or face an expensive penalty. The constitutional costs of such savings are too great.

For this reason, I dissent.

SUPREME COURT OF THE UNITED STATES

No. 11-1113
September 1, 2011

American Society of Thomas Aquinas, James Slatery, Margot Pector, and Steven Dalno,

Petitioners,

v.

Barack H. Obama, in his official capacity as President of the United States; Kathleen Sebelius, in her official capacity as Secretary, United States Department of Health and Human Services; Eric H. Holder, Jr., in his official capacity as Attorney General of the United States; and Timothy F. Geithner, in his official capacity as Secretary, United States Department of Treasury,

Respondents.

On petition for writ of certiorari to the
United States Court of Appeals for the Seventh Circuit

The petition for writ of certiorari is granted and limited to the following question:

1. Whether the minimal essential coverage provision, 26 U.S.C § 5000A, of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 11-152, 124 Stat. 1029 (2010), is a valid exercise of congressional power under the Commerce Clause of the Constitution of the United States.