The Individual Mandate: Not a Slippery Slope

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Arguments that the individual mandate, which compels Americans to buy health insurance under the Patient Protection and Affordable Care Act of 2010, is unconstitutional are fundamentally weak. Critics who wage these arguments insist the governmental mandate would allow Congress to enact other compulsory laws to dictate people’s behaviors. This is an odd assertion given that Congress already has broad powers to regulate the activities of citizens, but the Constitution also gives the Judicial and Executive branches of government the power to veto harmful or illicit laws. The individual mandate is an essential part of the reform law, helping shape the economic health of the nation and its people. It certainly falls within the parameters of the Commerce Clause of the Constitution, but even if debate about this matter continues, the argument that the mandate is unconstitutional is weak if it is based on the assumption that the mandate’s enactment will result in congressional abuses.

If we needed any more proof that there’s a conservative consensus that the individual mandate—the provision of the Affordable Care Act (ACA) that levies a tax on anyone without health care—is an unprecedented affront to both the Con-
stitution and individual freedom, we got it at Conservative Political Action Conference (CPAC) over the weekend. Former Minnesota governor Tim Pawlenty and other keynote speakers used it to go after not only Obama, but also at 2012 GOP frontrunner Mitt Romney, who in 2006 signed a health-care law with a similar provision as its centerpiece in Massachusetts.

The individual mandate did, of course, start out as a conservative policy innovation. But since arguing the mandate is itself a terrifying expansion of government power is a bit of a stretch, the ACA’s opponents have turned to “slippery slope” arguments. What supporters of the mandate don’t understand, charges Charles Lane of the Washington Post, “is that the threat to liberty, if any, comes not so much from the individual mandate itself, but from the other things Congress might do if it gets away with claiming authority for this measure under the commerce clause.” In his recent decision holding the ACA unconstitutional, Judge Roger Vinson echoed an increasingly prominent Tea Party meme: If the mandate is upheld, “Congress could require that people buy and consume broccoli at regular intervals.”

But there are many things preventing us from broccoli tyranny; the slope is actually not so slippery. The contention that upholding the ACA would allow the federal government to regulate everything hinges on the supposed distinction between regulating economic “activity” and “inactivity”; with the ACA, some conservatives claim, it is not having health insurance that’s being regulated—and the commerce clause only authorizes regulating economic activity. Of course this distinction proves essentially meaningless once you realize that not buying health insurance now means paying out of pocket later. Combined with the fact that states generally require hospitals to treat the uninsured in the case of emergency, to say that the uninsured are making a “free choice” is highly misleading. It’s government regulation that makes these choices possible in the first place.