Nearly a month ago, a clear message was sent to Washington, D.C., when 71 percent of Missouri voters supported Proposition C and rejected "Obamacare."

At the heart of Prop C and the legal challenges to Obamacare lies a simple question: Can the federal government require all Americans to purchase a specific product? Under this individual mandate in HR 3590, the Patient Protection and Affordable Care Act, Americans will be forced to purchase health-care insurance or be subject to penalties to be collected by the IRS. Never before have Americans been mandated to purchase something. I opposed HR 3590 when it came before the House for many reasons including the questionable constitutionality of the legislation.

Our Constitution establishes a fundamental difference between the powers of the states and the powers of the federal government.

A mainstay principle of our nation is that while states enjoy plenary police powers (subject to certain constitutional limits), the federal government is limited to specifically enumerated powers granted in the Constitution. Consequently, states can regulate such things as roads, traffic and car insurance because their authority stems from a constitutional authority separate and absent from the federal government's -- the state's police powers.

If the federal government is limited to its constitutionally enumerated powers, how exactly does it have the authority to impose the individual mandate?

Proponents of the legislation argue that some of Congress' broader enumerated powers, including the Commerce Clause, allow for the individual mandate. However, even under the broadest interpretation of the Commerce Clause, it is questionable that the individual mandate can be construed as an economic activity that "substantially affects interstate commerce" because the mandate is addressing inactivity -- that is the failure of an individual to purchase health insurance. Never before has the Commerce Clause been used to require a person who is doing nothing relating to interstate commerce to do something specific under the interstate commerce clause.

In a broader sense, if such authority is granted by the courts, there may be no limits to the expansiveness in which Congress can regulate various activities under guise of the Commerce Clause.

Critics claim the individual mandate is no different than being required to purchase car insurance. However, this is an unfair comparison. One difference between state car insurance requirements and the individual mandate is that with car insurance you have an option to voluntarily purchase a car or choose alternative transportation such as bus, Metro, carpooling, etc. Under Obamacare, there is no choice: The individual mandate is imposed on every American with very few statutory exceptions.

State car insurance requirements are also confined to the use of public roads. Generally, if an individual merely drove on private property or private roads, state car insurance requirements would not apply. Yet because public roads are often constructed, maintained and owned by state governments, the state has the authority to regulate what happens on these roads, including requiring drivers to carry car insurance to reduce risks on the road and to compensate those subject to injuries.

In contrast, the individual mandate in HR 3590 regulates private behavior. Should I be required by the federal government to purchase health insurance or run the risk of having the IRS come after me? What if I pay for my medical expenses out-of-pocket? What if I do have health insurance and I go to the doctor, does the federal government have the right to determine whether my insurance meets the "minimum essential coverage requirements" and is deemed a sufficient by bureaucrats in Washington?

Finally, states require drivers to carry car insurance to protect against the dangers and liabilities of third parties. That is, while car insurance protects you to a certain extent in the event of a hit-and-run or when the other driver is uninsured, it generally seeks to protect your legal responsibilities against the bodily injury liabilities of the other driver and property damage to their car in the event of an accident. In contrast, the individual mandate in the health-care bill does not seek protection against third parties but rather protection against people themselves by telling every American how to take care of themselves.

There is no doubt that we need to deal with the skyrocketing cost of health care in this country. However, the individual mandate in the Patient Protection and Affordable Care Act poses significant legal questions and is constitutionally suspect. While its constitutionality is a question

for the courts, Congress should immediately act to repeal the health-care law and replace it with better solutions that lower health-care costs and empower patients with individuals choice without testing the four corners of our Constitution.

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