



Written by [R. Cort Kirkwood](#) on September 17, 2012

## Legal Foundation: ObamaCare Still Unconstitutional

A small businessman who sued to stop the government from enforcing the socialist ObamaCare law has amended his complaint to argue that the law is unconstitutional because the U.S. Supreme Court upheld the law on the grounds that it is a tax.

With the help of the [Pacific Legal Foundation](#), [Matt Sissel argues](#) that the majority opinion from Chief Justice [John Roberts](#) kills the [Affordable Care Act](#) because it did not originate in the House of Representatives.



That would trespass the [Origination Clause](#) of the federal [Constitution](#), Sissel argues.

### Sissel Sued Government in 2010

Matt Sissel, a small businessman and former combat medic who wears the Bronze Star, believes the ObamaCare law trespasses the Constitution by forcing him to buy something he neither wants nor believes he needs. He pays for his health care out of pocket.

In July 2010, [he sued](#) to stop enforcement of ObamaCare on the grounds that the Commerce Clause does not permit the government to force someone to buy a product they do not want.

As PLF's Paul Beard [said at the time](#), "The new health-care law reflects a dangerous misconception about the relationship between citizens and the federal government."

It promotes the astounding idea that members of Congress and federal regulators should have the power to micromanage our lives, and that they can be trusted to make our most private, personal decisions for us.

In fact, the Constitution places clear, firm limits on what the federal government can do — and the feds have arrogantly transgressed those boundaries by trying to tell Americans that we must buy health insurance whether we like it or not.

Sissel's case was held in abeyance until the [Supreme Court ruled](#) on the case against ObamaCare brought by the [National Federation of Independent Business](#). NFIB prevailed in its Commerce Clause challenge [but lost](#) the case overall because Roberts, who was going to side with conservative justices and overturn the monstrosity, [defected](#).

[Roberts upheld](#) the law on the grounds that the penalty imposed for not buying health insurance amounts to a tax, which the government has the power to lay and collect. Obama's solicitor general argued that assessing a fine on those who refuse to buy health insurance falls within Congress' taxing power, although [Obama himself](#) and at least two spokesmen [have said](#) the penalty is not a tax.

The apparent confusion as to what the administration believed did not, apparently, bother Roberts.

### Amended Lawsuit

Yet Roberts' ruling inspired PLF and Sissel to file [an amended complaint](#) about the bill, with Sissel



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seeking “to conform his complaint to the Supreme Court’s holdings in NFIB.”

First, Sissel proposes to amend his original claim concerning the obligation to buy health insurance, which the Supreme Court held to be unconstitutional. Currently, he claims that “the Act compels applicable individuals, including Plaintiff, to obtain federally approved health insurance coverage, or pay a penalty” and that the Act is therefore unconstitutional under the Commerce Clause. ... As amended, the claim would allege, more specifically, that the requirement to purchase a federally prescribed health-insurance plan is unconstitutional under the Commerce Clause.

Second, Sissel proposes to amend the Complaint to add a second claim. The new claim arises from the Supreme Court’s conclusion that the “shared responsibility payment” is a tax. While Congress may have power under the Tax Clause to impose a tax on the failure to buy insurance, Sissel would allege that the tax was unconstitutionally passed because it did not comply with the Constitution’s Origination Clause.

The [Origination Clause](#) provides that “all Bills for raising Revenue shall originate in the House of Representatives,” but that “the Senate may propose or concur with amendments as on other bills.” Bills that are subject to the Origination Clause “raise revenue to support Government generally. ...”

Despite the fact that the Act raises considerable revenues, it originated in the Senate, not the House. ...

The Affordable Care Act was not the result of a lawful amendment. ... Because the tax originated in the Senate, it is unconstitutional.

[According to](#) Beard, “If the charge for not buying insurance is seen as a federal tax, then a new question must be asked.”

When lawmakers passed the ACA, with all of its taxes, did they follow the Constitution’s procedures for revenue increases? The Supreme Court wasn’t asked and didn’t address this question in the NFIB case. The question of whether the Constitution was obeyed needs to be litigated, and PLF is determined to see this important issue all the way through the courts.

[Beard says](#) that when Congress passed ObamaCare, “the process was backwards. The Constitution says revenue-raising bills must be approved first in the House of Representatives. But even though it imposes taxes, the ACA started in the Senate. That makes it a non-starter, in a constitutional sense.”

The Constitution’s “Origination” Clause provides that “all bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.” But what became the ACA was introduced in the upper chamber by Senate Majority Leader Harry Reid. In a so-called “shelf bill” maneuver, Reid took a House-passed measure to help veterans buy homes, struck out all its language, and inserted the federal health care legislation that became known as the ACA, with its health insurance mandate and charge for people who choose not to comply. In fact, the ACA, as it was created in the Senate, included a dozen new taxes estimated to increase federal revenue by \$486 billion by 2019.

PLF’s focus on the Origination Clause is not merely “academic,” [Beard adds](#), because the “Founders understood that the power to tax, if misused, involved the power to destroy.”

Therefore, they viewed the Origination Clause as a vital safeguard for liberty. They insisted that the power to initiate new taxes should be left with the lawmakers who are most directly accountable to



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voters — members of the House, who are elected every two years by local districts.

PLF also wants the Court to declare Commerce-Clause prohibition of forcing people to buy products or goods and service a binding precedent.

### **Roberts Greatly Expanded Federal Power**

Conservatives were rightly disturbed with Roberts and his decision, given that it massively expanded the government's power to use taxes to accomplish anything it wants. Writing for the website of *Chronicles* magazine, Scott Richert explained how bad Roberts' decision was. "Roberts portrays his decision as a check on federal power — if the Court had upheld the individual mandate under the Commerce Clause, it 'would open a new and potentially vast domain to congressional authority,'" he wrote.

But it's unclear whom he thinks he is fooling. The administration's lawyers and Roberts turned to the power "to lay and collect Taxes" precisely because the Commerce Clause had already been stretched to the limit. With today's ruling, Congress has been given the green light to do something that even the most imaginative interpretation of the Commerce Clause would not allow: to compel the supposedly free citizens of the United States to purchase anything that Congress deems in those citizens' best interest — or to compel them to purchase one thing rather than another. All Congress has to do is to pass legislation levying a tax on those who, say, fail to purchase smoke detectors for their homes, or who insist on purchasing a car that runs on gasoline over one that runs on electricity.

*Photo: Chief Justice Roberts administers the oath of office to President Obama a second time on January 21, 2009.*



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