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December 14, 2010: A Fundamental Rights Decision Masquerading as a Commerce Decision

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12/14/2010—So, a federal judge says requiring people to purchase health insurance is beyond Congress' Commerce power. And just what is so sacrosanct about buying something? What could be clearer than that Congress is in fact regulating a national industry in this way? That is about as commercial as you can get. Once before, in 1942, Congress forbade a wheat farmer from growing wheat for his family to use so he would have to buy wheat in the market. And that was constitutional. Congress could force people to buy health insurance by refusing emergency room service, which now everyone gets by law, or requiring ambulance crews to check health insurance. Or even providing national healthcare and then taxing everyone. Why is this one method such a big deal? The real reason has nothing whatever to do with the commerce power. Some people believe that forcing a citizen to buy a product is a violation of individual liberty. That is the real issue. So, why all the talk commerce? To speak of liberty would be to admit that now conservatives are insisting on rights not "in" the Constitution. Just like the right to have an abortion. Liberals would have a field day with that. As a commerce power decision, these challenges are absurd. As something more fundamental, maybe there is something to them. But we will never hear those arguments.