After a year of contentious debate, it became clear that the House intended to pass the health care bill by whatever means necessary, even if it required the use of a “deem and pass” procedure whereby Members would not vote directly on the bill. After a massive public outcry arose against that unconstitutional proposal (Article I, § 7, ¶ 2, and § 5, ¶ 3 direct that “the votes of both Houses shall be determined by yeas and nays” on a measure rather than just “deeming” it passed), Rep. Chris Van Hollen (MD), head of the Democrat Congressional Campaign Committee, urged Democrat House Members to remain quiet and avoid talking about the unconstitutional process in an attempt to lessen the political backlash.  

That procedure ultimately was not used, but once the health care bill passed, voters demanded of congressional leaders the constitutional provision that authorized the federal takeover of health care. In answering that question, Rep. John Conyers (MI) replied: “Under several clauses – the Good and Welfare Clause and a couple others. All the scholars – the constitutional scholars that I know (I’m chairman of the Judiciary committee, as you know) – they all say that there’s nothing unconstitutional in this bill.”

Of course, there is no Good and Welfare Clause in the Constitution, but assuming that Conyers simply made an honest mistake, he likely was referring to the General Welfare Clause, which appears in two locations:

We the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote THE GENERAL WELFARE, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. PREAMBLE TO THE CONSTITUTION

The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and GENERAL WELFARE of the United States. ART. 1, SEC. 8, PAR. 1

House Majority Leader Steny Hoyer (MD) agreed that “Congress has ‘broad authority’ to force Americans to purchase” health care “so long as it was trying to promote ‘the general welfare’.”

(Rep. James Clyburn – the No. 3 ranking Democrat in the House – did not invoke the General Welfare Clause but instead candidly admitted, “Most of what we do down here is not authorized by the Constitution.”)

The attempt by congressional leaders to invoke the General Welfare Clause as a cover for an unconstitutional act is nothing new. In 1792 when New England was suffering a crisis in one of its most important economic industries (fishing), some Congressmen proposed that federal funds be used to subsidize that troubled industry. James Madison quickly asserted that such a proposal was unconstitutional, explaining:

Those who proposed the Constitution knew, and those who ratified the Constitution also knew that this is . . . a limited government tied down to specified powers. . . .
was never supposed or suspected that the old Congress could give away the money of the states to encourage agriculture or for any other purpose they pleased.  

Madison then warned about the consequences of allowing Congress to expand the narrow meaning of the “General Welfare Clause”:

If Congress can employ money indefinitely to the “general welfare,” and are the sole and supreme judges of the “general welfare,” then they may take the care of religion into their own hands; they may appoint teachers in every state, county, and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the United States; they may assume the provision for the poor; they may undertake the regulation of all roads other than post-roads; in short, everything from the highest object of state legislation down to the most minute object of police would be thrown under the power of Congress, for every object I have mentioned would admit of the application of money, and might be called, if Congress pleased, provisions for the “general welfare.”

According to Madison, if the original intent of the General Welfare Clause were ever expanded, then Congress would begin an unbridled intrusion into areas that were deliberately designed by the Constitution to be under the control of the state and local governments. Two specific aspects of the Constitution were intended to prohibit such federal encroachments: (1) the Enumerated Powers Doctrine, and (2) the Bill of Rights – specifically the Ninth and Tenth Amendments.

Concerning the first, the Constitution authorizes Congress to address only eighteen specifically enumerated (that is, individually listed) areas and responsibilities; this is called the Enumerated Powers Doctrine. As affirmed by Thomas Jefferson:

Congress has not unlimited powers to provide for the general welfare but is restrained to those specifically enumerated, and . . . it was never meant they should provide for that welfare but by the exercise of the enumerated powers.

Many other Founders were equally outspoken about Congress’ limitations under the Enumerated Powers Doctrine. In fact, this doctrine was so well understood that in America’s first several decades, presidents had only four cabinet level departments: the Secretary of State, the Secretary of War, the Secretary of the Treasury, and the Attorney General (occasionally there was also a separate Secretary of the Navy, but many presidents often placed him under the Secretary of War). Today, however, there are almost four times as many cabinet level positions, including a Secretary of Agriculture, Labor, Commerce, Housing, Education, Transportation, Energy, and many others. Each of those areas was also very important two centuries ago, but because the Constitution had placed these areas under the jurisdiction of state governments, there was no federal presence involved in them.

Concerning the second point (the Bill of Rights), the Founding Fathers – dedicated students of history, government, and human nature that they were – knew that the federal government would invariably try to step beyond its enumerated powers; they therefore added the Ninth and Tenth Amendments to the Constitution, directly stipulating that all areas not specifically listed in the Constitution were to remain under the jurisdiction of the states and local governments, which thus included areas such as education, criminal justice, energy,
agriculture, and many others. As Thomas Jefferson affirmed:

I consider the foundation of the Constitution as laid on this ground: that “all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states or to the people” [the Tenth Amendment]. . . . To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition. 9

James Madison agreed:

I declare it as my opinion that [if] the power of Congress be established in the latitude contended for, it would subvert the very foundations . . . of the limited government established by the people of America. 10

Jefferson further explained:

Our country is too large to have all its affairs directed by a single government. Public servants at such a distance and from under the eye of their constituents . . . will invite the public agents to corruption, plunder, and waste. . . . What an augmentation of the field for jobbing, speculating, plundering, office-building, and office-hunting would be produced by an assumption of all the state powers into the hands of the federal government! 11

As Jefferson summarized it:

The states can best govern our home concerns, and the [federal] government our foreign ones. 12

Significantly, health care issues often arose in early America – as when various dangerous fevers would periodically appear, ravaging American cities and killing scores of citizens. Concerning health care issues, the Founders specifically placed domestic health care into the hands of the state governments, leaving issues of international health care in the hands of the federal government. As Thomas Jefferson affirmed, the federal government was “to certify with exact truth, for every vessel sailing from a foreign port, the state of health respecting this fever which prevails at the place from which she sails,” but that “the state authorities [are] charged with the care of the public health.” 13 Under the Constitution, states were to handle domestic health care issues, and the federal government foreign ones.

Notwithstanding the fact that a majority of Congressmen voted for the recent passage of the unconstitutional health care bill, there are many in Congress who do understand the constitutionally limited powers of Congress. Dozens of these Congressmen formed the Constitution Caucus, chaired by Rep. Scott Garrett (NJ), and many of its Members have made outstanding efforts to return Congress to its constitutional role; two such measures are highlighted below.
Rep. John Shadegg (AZ)

Every session since John has been in Congress, he has introduced “The Enumerated Powers Act” which would require “that all bills introduced in the U. S. Congress include a statement setting forth the specific constitutional authority under which the law is being enacted.” As Shadegg explains, “The Enumerated Powers Act will help slow the flood of unconstitutional legislation and force Congress to reexamine the proper role of the federal government.”

Not surprisingly, leaders of Congress have not allowed this bill to move forward, nevertheless, what a refreshing idea that Congress should provide constitutional authority for the actions it takes and the bills it passes!

Rep. Mike Conaway (TX)

Federal law establishes September 17 (the day the Constitution was signed in 1787) as Constitution Day, requiring that on that day every school receiving federal funding spend time studying the Constitution. Despite the law, a recent survey found that the majority of high school students had never heard of Constitution Day, and only ten percent could recall any such school celebration the prior year.

However, Congressman Conaway believed that not just school students but also Members of Congress and their staff should also study the Constitution on that day, so he introduced a congressional resolution to that effect. When the Chairman of the Judiciary Committee heard the resolution, he told Mike, “That’s the stupidest idea I’ve ever heard!” – an attitude far too common among many in Congress.

Nonetheless, Mike (and many other Congressmen like him) continues to study the Constitution regularly. In fact, Mike always carries a pocket Constitution with him and each time he reads through it, he writes the date on the flyleaf of the booklet – a practice he began even before he became a Member of Congress.

— — — ◊ ◊ ◊ — — —

Founding Father John Jay wisely advised:

Every member of the State ought diligently to read and to study the constitution of his country. . . . By knowing their rights, they will sooner perceive when they are violated and be the better prepared to defend and assert them.

The only way that more Congressmen will begin to study the Constitution is if “We The People” study it first and then, through the power of our voice, calls, letters, and votes, insist that our elected officials also know and observe it.
To help Americans better understand the Constitution and the limited government set forth by the Founding Fathers, we have just released a new audio CD called “The Principles of Limited Government,” which can be purchased or downloaded. We also have a pocket Constitution, called “Documents of Freedom.” Both are available in the store at www.wallbuilders.com.