GUEST COMMENTARY
By Rep. Mike Coffman POSTED: 01/13/2010
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Founding Father and statesman Patrick Henry once said of the Constitution, "It is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government — lest it come to dominate our lives and interests."

The current health care legislation Democratic leaders are pushing through Congress is bad policy — but worse than bad policy, it is an affront to the Constitution and an unlawful expansion of federal power. Americans are growing weary that Democrats are leveraging their control of the White House and big majorities in both houses of Congress to expand federal powers. They are also running roughshod over the Constitution.

When it comes to legislation that flies directly in the face of the Constitution, every voice is important. The House and Senate health care bills contain many provisions that blatantly go beyond the authority granted to Congress by the Constitution. Here are the three most glaring examples:

• The mandate contained in both the House and Senate bills requiring individuals to purchase a "government approved" health insurance plan is unprecedented and unconstitutional. Mandating the purchase of a product is neither taxing nor spending, so the only possible congressional authority would come from the ability to regulate interstate commerce granted by the third clause, known as the "Commerce Clause" of section eight in Article One of the Constitution.

Congress can regulate the economic activity individuals choose to engage in but cannot require individuals to engage in economic activities. The Supreme Court has already rejected the proposition that Congress can regulate non-economic activity because that activity will have an indirect economic impact.

• The sweetheart deal Harry Reid cut with Sen. Ben Nelson of Nebraska to secure his vote on the Senate bill, known as the "Cornhusker Kickback," permanently exempts Nebraska from

having to pay its state share of any new Medicaid costs. As Colorado Attorney General John Suthers noted in a recent Denver Post column, "The U.S. Constitution and related case law bar Congress from arbitrarily funding or taxing the states differently. Any differences must have a rational basis." The deal has no rational basis and violates the "General Welfare" clause contained in the first clause of section eight in Article One. There can be taxing or spending differences between states, but placing a burden on 49 other states to pay Nebraska's share, for no other reason than to get Sen. Nelson's vote, does not promote the general welfare of the country.

• The legislation commands that states must establish and administer health benefit exchanges, something that will require new state legislation and regulations. The Constitution prohibits the federal government from commandeering state officials and resources to run a federal program as expressly stated by the 10th Amendment. The provision directly undermines federalism, a cornerstone of our democracy. Quite simply, state legislatures cannot be told what to do by Congress.

In the lead up to the Christmas Eve Senate health care vote, conservatives in the Senate forced votes on two points of order raised about the constitutionality of the Senate bill. Although those votes failed, the flame of this debate will burn brightly in the courts long after Congress finishes its action. It remains to be seen what will emerge from the final closed-door negotiations Democrats are currently holding to reconcile the two versions of the bill, but the fact is both bills have unconstitutional provisions.

Patrick Henry understood the importance of a limited federal government and local control, and our Constitution expressly grants those liberties. Henry's words about the Constitution ring as true today as they did more than two centuries ago, "An instrument for the people to restrain the government — lest it come to dominate our lives and interests." The "deals" must go, the individual mandates must go, and the commandeering of state legislatures to create and administer benefit exchanges must go. Our liberty depends on it.

U.S. Rep. Mike Coffman represents Colorado's 6th Congressional District.

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