



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

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The Honorable Jim Gibbons
Governor, State of Nevada
101 North Carson Street
Carson City, NV 89701

Dear Governor Gibbons:

You have asked that on behalf of the State of Nevada, I join in litigation filed by 14 other states against the United States of America to challenge the Patient Protection and Affordable Care Act (Act). Your request requires a review of existing case law to determine if a lawsuit would have a credible basis for success.

First, we should note that legislation is presumed to be valid. *Parker v. Levy*, 417 U.S. 733, 757 (1974). Any suit against the Act would therefore have to show clearly that it is unconstitutional. *Id.*

One theory to consider is that Congress lacks authority under the Constitution's Commerce and Spending Clauses. However, the authority given to Congress is extensive and appears strong enough to support the Act. Health care costs affect our nation's economy, and the Act is Congress' answer to alleviating those costs. The United States Supreme Court long ago determined that insurance is commerce and is therefore subject to federal regulation. *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944). Since the 1930s and the "long-rejected *Lochner*-era precedents," *MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue*, 553 U.S. 16, 128 S.Ct. 1498, 1510 (2008) (Thomas, J. concurring), Congress' broad authority has been acknowledged to, among other things, uphold mandatory contributions to the Social Security Act system, *Helvering v. Davis*, 301 U.S. 619 (1937), and legislate many other federal programs.

The only recent decisions limiting Congress' powers invalidated federal criminal statutes that had no relationship to commerce. In *U.S. v. Lopez*, 514 U.S. 549 (1995), the Court struck down a federal criminal statute criminalizing handgun possession in proximity to schools. It reasoned that handgun possession in a school zone was not economic