Constitutional Foundation for Indian-Specific Health Care Legislation

*Congress has the constitutional authority and responsibility to legislate with regard to the unique circumstances of Indian Tribes and peoples. Congress can and should act to preserve the government-to-government relationship between Tribes and the United States and promote Tribal sovereignty*.

The U.S. Constitution recognizes three sovereigns: the Federal government, States, and Indian Tribes. As sovereigns, Tribes predate the United States, and retain rights of self-government.[[1]](#footnote-1) When the United States was established, the Constitution’s Indian Commerce Clause granted Congress the authority to pass legislation specific to Indian Affairs.[[2]](#footnote-2) The Supreme Court has upheld Indian-specific legislation, determining that it is political in nature, rather than based on an unconstitutional racial classification.[[3]](#footnote-3) Health care reform legislation that reflects the unique federal responsibility to provide health care for American Indians and Alaska Natives is subject to rational basis review and does not violate the equal protection clause so long as it is “tied rationally to the fulfillment of Congress’ unique obligation toward the Indians.”[[4]](#footnote-4)

Congress has the constitutional authority and responsibility to provide for Indian health care. Tribes signed treaties and negotiated other agreements with the United States in which they ceded vast amounts of territory in exchange for certain solemn promises. These promises include protecting Tribal self-government and providing for the health and well-being of Indian peoples.[[5]](#footnote-5) Indian treaties are the supreme law of the land, and in carrying out these treaty obligations, the United States has “moral obligations of the highest responsibility and trust.”[[6]](#footnote-6)

Congress has passed numerous Indian-specific laws to provide for Indian health care, including establishing the Indian health care system and passing the Indian Health Care Improvement Act (IHCIA), 25 U.S.C. § 1601 *et seq.* In the IHCIA, for instance, Congress found that “Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government’s historical and unique legal relationship with, and resulting responsibility to, the American Indian people.” *Id.* § 1601(1). In the Indian Self-determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 450 *et seq.*, Congress enabled Tribes to contract to run their own health care programs while also preserving Tribes’ right to choose that services continue to be provided directly by the Indian Health Service. Congress has also legislated to provide Indians with access to general health programs, such as Medicaid, while creating Indian-specific protections within those programs that reflect this unique political relationship.

Congress has full constitutional authority to legislate with regard to Indian health care, and should continue to promote Tribal sovereignty and uphold the government-to-government relationship between the United States and Tribes in fulfillment of its trust and legal responsibilities in any health care reform proposal including current efforts to repeal and replace the Affordable Care Act.

1. *Worcester v. State of Ga.*, 31 U.S. 515, 559 (1832). [↑](#footnote-ref-1)
2. U.S. Const., art. I, § 8, cl. 3; *see also Morton v. Mancari*, 417 U.S. 535, 552–55 (1974). [↑](#footnote-ref-2)
3. *Morton*, 417 U.S. at 555; *see also Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 479–80 (1976); *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 673 n.20 (1979); *United States v. Antelope*, 430 U.S. 641, 645–47 (1977); *Am. Fed’n of Gov’t Employees, AFL-CIO v. United States*, 330 F.3d 513, 520-21 (D.C. Cir. 2003). [↑](#footnote-ref-3)
4. *Morton*, 417 U.S. at 555. [↑](#footnote-ref-4)
5. *See United States v. Winans*, 198 U.S. 371, 380–81 (1905). [↑](#footnote-ref-5)
6. *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942); *see also* U.S. Const., art. VI, cl. 2; *Worcester*, 31 U.S. at 539. [↑](#footnote-ref-6)