Individual Mandate

Among the debated provisions included in President Obama's Patient Protection and Affordable Care Act, (P.L. 111-148, PPACA), the most hotly contested is the individual mandate. The mandate, included in (Section 1501 of the Affordable Care Act), asserts that all Americans must purchase a health care insurance policy beginning in 2014 or be subject to a penalty. The individual mandate has become the focus of most cases addressing the constitutionality of the health care law.

More specifically, PPACA states that effective in 2014 all private individuals must either purchase health insurance or be covered by a government program. If a person fails to comply with either option they will face, what the Obama Administration is calling, a "tax penalty." This tax penalty of $95.00 or 1% of income, whichever is greater, more commonly referred to by opponents of the law as a "fine," has created the debate over whether or not the requirement for individuals to buy insurance or pay a penalty is constitutional. Moreover, by 2016, the penalty stands to increase to $625.00 for an uninsured adult and up to $2,085.00 per household. In other words, does Congress have the authority pursuant to the Commerce Clause of the Constitution to impose the mandate?

Challengers to the individual mandate, including 26 states, find the insurance requirement, required through the language of PPACA, to be an unprecedented intrusion on individual liberty. The opposition to the provision finds itself facing a question at the heart of the debate: does the "in-action" of buying health insurance impact interstate commerce--- challengers say no. Moreover, opponents to the provision of the law argue that Congress is not even entitled to use its interstate commerce power to force Americans who choose not to partake in the health insurance market to do so.

However, proponents of the individual mandate provision claim its rationale is straightforward because without a mandate numerous Americans would wait until they needed care before purchasing insurance. This would drive premiums up for those with health insurance and, as such, higher premiums would lead to increasing partakers in health insurance to potentially drop their coverage; more individuals would be at risk with no health care coverage. Proponents claim the mandate is, therefore, constitutional under the Commerce Clause since the government is allowed to regulate interstate commerce under broadly defined economic activities, and an individual's decision not to purchase insurance would have an economic impact on those who do have coverage.

In August 2011, an 11th Circuit Appellate decision from Atlanta, Georgia, struck down the individual mandate; thus declaring it unconstitutional. The Obama Administration, in turn, appealed this ruling to the U.S. Supreme Court (SCOTUS). The administration argued that Congress was, in fact, using its "quintessential" power, as provided through the Commerce Clause, to regulate interstate commerce inclusive of the health care industry. On November 14, 2011, the Supreme Court announced that it would review the legal arguments stemming from PPACA including the constitutionality of the individual mandate through oral arguments beginning March 26, 2012.

The pivotal issue on whether or not the Supreme Court will rule the individual mandate unconstitutional or not directly pertains to Congress's authority over the Commerce Clause. Historically, under the Commerce Clause, the Supreme Court has ruled in favor of supporting an overwhelming amount of power to Congress in order to regulate economic activity. Two examples where the Court has ruled that individuals who don't engage in economic activity, but have an effect on interstate commerce and, in turn, associated under the Commerce Clause include both *Wickard v. Filburn* (1942) and *Gonzales v. Raich* (2005).

During *Wickard v. Filburn*, the Court ruled that the legislature had the authority to regulate a farmer who grew wheat for his family's consumption, even though the farmer did not enter the wheat into any stream of commerce. SCOTUS determined that even if the farmer did not grow his own wheat, he would have had to purchase it regardless. Therefore, his actions would have had an influence on the interstate wheat market. In the case of *Gonzales v. Raich* (2005), the Court concluded that Congress could forbid citizens from growing medicinal marijuana for their personal use because their actions affected the interstate and illegal market for marijuana.

Opponents to the individual mandate do, however, have one supporting precedent on their side in the case of *The United States v. Lopez* (1995); wherein, the Supreme Court ruled that the Constitution does not give the federal government unlimited powers and that Congress's power is subject to outer limits. Additionally, in regards to proponents two competing precedents, opponents to PPACA's individual mandate maintain two primary distinctions between prior court cases and this one. Both the wheat farmer and the marijuana grower engaged in current activities, and by enforcing the purchase of health coverage, Congress is not only attempting to regulate inactivity but also future inactivity.

The Supreme Court may however reach the conclusion that whether or not insurance-mandate penalties are unconstitutional they can only be challenged after they're in effect. If SCOTUS rules that it is premature to deal with the main issue of the individual mandate, as of March 2012, then the Court would not maintain legal power to consider such a challenge until people are required to pay the "penalty tax" beginning in January 2014. Therefore, for the Supreme Court to ultimately rule against PPACA's individual mandate provision and declare it unconstitutional, opponents must demonstrate a clear case to the Court illustrating that the acts of Congress pertaining to the health care law are presumptuous and that, in this instance, the powers of Congress are not conducive to the U.S. Constitution under the Commerce Clause.