

## **Moral Obligation and Social Rationality of Government: The Affordable Care Act**

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### **Abstract**

Fifteen percent Americans lack access to health care. The central focus of the current and previous debates on attempts to reform health care has been the projected cost of ensuring accessible and affordable care to all Americans amid rising costs. The provision of care to a sicker/more disadvantaged population and the direct/indirect costs of health inequities such as loss in productivity, low wages, absenteeism, family leave and premature death convince the majority of Americans that the health care system is broke and needs to be fixed. The low-income group, the racial/ethnic minorities and other underserved populations often had higher rates of disease, fewer treatment options, less access to care and are less likely to have health insurance than the population as a whole. The Patient Protection and Affordable Care Act (HR 3590), otherwise known as the Affordable Care Act (ACA) of March 23, 2010 is designed to help millions of uninsured/underinsured Americans get adequate/affordable health care through a series of government-imposed mandate and subsidies and reduce the growth of health care costs while improving care. This paper examines the moral obligation of individuals and the social rationality of the government under two claims: (1) that opposition to the ACA, based on individual-ethnic considerations expressed in regard to existing conditions of the uninsured, is morally, socially and economically irrational and (2) that the social rationality of the government, based on community-ethical considerations, is not only morally imperative but also consistent with Article 1, Section 8 of the U.S. Constitution re: the “individual mandate” provision requiring people to purchase health insurance. It concludes that the Congress’ enactment of the ACA is based on social rationality principle and the method of defraying costs used is the appropriate and right thing to do.

### **Introduction**

“For me to voluntarily open my pocket to help the poor and needy is a worthy and honorable act of human compassion. But for you to reach inside my pockets and take my money to do so is stealing for which someone should go to jail” <sup>1</sup>(Walter E. Williams 2009).

“Of all the forms of inequality, injustice in health care is the most shocking and inhumane”  
(Martin Luther, Jr).

Medicare/Medicaid programs were added to Social Security Act in 1965 under LBJ’s “Great Society” program. In the 1970’s the bill set up cost-of-living adjustment (COLA) making a yearly adjustment on basis of consumer price index (CPI) increase of 3% or more. In 1992, Social Security legislation

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<sup>1</sup> Walter E. Williams’ comment evoking the idea of a “free rider” may have energized opponents of the reform law. See Anthony G. Martin (22 August 2009). “A moral obligation to oppose Obama health care plan.” <http://www.examiner.com/conservative-in-columbia/a-moral-obligation>.” <http://www.quando.net/?p=4149>. (28 December 2010).

expanded the minimum monthly benefits of persons employed in low-income positions for at least 30 years as well as for widows, widowers, and dependents which set up the Supplemental Security Income welfare program. The 1983 Amendment set up social security in excess of a household income threshold (\$25,000 for singles and \$32,000 for couples) taxable to help generate revenue and prevent solvency. Social Security and Medicare funds, therefore, have been in crisis all along due to changing financial pictures. The question before opponents of the Guaranteed Affordable Care Act (ACA) then is “why the angst, the opposition to an Act seeking to fix a broken healthcare system as was allowed in 1983?”

This paper examines the implications of moral obligation and social rationality of the government re: the Affordable Care Act (ACA) of March 23, 2010. It provides valuable discursive insight into what is expected to be the outcome from the ongoing debate about the rationale behind the enactment of the ACA and predicts that the final decision on the constitutionality of the law resides within the U.S. Supreme Court<sup>2</sup> and, eventually, the 2012 general elections.

The ACA includes provisions designed to provide a high quality, high value, health care system for all Americans and to make health care insurance market more consumer-friendly and transparent. It will dramatically increase the number of people lacking coverage but it does not extend coverage to everyone; approximately 46 million are currently lacking healthcare insurance<sup>3</sup>. The ACA will initially cover 32 million people currently uninsured but that only accounts for 94% of young Americans eligible to receive health care; about 83- 85% Americans are currently covered. The ACA extends the number of people eligible for Medicaid and provides subsidies for the lower class to buy insurance, but lacks a government-sponsored public option that could have ensured universal coverage.

By 2014, states will open up health insurance marketplaces or “exchanges,” which allow the unemployed, self-employed, part-time workers and small businesses to comparison-shop for private insurance plans at more affordable rates than the ones they have now. Until then, many reforms to the ACA are expected. Children are now allowed to remain on their parents’ health plans until age 26 and can no longer be denied coverage for pre-existing conditions. Adults with similar conditions can take advantage of a high-risk insurance program provided by the government, and by 2014 assume full protection from denials of coverage. Insurance companies will no longer be allowed to set lifetime limits on health care coverage or cancel policy once someone gets sick. The ACA closes the Medicare “doughnut hole,” a gap in prescription drug coverage that makes medication very expensive for older adults to help them purchase medicine below the catastrophic coverage thresholds. On the revenue side, the ACA delays its taxes until 2013, adding additional Medicare payroll/investment taxes in three years for richer families. In eight years, it will add an excise tax on high-cost insurance plans indexed to creep into more insurance plans in the second decade of the law. It bars insurers from rescinding coverage to shedding the sick based on pre-existing conditions and capping lifetime coverage. Medicaid will begin to expand to cover more people by 2014.

The ACA reforms hold potential for expanding access to health insurance coverage for millions of families of whom 23 million will still be uninsured by 2019; the number being a third of

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<sup>2</sup> Earlier calls in the media suggest the Supreme Court will be the final destination for law suits filed against the federal government. See Timothy Jost (11 March 2010). “Perspectives: Can the states nullify health care reform?” *New England Journal of Medicine*, 362:869-871; Simon Lazarus (2009). “Mandatory health insurance: Is it constitutional? American Constitutional Society for Law and Policy; Randy E. Barnett (21 March 2010). “Is healthcare reform constitutional? [http://www.washingtonpost.com/wp/dyn/content/article/2010/03/19/AR2010\\_14](http://www.washingtonpost.com/wp/dyn/content/article/2010/03/19/AR2010_14) (14 December 2010); Reuter (3 March 2011). “U.S. judge refuses to halt new healthcare law.” <http://chicagobreakingbusiness.com/2011/03/u-s-judge-refuses-to-halt-new-health>. (6 March 2011).

<sup>3</sup> See Lazarus (2009), supra.

undocumented immigrants. In addition, a large proportion will still be poor and consisting people from diverse racial/ethnic heritage. Getting access to needed health care is a major problem for racially/ethnically diverse populations<sup>4</sup>. More than one-half Hispanic adults report not having a regular doctor even when insured<sup>5</sup>. According to National Association of Community Health Centers 2010 report, African Americans (44%) and Hispanics (62%) are less likely to receive care in a private doctor's office compared to 77% Whites, and are more likely to seek care in community health centers. Comparatively, communities of color fare far worse than their White counterparts across a range of health indicators. The average life expectancy for African Americans is 73.8 years compared to Whites' 79.9 years and the reasons are attributed to less access to income, health care and education. Hispanics tend to live 2.5 years longer than White, and 7.7 years longer than African Americans apparently due to their cultural and family ties and their reluctance to assimilate to many unhealthy American traditions<sup>6</sup>. The African Americans-Whites life expectancy gap which widened during the 1980s has narrowed due to relative mortality improvements in African-American homicide rate, HIV disease, unintentional injuries and heart disease among women. However, homicide, HIV and prenatal death keep the gap unnecessarily large<sup>7</sup> with risky mortality trends in kidney disease (nephritis) and bloodstream infection (septicemia) contributing to widen the gap.

African Americans have 2.4 times the infant mortality rate as non-Hispanic whites and they are four times as likely to die as infants due to complications related to low birth weight as compared to non-Hispanics White infants<sup>8</sup>. According to CDCP<sup>9</sup>, African Americans are 10 times as likely, Hispanics about three times as likely as Whites to have HIV/AIDS. As U.S. population continues to diversify, these disparities are likely to grow, exponentially. Addressing these disparities is urgently, morally and socially imperative as people of color are projected to constitute 54% of U.S. population by 2050, and more than

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<sup>4</sup> Mertens, M. (24 March 2010). "Health care for all leaves 23 million uninsured." [http://npr.org/blogs/health/2010/03/health\\_care\\_for\\_all\\_minus\\_23\\_m.html](http://npr.org/blogs/health/2010/03/health_care_for_all_minus_23_m.html). (29 June 2010). Others estimate it at 47 million with healthcare cost increase [http://www.businessweek.com/technology/content.sep2007/tc20070914\\_836209.htm](http://www.businessweek.com/technology/content.sep2007/tc20070914_836209.htm). (14 December 2010): 32 million currently but this only account for 94% of non-elderly Americans eligible to receive healthcare, and about 83% of non-elderly but the ACA does not extend the number of those eligible for Medicaid. Some critics prefer the public option that would have ensured universal coverage <http://health.howstuffworks.com/medicine/healthcare/insurance/10-myths-about-health-car>. (10 September 2010). Jenny Ashford (15 October 2008) puts her estimate at 43 million <http://www.suite101.com/content/american-canadian-british-health-care-systems-a73595>. (23 February 2011), 45,000 die yearly from lack of access to healthcare.

<sup>5</sup>See Andrulis, D. P., N. J., Siddique, J. P., Purtle, and L. Duchon. (2010). "Patient Protection and Affordable Care Act of 2010." Joint Center for Political and Economic Studies on problems in advancing the ACA to the poor, thusly justifying the social rationality of government.

<sup>6</sup>The CDC report on Hispanic longevity rate draws divergent views. Natalie Dzado (20 October 2010) attributes it to their strong cultural/family ties and their reluctance to associate with many unhealthy U.S. traditions. <http://www.suite101.com/content/2010-life-expectancy-longevity-factors-and->. Clayton Browne (13 October 2010) calls it a "Hispanic paradox" that would probably last two or three years as their offspring rapidly adapts to smoking, fast food and other poor health habits damaging other ethnicities because Hispanics who migrated are among the healthiest from their native countries.

<sup>7</sup> Science Daily News (17 March 2007). "Black-White expectancy gap narrows but remains substantial." <http://www.sciencedaily.com/release/2007/03/070316172124.html>. (26 February 2011).

<sup>8</sup> CDC. (26 June 2010). "Infant mortality and African Americans." The Office of Minority Health. <http://minorityhealth.hhs.gov/templates/content.aspx?ID=3021>. (26 February 2011).

<sup>9</sup> CDCP (2009). "U.S. infant mortality rate." <http://www.cdc.gov/media/pressrel/2009/r090819.htm>. (23 February 2011); "Behavioral Risk Factors in Surveillance System." <http://apps.nccd.cdc.gov/BRFSS/race.asp?car=HC&yr=2008&qKey=880&state+UB>.

50% of its children by 2023<sup>10</sup> Relatively, globalization has contributed to U.S-foreign population approaching 13%, with one in every four poor children in a family with at least one immigrant parent and 18% of all residents in a house where a language other than English is spoken<sup>11</sup>.

Although the provisions in the ACA such as expanding access to health insurance and support for culturally competent prevention initiatives hold potential to reduce disparities and improve the health status of diverse populations, the elimination of health disparities will require action in sectors beyond health care to address the socio-economic and political inequities perpetuating them<sup>12</sup>. These inequities relate to experiences of the 15% Americans lacking health insurance and the problem of rising health care costs, with both compounding one another<sup>13</sup> As medical care results in more expenditure, obtaining it becomes less affordable to their families because covering everybody increases the costs for all tax payers including 85% of those having coverage.

LaVeist et al. and Andrulis et al.<sup>14</sup>, inform that more than 30% of direct medical costs of treating racially/ethnically diverse populations were excess costs due to health inequalities arguing that by eliminating health disparities, costs due to direct/indirect health care would be reduced by about \$229.4 billion within a three-year period<sup>15</sup> Although the projected costs of ensuring accessibility and affordable health care to all Americans has been the central focus of the ACA debate, that of direct/indirect costs of not providing care to sicker and more disadvantaged population has been overlooked.

Borger et al. and Poisal et al.<sup>16</sup> agree that the U.S. spends over \$2.2 trillion or 16% of its gross domestic product (GDP) on health care than any other industrialized nations while failing to cover roughly 43 million Americans suffering higher rates of illness, premature deaths and facing inadequate access to quality care; the costs of which are channeled to tax payers with the highest incomes although those living on fixed incomes will not be affected when taxes kick in, 2013. According to Sharon Shaw Elrod<sup>17</sup>, the average annual income for a household in U.S. in 2007 was \$50, 233 which rises with age group until at age 64 when the figures begin to decline and that among households headed by 75-year olds with a median household income of \$20,467, only 1.93% had income exceeding \$250,000. Couples with

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<sup>10</sup> U.S. Census Bureau (14 August 2008). "An older and more diverse nation by mid-century." <http://www.census.gov/newsroom/release/archives/population/cb08-123.html>. (16 June 2010).

<sup>11</sup> Estes, R. J. (n.d). U.S-based conceptualization of International Social Work: A concept paper on education for International Social Work drafted for Council on Social Work Education on Global Social Work Education, Philadelphia: PA.

<sup>12</sup> Although Purtle et al. (2010) "Implications of healthcare reform for minorities" study relates to a California population, its findings emphasize that the Affordable Care Act is no panacea for reducing health disparities for all minorities [http://fridayletter.asph.org/article\\_view.cfm?FLE\\_index=13662&FL](http://fridayletter.asph.org/article_view.cfm?FLE_index=13662&FL). (14 September 2010). See also LaVeist et al. (2009). "The economic burden of health inequities in the U.S." Joint Center for Political and Economic Studies [www.jointcenter.org](http://www.jointcenter.org).

<sup>13</sup> According to Brevy Cannon (12 October 2010) "Untangling the politics of health care reform, higher taxes become a "scare" when it comes to the 85% that value the quality of care they are getting from their current care plans. Expanding care, to them, will mean lowering their quality of care because the expectation is that care costs will continue to out-pace economic growth thereby straining states' budgets.

<sup>14</sup> LaVeist et al. (2009), supra; Andrulis et al. (2010), supra.

<sup>15</sup> Ibid.

<sup>16</sup> Borger, C. S., C. Truffer, S. Keehan, A. Sisko, J. Poisal, and M. K. Clemens (2006). "Health spending projections through 2015." *Health Affairs*, 25:61-73; Poisal, J., C. Truffer, S. Smith, A. Sisko, C. Cowan, S. Keehan, B. Dickensheets, and the National Health Expenditure Accounts Projections Team (2007). "Health spending projections through 2016." *Health Affairs*, 26(2): 242-253.

<sup>17</sup> Elrod, S. S. (23 January 2010). "Tax implications for seniors' health reform." <http://www.seniorcitizen.com/2010/06/03/tax-implications-for-seniors>. (14 September 2010).

annual income greater than \$250,000 and individuals with \$200,000 will pay an extra nine-tenths of one per cent in Medicare payroll taxes, and 3.8% tax on earned income or investments.

A Savings Program exists in the ACA provisions in which the insured deposits funds at the beginning of the year then draws upon those funds to pay for approved health care during the year and in which the insured is required to spend the funds only on health-related expense. If funds are drawn for any other expense, the tax on those withdrawals will be 20%; up from 10%, currently. Starting with tax returns for 2016, older adults will only deduct medical expenses in excess of 10% of their incomes; up from 7.5%, currently. While those who are less than 65 years old experience this change by 2013, majority of older adults experience very little in the amount of taxes they pay but the benefits of the ACA are many in other areas for them<sup>18</sup>. However, some policy analysts worry that changes in the ACA could skew the system for the worse because the age cohort with the highest medical costs, and who have more money, are the ones poised to be subsidized and the other half they are getting the subsidy from, are those paying the taxes. In other words, there is fear that the 22-year olds, young and healthy, will pay the penalty since they can sign up when they are sick and if no one signs up except when they are sick, the costs rise.

Because the Insurance companies are being blamed for contributing to the soaring costs of health care, the Health Premium Review Grant which consist an element of the ACA broad efforts to reduce the unreasonable premium increases insurers charge, are proposed in 2010. Under this ACA provision, insurers are generally required to spend at least 80% of premium dollars on medical care services, quality-improvement activities, to limit spending on overhead, marketing, CEO pay and profit. These provisions are designed to improve affordability and assist in curbing excessive insurer rates. For example, the top five for-profit insurance companies recorded profits of \$12.2 million in 2009, up from 56% from 2008, while shedding 2.7 million policy holders. United Health Care, a Maryland top for-profit insurer, spends less than 83 cents out of every dollar of revenue on health care while rewarding their top executives with hundreds of millions of dollars in bonuses when 45,000 Americans die from preventable deaths yearly due to insurance industry rationing care<sup>19</sup>.

The health care reform will change the manner millions of Americans get health insurance and requires almost everyone to have insurance or face penalties. How it impacts on people's lives specifically depends on variables such as age, location and family size. Based on one's income/family size, tax credit in the new "exchange" and assistance with deductibles and co-payments, the ACA will ensure that one does not spend more than \$900-\$2100 on premiums. A person's out-of-pocket cost for deductible and co-payment is capped at 8% of the total cost. One is required to have insurance by 2014 and penalties for not having one begins in 2014 at \$95 per uninsured dependent, and rise by 2016 to \$695 per person; up to \$2,085 per family or 2.5% of household income, whichever one is higher<sup>20</sup>

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<sup>18</sup> According to Amanda Gardner's (14 December 2010) "Report finds baby boomers to gain most from healthcare reform," the ACA will help generations hit hard by unemployment and rising costs of health care costs including not turning older adults down for care due to age and health. The Commonwealth Fund estimates that some 57 million people aged 50-64 (8.6 million) in U.S. are uninsured and about 10 million with high out-of-pocket costs on health are uninsured. Among this group of older adults, two-thirds have one or more chronic health problems and have more difficulty accessing care and experiencing record unemployment. For other benefits and non-benefits, see Sharon O'Brien (2010); Elrod (2010), *supra*.

<sup>19</sup> Cohn, Meredith (9 March 2010). "Locals head to DC for health care reform." [http://weblogs.baltimoresun.com/health/2010/locals\\_head\\_to\\_call\\_for.html](http://weblogs.baltimoresun.com/health/2010/locals_head_to_call_for.html). (28 December 2010).

<sup>20</sup> To calculate, determine how the ACA affects people personally, for examples, the 22-years old entry level employee making \$30,000-\$40,000 per year gets to stay on employer's plan with the option to switch insurance to the "exchange" market with government subsidizing; a married, employed breadwinner with one child making

The terms often used in health care reform debate center primarily on “moral obligation,” and “social rationality” of the government for enacting the ACA; terms that connote “private” versus “public” interests. Moral obligation implies an obligatory act or duty; one’s ethical judgment in doing what is viewed as right and wrong. Opponents and proponents of the ACA have explored this term to their advantage. The former believe a moral act must involve choice, not coercion in the fulfillment of personal responsibility and obligation arguing that the New Testament of Jesus Christ is clear on helping the poor, is an injunction laid on each person individually and that no other suggestion is made therein that anyone is supposed to force others to help the poor<sup>21</sup> At the center of “poor” debate is the mandate requiring everyone to purchase insurance and be penalized for not. The most important constituency for this individualistic “moral obligation” approach is the 85% of people who already have insurance and who worry about being hurt in the cusp; a fear which the proponents apparently have not been able to allay. “Social rationality,” on the other hand, connotes the taking-care-of-people-welfare approach to solving healthcare problems as members of the society and the government’s appropriateness in taking actions to achieve a given welfare goal, working within bounds imposed by restraints and conditions to do what is the right thing to do. Proponents of the reform are, therefore, guided by “reason” to provide access to affordable quality health care for all Americans believing that it is not only the right thing to do but also the responsibility of the government to facilitate doing that right thing, even in the face of conditions of restraints. Citing such constraints and restraints, President Obama cast the difficulty of the reform debate by comparing it to the creation of Social Security and Medicare: “These struggles always boil down to a contest between hope and fear. That was true in the debate over Social Security when FDR was accused of being a “socialist.” That was true when JFK and LBJ tried to pass Medicare. And it is true in the debate today.”<sup>22</sup>

In such an industrialized nation as U.S., paying far more per capita on health care than any other nations while failing to cover about 43-46 million Americans, why is this ACA designed to provide equal access to health care for all Americans so controversial? Do the government and Congress have the authority to mandate its citizens to purchase insurance premiums as a means to defray the ACA costs? In the face of voter dissatisfaction and angst for the ACA exemplified in the midterm elections, pending law suits challenging the constitutionality of the law, and the expectation that the law suits will eventual reach the Supreme Court, what will ultimately be the fate of the ACA?

This paper examines the moral obligation and social rationality under two claims (1) That opponents of the ACA, based on individual-ethic considerations expressed intolerance of the existing conditions of the uninsured, is morally wrong and socially and economically irrational (2) The social

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\$100,000 sees no change through the ACA; and a family making more than \$250,000 with two children sees Medicare payroll taxes increase by 0.9%-2.35% and will have to pay a 3.8% tax on investment income. Andrew, W. and Yourish, K. (21 March 2010) use Washington Post interactive tool to calculate and make this determination. <http://www.washingtonpost.com/wp-srv/special/politics/what-health-bill-means-for-you/?h>. (14 September 2010). See also Derek Thompson (22 March 2010). “Understanding how health care reform will affect you.” <http://www.theatlantic.com/business/archive/2010/03/understanding-how-health-care-reform..> (14 September 2010).

<sup>21</sup> See opinion: <http://www.quando.net/?p=4149> (20 August 2009). See New Testament Scriptures, John 12:8 and Galatians 2:10 on individual injunctions to help the poor. See Michael Bennett (D-Colorado) “Health care is a moral obligation (video): We have a moral obligation to change health care system in this country so every American has access to affordable, quality health care.” <http://www.huffingtonpost.com/sen-michael-bennett>. See also <http://www.nytimes.com/2009/08/20/us/politics/20obama.html>. (28 December 2010).

<sup>22</sup> See opinion in “Health care reform now a moral obligation.” <http://www.quando.net/>. (20 August 2009). See also Jeff Zeleny and C. Hulse (19 August 2010). “Obama calls health plan a moral obligation.” <http://www.nytimes.com/2009/08/20/us/politics/20obama.html>. (20 December 2010).

rationality of the government, based on community-ethic obligation, is not only legally imperative but also consistent with Article 1, Section 8 of the U.S. Constitution re: “individual mandate” requiring people to purchase health insurance. It concludes that the Congress’ enactment of the ACA, and its method of defraying costs is appropriate and the right thing to do.

### **Myths, Fears, Stakeholders Role/Distrust For The ACA**

By the time Obama’s health care plan went for a final showdown in the House, Philip Williams<sup>23</sup> informs that almost most Americans, maybe a few Congressmen supposedly have little idea what is exactly in the 2,000-page bill which many who voted for it did not read and contains many payoffs to various constituency groups. Perhaps he is right because distrust and lack of partisanship that typified Congress before Obama’s election in 2008 were still alive and well so, from the start of the 111<sup>th</sup> Congress, trust and mutual benefit were lacking as the Democrats primarily focused on expanding coverage and the Republicans were fixated on controlling costs. The Democrats may have blown the opportunity to muster the necessary votes in the Senate to okay a House bill on health insurance that was passed when, apparently, the White House and the House Speaker gave up on public option<sup>24</sup> too soon when three Republicans backed Obama’s health care plan that could have signaled a threshold of bipartisanship.

Scott Brown’s stunning victory in January 19, 2010 in a special election for the vacated late Edward Kennedy’s Senate seat then forced the Democrats to “slow-walk” legislation because they did not have the required 60 seats to break Republican filibuster. However, Brown’s victory did little to change the minds of the White House and Democrats but it raised the electoral stakes leading to Republican victories in midterm elections.

The media, special interest groups and labor unions’ role in shaping people’s opinion on health care reform left much to be desired both before and during midterm elections with each canvassing to gain voters’ opinion for support of their selfish interests through alleged “expert and non-expert” assertions about the health care reform. A Political Scientist James Q. Wilson is right to say that Americans are heavily influenced by expert opinion on matters they are not personally informed (and the Media/Special Interest groups heard him clearly, took advantage of it) but that expert opinion is less influential when it comes to issues Americans have first knowledge. According to a New York Times/CBS News Poll, June 2009, Americans overwhelmingly support substantial changes to health care system, just as was the case in 1992 when the idea of universal coverage was first introduced in Congress by former President Clinton<sup>25</sup>, and that nearly 60% of respondents were willing to pay higher taxes so all Americans could have health insurance<sup>26</sup>. The influence of the Media/Special Interest groups in shaping public opinion on the current healthcare reform is no different from their previous role in the 1992 debate. For example, by October 27, 2009, public opinion researchers said that public opinion was solidly in

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<sup>23</sup> William Philip. (16 September 2010). “Health care reform: Arguments begin in state repeal case.” <http://www.usmoneytalk.com/finance/health-care-reform-begin-in-state-repeal>. (28 December 2010).

<sup>24</sup> “Public Option,” a government-run health insurance plan that competes with private insurers, also known as “single-payer system” would have mustered the necessary votes in the Senate. See Chris Cilizza (21 March 2010). “Five myths about the politics of health care reform.”

<http://washingtonpost.com/wp/dyn/content/article/2010/03/18/AR>. (14 December 2010). A number of people who supported the reform changed their minds when “public option” was taken off the table. See also Philip Williams (2010), *supra*.

<sup>25</sup> Johnson, H., and Broder, D. (1996). “The system.” [http://www.pbs.org/newshour/forum/may96/background/broder\\_johnson.html](http://www.pbs.org/newshour/forum/may96/background/broder_johnson.html). (14 December 2010).

<sup>26</sup> Silver Nate (June 2009). “Public support for the public option.” <http://www.fivethirtyeight.com/2009/06/public-support-for-public-option.html>; (6 June 2011).

favor of a public option. A random survey conducted by Salomeh Keyhani and Alex Federman over the summer of 2009, found 73% of 2,000 doctors polled supporting a public option<sup>27</sup> but an IBD/TIPP poll of 1,376 doctors showed 45% “would consider leaving or taking early retirement” if Congress passed the health plan favored by the White House/Democrats. This poll also found 65% doctors opposing the White House/Democrats version of the reform. However, this poll was heavily criticized by Statistician experts on grounds of methodology, bias in its earlier questioning, poor track record with previous polling in finding a properly random sample, publishing results before sample could be fully reported and not publishing the full methodology used. Similarly, in a random survey of 2,000 doctors conducted by same IBD/TIPP pollster, respondents were asked if they were concerned that “healthcare reform would lead to higher taxes, lower quality, fewer choices, a bigger deficit, diminished insurance coverage and more government bureaucracy.” About six in ten say “somewhat concerned on all the six issues, over 80% were “satisfied with their quality care,” and questions relating to a public option with the popular Medicare program or questions stressing the prospect of more choices, received “a more tepid” response. However, this support dropped to 37% when “respondents were told that a public option meant some insurers would go out of business;”<sup>28</sup> a drop arguably due to pollster’s manipulation of words and minds of voters.

Public opinion polls continue to fluctuate since the reform bill became law partially due to how the Media/Special Interest groups educated the public on the real issues at stake and partly due to how they capitalized on myths and fears surrounding the ACA. The news media failed to explain fully the stakes in health care debate or failed to properly investigate the intensive lobbying that was going on in order to be able to do justice to the complicated issues in question. For example, in July 2009, 51% rejected the idea of requiring people to purchase health insurance while 44% approved, and 73% rejected the idea of charging business fees to pay for their employee’s insurance plan while 24% approved but that was only after the initial 65% supporters have supported the idea of everyone getting health insurance. The 34% decrease occurred when pollsters included “charging penalties” for those who would prefer not to buy insurance<sup>29</sup>. The Pollsters did not explain who will be charged and who will not, when penalties start, and who are exempted due to financial hardship, religious objections among others. Although by September 27, 2010 and before the midterm elections, public opinion was more closely divided among voters: 46% in favor of the ACA repeal, and 45% opposed, opponents of the law continued more aggressively to hold their views more emphatically than the advocates to pull a victory. Because most Americans think about healthcare in terms of what it means to them personally, their loved ones, their ability to keep their relationships with their doctors, coupled with the influence of the Pollsters/Special Interest groups in shaping their opinion, three in ten older adult Medicare recipients believed that the law will allow the government panels or “death panels” to make decisions about their end-of-life care; a myth already disproved by healthcare experts<sup>30</sup>.

Guided and influenced by American myths/belief systems, the conservative critics commit to a private health care system or a private/public system of health care delivery that is largely private under

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<sup>27</sup> Shapiro, Joseph. (14 September 2009). “Poll finds most doctors support public option.” <http://www.npr.org/templates/story/story.php?storyID=112818960>. (6 January 2011: <http://www.investors.com/NewsAndAnalysis/Article.aspx?id=506199>; <http://fivethirtyeight.com/2009/09/ibd Tipp.doctors-poll-is-not-trustworthy.html>.

<sup>28</sup> The Washington Post/ABC News News Poll. [http://www.washingtonpost.com/wp-srv/politics/polls/postpoll\\_062209.html](http://www.washingtonpost.com/wp-srv/politics/polls/postpoll_062209.html). (6 June 2011).

<sup>29</sup> <http://www.politicsdaily.com/2009/08/24/individual-mandate-files-under-the-radar/5>.

<sup>30</sup> Sturgis, Sue. (11 August 2009). “Far right religious group behind “death panel,” myth linked to other health reform distortions.” <http://www.southernstudies.org/2009/08/the-far-right-religious-group->. (10 September 2010).



the misguided belief that the U.S. cannot afford to cover the uninsured and that Americans will face higher taxes as the ACA is estimated to cost \$938 billion over 10 years, when, in fact, a coordinated financing system could be a solution for holding down costs<sup>31</sup>. They claim that the ACA Plan represents the first step to a government take-over of health insurance and “socialized medicine,” as U.K.’s making the U.S. a “socialist country.”

Advocates of the ACA argue that the government already handles a fair amount of health insurance in the form of programs like Medicare, Medicaid and the Children’s Health Insurance Program (CHIP). They think Americans overwhelmingly despise the current health care system when most Americans, especially those on Medicare, are satisfied with the quality of their personal medical care; more than eight in ten say they are satisfied with their current medical plans. However, under the Act, the federal government’s role increases even more including a government-run insurance marketplace, oversight boards that will evaluate the effectiveness of certain treatments, and a role in defining essential benefits that insurance plans must offer. They argue that the U.S. is not heading toward “socialized medicine” and that there will be no public option because all of the new insurance customers will be served by private insurance companies.

### **Lessons From The British-Canadian Health Care Systems**

There are other myths surrounding the British-Canadian systems often referred to by opponents in their criticism of the new A.S. healthcare reform. The Canadian health care system is a Medicare-for-all plan otherwise known as a single-payer system and is different from U.S. system in the way it is funded. Instead of basing the largest portion of the system around private insurance as in U.S., the Canadian government acts as a “single-payer,” collects money through taxes, negotiates with health care providers to compromise on costs, then disburses the fees from a central public fund. Thus patients are not charged for most necessary medical care although there is small fee for some pharmaceuticals. It is not “socialized medicine” as critics of the ACA contend rather doctors, hospitals can be publicly or privately owned and private insurance may be purchased by those wanting to do so. Generally, however, most Canadians utilize the public system. Under the new law, the U.S. government will not be paying for everyone’s health insurance. Both the Canadian and U.S. healthcare systems face political controversy and debate over the efficiencies of their systems. While the Canadians struggle<sup>32</sup> over the question of how to deliver treatments in a timely fashion and worry that privatization would lead to inequalities in the system with only the rich accessing certain treatments, the U.S. is consumed with costs of doing so. While the Canadian system, regardless of the political debate, boasts of the life expectancy (80.7 years) and infant mortality rate totaling 4.99 deaths per 100,000 live births, the U.S. system settles with 78.3 years life expectancy rate and a total of 6.14 deaths per 100,000 live births, down from 6.77% rate in 2007, and U.K. with 94.4 years<sup>33</sup>. The U.S drops from 24<sup>th</sup> in the world in 1999 to 49<sup>th</sup> in 2010. The estimated infant

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<sup>31</sup> Light, D. W. (10 September 2002). “Universal health care: Lessons from the British experience.” <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC144768/>. (28 December 2010).

<sup>32</sup> See Canadian Healthcare <http://www.canadian.healthcare.org>. (28 December 2010) which also attributes Canada’s life expectancy rate of 80%, and the lowest infant mortality rate to its health care system. These rates are compared to U.S. life expectancy rate that is 38<sup>th</sup> worldwide and 33<sup>rd</sup> in infant mortality rate <http://weblogs.baltimoresun.com/health/2010/03/locals>. (28 December 2010). See also Molly Edmonds (2010) “10 myths about U.S. health care reform <http://health.howstuffworks.com/medicine/healthcare/insurance/10-myths>. (10 September 2010).

<sup>33</sup> Natalie Dzado. (20 October 2010). “2010 average life expectancy by gender, race and ethnicity.” <http://www.suite101.com/content/2010-life-expectancy-longevity-factors-and>. (26 February 2011).

mortality rate for Canada in 2011 is 4.93; 4.62 for U.K. and Cuba, 4.90<sup>34</sup>. While per capita spending on health care in the Canadian system is much lower than in U.S. and coverage is universal, the U.S. system coverage is not guaranteed except for those under poverty level or over 65 years of age. On a bad note, under the Canadian system rates of heart disease and cancer mortality are slightly worse than in the U.S. and U.K.<sup>35</sup>.

The British system has, however, been evolutionary. Under the Conservative Party government, Margaret Thatcher transformed the British old National Health Service (NHS) system from a public service for the sick to a public system of purchasers/providers in an attempt to please then patients now turned into consumers. Eventually, however, the Conservative Party concluded their competition policies were inefficient, that managed care competition policies undermine public health and population-based health care system<sup>36</sup> requires more regulation and government monitoring because health care involves many kinds of market failures. The failure of the General Practitioners to control funds as a wild card was the last straw that broke the camel's back.

In 1997, the Labor, promising an end to competition and a new era of partnership won a landslide victory but its plan for a new NHS was even more ambitious<sup>37</sup> than the Conservatives<sup>38</sup>. What the Labor Party discovered was that the waiting list needs to be reduced/restructured because the existing system where each specialist manages his/her waiting list in an uncoordinated manner, created a conflict of interest because specialists are rewarded for building up private practices which only lengthened the waiting times for everyone else on the waiting lists. In addressing the most pressing problem faced by NHS, Labor, as from 2008, ensured that no person waits no longer than 18 weeks from the date a patient was referred to hospital to the time of operation or treatment.

The NHS differs from both the Canadian and the U.S. systems. Most healthcare providers are considered government employees and are paid a government salary collected through taxes. Most necessary care is free of charge except small fees charged for prescriptions if the patient is employed just as in the Canadian system but generally these fees are waived if the patient is a student or older adult or unemployed. In Wales, however, no fee is charged for any approved drug. In U.K. private insurance is an option for those willing to utilize it and some employers offer private insurance as part of their hiring package. Most Britons use the NHS exclusively.

Only 14% percent want to see the system changed in U.K. compared to 25% in Canada who wants the system completely overhauled. The U.K. system like in Canada covers everyone at substantially less cost than in U.S. where the cost per capita is \$4,178 as opposed to Canada's \$2,312 and U.K.'s \$1,461<sup>39</sup>.

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<sup>34</sup> CIA World Factbook. (30 December 2010). "U.K. infant mortality rate."

[http://indexmundi.com/united\\_kingdom/infant\\_mortality\\_rate.html](http://indexmundi.com/united_kingdom/infant_mortality_rate.html). (23 February 2011).

<sup>35</sup> Ashford (2008), *supra*.

<sup>36</sup> Glasser, W. A. (1993). "The competition vogue and its outcomes." *Lancet*, 341:805-812; Light (2002), *supra*.

<sup>37</sup> The Labor Party's plan to bring General Practitioners from the organizational end of the center of the NHS, to organize them into geographical units called "primary care trusts," to combine them with community services and with a public agenda for improving the health status of the population, to develop coordinated programs with housing employment, education and the voluntary sector, to devolve most of the centrally held budget to them, and to have them develop new integrated relations with specialists and hospitals, was too ambitious.

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447686>. (28 December 2010).

<sup>38</sup> Department of Health (U.K.). (2000). *The NHS Plan. A plan for investment. A plan for reform*. London, England: Stationery Office.

<sup>39</sup> Anderson, G., and P. S. Hussey. (May/June 2008). Comparing health system performances in OECD countries. *Health Affairs*, 20(3):219-232.

Opponents of reform live with the myth that since the U.S. is so large a country, any lesson learned from smaller economies may not apply, so needless pothering with such lessons from elsewhere. In a poll conducted by the Harvard School of Public Health and Harris Interactive<sup>40</sup> over the comparative merit of the U.S. health care system and those of other countries, 45% Americans believe the U.S. has the best system, 39% believe other countries have a better systems, 15% do not know but nearly 68% Republicans believe the U.S system is the best compared to just 32% Democrats and 40% Independents who feel the same way. Conservatives in U.S. imagine a universal healthcare as an epitome of low salaries, random poor quality and endless waits to see a doctor as with the British NHS and, consequently, would do anything to avoid it. However, Donald W. Light admits that most British NHS features “are dreary” such as random hospitals, chronic shortages of Specialists in every field and long waiting lists and attributing them to underfunding and undersupply of personnel and equipments unlike the U.S. system richly funded by designed to maximize waste, inefficiency and inequity<sup>41</sup>.

Perhaps the most important lesson from the Canadian/U.K. and other Western healthcare systems is that of apprehension toward the Managed Competition Model in healthcare. As Donald W. Light describes, the model originated from the U.S. and spread to Western Europe, to Organizations for Economic Cooperation and Development (OECD) nations, to Eastern Europe and the Third World countries with such International Agencies as World Bank, International Monetary Fund and World Trade Organizations contributing to sustain it and that, however, most European countries pulled out of the Managed Competition Model due to its demonstrated risks of dislocation, bankruptcy and high transaction costs<sup>42</sup>.

The best feature of current U.S. healthcare system which other countries can learn from is the system’s ability to generate innovation, some of which dramatically improves healthcare outcomes. Most Americans are satisfied with their own physicians and medical plans and many older adults have reasonable coverage<sup>43</sup> but many working Americans cannot afford health insurance because healthcare costs, unlike other technological innovations that have lowered consumer costs in most fields, are out of control. Wages have been stagnating partly due to the growing percentage of employee compensation channeled into Medical care. The federal budget is unsustainable due to rising costs in Medicare, rising spending at state level is also straining state budgets, and about half of all personal bankruptcies are caused by medical costs.<sup>44</sup>

### **An Overview Of Medicare Program**

Medicare gives older adults under 65 with permanent disabilities some financial security along with social security. It is financed by general revenues, payroll taxes, and beneficiary premiums. There are a number of Medicare plan choices; two of the most available ones are original Medicare and Medicare Advantage. The former is pay-per-visit and is available nationwide. There are coverage gaps or costs that a person must pay such as deductibles, co-payments and co-insurance. Some people buy Medicare supplement insurance policy, also known as Medigap, to cover the gaps in coverage. Medicare supplement insurance

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<sup>40</sup> Harvard School of Public Health. (20 March 2008). “Most Republicans think the U.S. healthcare system is the best in the world. Democrats disagree.” <http://www.hsph.harvard.edu/news/press-release/2008-release/republicans-democrats>. (10 September 2012).

<sup>41</sup> Light (2002), supra.

<sup>42</sup> Ibid.

<sup>43</sup> Cannon, Brevy. (12 October 2010). “Untangling the politics of health care reform.” <http://virginia.edu/uvtoday/newsRelease.php?id=9522>. (14 December 2010).

<sup>44</sup> Ashford (2008), supra; <http://www.suite101.com/content/american-canadian-british-healthcare-systems-a73595>.

policy reimburses for out-of-pocket costs not covered by Original Medicare. Medicare Advantage Plan, available in some parts of U.S., is managed care Medicare plan. Medicare pays a set amount of dollars for citizen's care to these private health plans every month that in most cases offer extra benefits and lower copayments than in Original Medicare but a person may have to see a doctor belonging to the plan or go to certain hospitals to get services. An enrollee in Medicare Advantage Plan may not need a Medigap or Medicare supplement insurance because the former provides a wider range of services<sup>45</sup>.

Critics of the ACA claim that Medicare benefits will be slashed because the ACA calls for \$138 billion cut from Medicare Advantage Program by 2019 which likely will result in the loss of some Medicare Advantage benefits. The Medicare Advantage, however, differs dramatically from the traditional Medicare in that it is more related to private insurance and is administered by a private company yet subsidized by the federal government; a subsidy that costs the government 14% per person in Medicare Advantage compared to a person with traditional Medicare. Insurance companies may provide extra perks such as gym membership or slightly cheaper prescription drugs to beneficiaries with that subsidy but it does not provide any additional essential benefits affecting the overall health of individuals. Starting in 2014 when the cuts to Medicare Advantage occur, the ACA offers additional protections for Medicare Advantage Program members by taking stronger steps to limit the amount programs spend on administrative costs, insurance company profits, and things other than health care but about 75% of those in traditional Medicare will not be affected by the cuts. While the ACA does not impose direct cuts in Medicare benefits, the cuts would slice provider reimbursement rates causing many older adults to worry that their doctors will choose to opt out of the Medicare program just as many specialists refuse to treat Medicaid patients today<sup>46</sup>, and because the medical professionals worry about losing more powers than they already have under corporate managed care.

The implications of older adult bulge concern government spending and the care they will get as 77 million baby boomers born between 1946 and 1964 become eligible for Medicare. With Medicare already shrinking under cost increases above inflation, the Center for Medicare/Medicaid Services estimates 2.8 million 65-year olds will enter the system by 2011; average costs, \$7,700 per person<sup>47</sup>. Spending is projected to increase by 5.8%, hitting \$920 billion by 2020, and when the last of the baby boomers turn 65, Medicare population will have nearly doubled from 47 million in 2010 to 80 million in 2030. More importantly, older adults will require more hospitalizations and skilled care living longer than previous generations in a health care workforce that is not expanding rapidly enough. The worker-to-beneficiary ratio will also decline from 3.5 workers for every beneficiary in 2009 to 2.3 workers in 2030.

How then does lack of affordability impact working older adults? What worries the older adults and their spouses about the ACA is lack of confidence in healthcare coverage and lack of support for policy options that would improve their access to health care. On the affordability, over half of older workers with incomes below \$40,000, and about two out of five with incomes between \$40,000 and \$60,000, say they are "very worried" being able to afford insurance coverage; 72% say they are interested in receiving Medicare before age 65 and among higher-income households earning \$60,000 and above, two-thirds say they would be "very or somewhat interested" in early enrollment in Medicare; 54% of those at risk for being uninsured adults in working households with income under \$25,000 and 33% of

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<sup>45</sup> <http://www.cmc.hhs.gov/http://www.medicare.gov/default.asp>.

<sup>46</sup> <http://www.virginia.edu/uvatoday/newsRelease.php?id=9522>.

<sup>47</sup> Bivins (2010), supra; O'Brien, Sharon. (2010). "Baby boomers and healthcare." <http://seniorliving.about.com/od/manageyourmoney/a/health>. (20 December 2010); Kaiser Family Foundation. (2010). "Summary of coverage provisions in the Patient Protection and Affordable Care Act." <http://www.kff.org/healthreform/upload/8023-R.pdf>. (15 June 2010).

those with incomes between \$25,000 and \$40,000, say they experienced a time with no health care insurance coverage at all<sup>48</sup>.

Regarding out-of-pocket costs for health care insurance premiums, 50-55% of older workers in households with incomes under \$40,000 spent more than 50% of their income on out-of-pocket healthcare costs and premiums, and more than 33% spent more than 10%. More than two in five with family income under \$25,000, and about 30% of those with \$25,000-\$60,000 moderate incomes reported not getting needed healthcare as well as 10% with household incomes over \$60,000<sup>49</sup>. Self-employed older adult workers face the biggest healthcare burden; 55% of workers 50-64 years old with individual coverage spent more than \$3,800 annually on healthcare insurance premiums compared to 16% workers with employer coverage. Three-quarters of older working adults and spouses with individual coverage spent 5% or more of their annual income on premiums and out-of-pocket medical expenses, and 48% spent 10% or more on premiums and out-of-pocket costs.

Besides, healthcare insurance premiums have doubled on the average over the last 10 years much faster than wages and inflation putting coverage out of reach for millions of Americans and business owners. Why? Only 26 U.S. states and the District of Columbia have the legal authority to reject a proposed increase that is in excess, lacks jurisdiction or otherwise exceeds state standards while states that lack authority, lack resources to exercise it, meaningfully. Lack of authority/resources for states, create an uneven playing ground for consumers and contributed to unjustified premium hikes in some states. Under the ACA provision, states were recently awarded \$46 million to enhance their current processes for reviewing health insurance premium hike<sup>50</sup>.

In addition to reducing Medicare growth and other benefits, the ACA will provide services such as screenings for colon cancer, mammograms and free annual checkups. Those affected in the closing of “doughnut holes” in 2010 will get \$250 tax-free rebate and those affected in 2011-2020 will get 50% of the cost of their drugs thus the ACA improves quality by encouraging more coordinated care, reducing projected payment increase to hospitals and other providers. Five billion dollars are appropriated to states to set up a high-risk pool to cover uninsured people with pre-existing conditions temporarily from July 1, 2010 to January 1, 2014 when subsidies, exchanges, Medicare expansion take effect under conditions that those eligible must not have had insurance for at least six months, excluding those already enrolled in the high-risk pools operating in 36 states. Opponents view these changes as “massive” encroachment into states’ power and the state of Florida took lead to challenge its constitutionality.

### **Is The ACA Constitutional? Arguments/Suits Over State/Federal Powers**

The “Individual Mandate” Provision of the ACA requires people to have health insurance coverage by 2014 and at the same time making more people eligible for Medicaid. In opposition to this provision, 26 states and a small Business Administration are challenging the law on two grounds: That the law imposes penalties on those who do not comply by 2015, will destroy states’ constitutional sovereignty by burdening them with uncontrolled medical costs, that the federal government is overreaching its taxing authority by penalizing people for not purchasing health insurance and imposing a mandate on its inactive individuals, and that by doing so the federal government eviscerates state’s sovereignty. Individual opponents of the law claim that it is the wealthiest that should decide whether or not to contribute,

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<sup>48</sup> Bivins, Larry. (29 December 2010). “Medicare will soon bulge with baby boomers.” Post-Crescent Washington Bureau. <http://www.postcrescent.com/article/20101229/APco101>. (29 December 2010).

<sup>49</sup> <http://seniorliving.about.com/od/manageyourmoney/a/healthcarecosts.htm>.

<sup>50</sup> <http://healthcare.gov/news/factsheet/rates.html>.

therefore, it is absurd to claim that they are morally obligated to contribute because in contributing, the act becomes supererogatory and so, morally wrong. They question the lack of “individual responsibility” of the “free riders;” those who will not be taxed or wait for others to take care of them. However, the Senate bill, HR 3590, requires Americans and legal residents to have “qualifying” health coverage which is marked as an “individual responsibility requirement” by 2014 and after. Those without coverage will then pay a tax penalty of \$750 per year up to a maximum of three times the amount equal to \$2,250 per family. This penalty will be phased-in from 2014 to 2016. If it results in a higher amount, the non-compliant must pay 5% of the household income for 2014, 1% for 2015, and 2% for 2015 and above years. The ACA grants exemptions for financial hardship, religious objections, American Indians, those without coverage for less than three months, the undocumented immigrants, the incarcerated, if a person’s income is below the commerce Department poverty level, and if the lowest cost of available plan option exceeds 8% of person’s income. While the Senate bill provides that failure to pay the penalty cannot result in a criminal liability, the House bill, HR 3962, does not contain an expressed mandate to carry health insurance<sup>51</sup>.

Similarly, supporters of the ACA contend that the mandate requires all uninsured to purchase insurance coverage if it is affordable. For example, for 58% Americans currently covered by employer, professional or non-sponsored group health plans, meeting this requirement will involve no change in their current status or arrangement provided they do not lose their jobs or find new work not covered by a group plan. The 32% Americans covered by Medicare/Medicaid or other governmental insurance plans will likewise meet their obligation to acquire health insurance that meets the statutory criteria for adequate coverage<sup>52</sup>. For those not covered by the above criteria, the ACA establishes a new market for policies for individuals that are offered through and regulated by a national exchange and state-based exchanges. Besides, the ACA requires all such policies be provided without regards to pre-existing medical conditions, guarantees renewability of insurance coverage, prohibits discrimination based on age and other inappropriate factors, and eliminates or reduces barriers that heretofore put quality health insurance beyond the reach of many people not covered by group health plans providing for subsidies designed to make mandatory affordable to persons eligible.

Opponents contend that Medicaid will also grow costs. Medicaid is a health insurance program financed and run jointly by the federal and state governments for low-income people of all ages who do not have the money or insurance to pay for health care. Its goal is to provide medical and other health care services to eligible individuals so that they are able to maintain self-sufficiency. A state administered program, each state establishes its own guidelines, subject to federal rules and guidelines. Certain services must be covered by the states in order to receive federal funds.

Medicaid costs the federal government a lot of money and serves its beneficiaries poorly<sup>53</sup>. For most services, it reimburses less than Medicare and private insurance and that is why doctors, hospitals do not see Medicaid patients but few. However, the ACA is expected to increase Medicaid enrollment by about 16 million people. Although Medicaid offers few choices and may not provide great access to care, it accesses its recipients much needs that has measurably improved the health of the poor. Medicaid provides benefits unique to population needs that would be a struggle to find in private

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<sup>51</sup> Lazarus (2009), *Supra*.

<sup>52</sup> On a mandate to purchase health insurance relating to 58% of Americans covered by employers and 32% of those covered by Medicare/Medicaid and other governmental insurance and statutory criteria for adequate coverage, see “In search of health care reform,” [http://www.washingtonpost.com/wp.srv/politics/polls/postpoll\\_062209.html](http://www.washingtonpost.com/wp.srv/politics/polls/postpoll_062209.html) (9 June 2009).

<sup>53</sup> See Jonathan Cohn. (17 December 2010), *Supra*.

insurance market such as lead screening for low-income children, a fragile population at high risk of toxicity from chipped in poorly maintained homes<sup>54</sup> hospital and physician services, laboratory services and X-rays, and long-term care in nursing homes or home health care services. It spends most of its money on the disabled and older adults; not on the stereotypical single mother on welfare as Medicaid critics would believe. Despite the ACA supporters' belief that Medicaid will do a better job just like every health insurance program, private or public, in terms of promoting the management of chronic disease, fraud from the states, and by being given more money for beneficiaries to pay providers what Medicare/private insurers pay, the opponents want Medicaid to spend less. According to Kaiser Family Foundation, Medicaid spends on the average \$2,500 yearly for young adults; roughly half of what a single person pays today for a private insurance premium.

### **The Place of The Economy In The Debate**

The Economy is the Barometer for U.S. political tides and as such very crucial in the debate over "individual mandate" provision of the ACA. When it comes to matters of the economy/employment, the American public is very impatient, and when it struggles, all other issues take a back seat. Of all factors beclouding U.S voters during the midterm elections last November such as the rise of Tea Party, health care reform, on-going wars in Iraq and Afghanistan, none other influenced voters' choice than the official unemployment that stood at 9.6% or more. The Democrats' contend that things would have been much worse were it not for their economic measures but that did not change voters' minds. Observers note that had the unemployment figures been below six percent, nobody would have thought about the anxiety over the ACA. Capitalizing on unemployment status, the Republicans ran the election on potential to slash taxes, deficit without making the necessary cuts in defense, social security, Medicare/Medicaid<sup>55</sup>. Jill Lawrence<sup>56</sup> analyzed midterm exit poll focusing on what exactly did American voters reject and found 48% want health law repealed and 47% want it either expanded (31%) or left as it is (16%); an evenly divided opinion. Similarly, the Kaiser Family Foundation (KFF) Tracking Poll in December 13, 2010 found 42% voters saying they have generally a favorable view of the ACA while 41% have unfavorable view. As the weak economy continues, the KFF survey found a significant number of people were struggling to stay afloat, financially. One in four say their household had had trouble paying medical bills over the past 2009, and 54% say they have delayed needed medical care due to costs. The problem is more pronounced among the low-income and the uninsured and among 36-48% of who report having trouble paying medical bills. Among the uninsured 85% say they have put off needed care because of cost. Beyond health care, 41% report problems with getting a good paying job or a pay raise; 36% losing money in the stock market; 32% suffering cutbacks in pay or work hours; 25% having trouble paying

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<sup>54</sup> According to economists Jane Curie and Jonathan Gruber, large expansions of Medicaid during the 1980s and early 1990s "significantly increased the utilization of medical care, especially care delivered in physicians' offices," and that this leads to "significant" reduction in both infant and child mortality. <http://www.tnr.com/blog/jonathan-cohn/80158/Republic-Medicaid-Texas-Perry>. (28 December 2010). See also David Espo (2 February 2011) on Senate majority leader, Harry Reid: "The Republican repeal movement would take away a child's right to get health insurance and instead give insurance companies the right to use asthma or diabetes as an excuse to take away that care. It would kick kids out of their parents' health insurance. It would take away seniors' right to a free wellness check." <http://www.huffingtonpost.com/2011/02/02/health-care-repeal-vote>. (4 February 2011).

<sup>55</sup> Watcher, Paul. (2010). "The real lesson of the midterms? It's the economy (again), stupid." <http://www.aol.com/surge-desk/articles/it's-the-economy-stupid-the-real-lesson-of-the>. (5 November 2010).

<sup>56</sup> Lawrence, Jill. (2010). "Republicans think they won a mandate, but did they?" <http://www.politicsdaily.com/1010/11/03/republicans-think-they-won-a-mandate-but>. (5 November 2010).

their rent or mortgage; 23% losing a job; and 23% having problems paying for food<sup>57</sup>. Four days after the midterm elections, KFF found health care as a factor but not a dominant one. Among all voters, 29% most often cited the economy/job as the dominant factor in their decision to vote; 25% followed party preference; 21% on their views of the candidates; and 17% cited health care as the factor influencing their votes. Americans were also avoiding health care to limit spending. According to KFF, about one in five adults in U.S. report problems paying medical bills and nearly half have taken some sort of action in the past year such as skipping recommended tests or treatments to cut health spending and most express worry about paying for future health care costs. Even among those with coverage, half worry about losing it. KFF analysis suggests that certain groups experience these problems worrying about high rate of insurance premium, especially the uninsured, those with lower incomes, those with health problems and those who lack access to private institutions that are available to the more fortunate 85% holders of health insurance. The poorest 20% of U.S. population has no financial resource to fall back upon<sup>58</sup>. For families of these populations, sudden unemployment and extreme hardships are experienced. M. Harvey Brenner, reporting in Kates et al.<sup>59</sup> states that one and half percent rise in the rate of unemployment correlated with an increase of as many as 51,000 deaths and 6,000 hospitalizations in the following five years<sup>60</sup>. D'Arcy and Siddique<sup>61</sup> add that "the unemployed visit doctors 33% more frequently than the employed" even though the former have no health insurance. A poll conducted by Gallup in March 2010 found 31% of people polled identified unemployment as the most pressing issue facing the U.S, 24% identified the economy in general, while only 20% cited health care as the most issue<sup>62</sup>. In fact, Americans are more concerned about the economy than losing their health care coverage<sup>63</sup>.

The role of the economy in forcing up costs cannot be overlooked. The state of unemployment at 9.6% was a capital utilized by Republicans to make substantial gains in the midterm elections. An overwhelming 86% of 17, 504 exit voters polled said they are worried about where the economy is heading and 31% said someone in their households have lost their jobs or have been laid off in the last two years<sup>64</sup>. According to KFF September 2010 tracking polls, the economy, not healthcare reform, had the decisive advantage in voters' minds. The ACA, however, has shown potential of revitalizing the economy. In the words of Ipsita Smolinski, President of Capitol Street and senior advisor to McKenna Long and Aldridge: "...investors know they have a pretty viable future. There was initially a concern among investors that health reform would kill business...that hasn't happened"<sup>65</sup>. According to The

<sup>57</sup> <http://healthreform.kff.org/public-opinion.aspx?tag=KFF>.

<sup>58</sup> Wolff, E. N. (1998). "Recent trend in the size distribution of household wealth." *Journal of Economic Perspectives*, 12(3): 131-50.

<sup>59</sup> Kates et al. (1990), Supra.

<sup>60</sup> According to M. Harvey Brenner, finding is based on a review of 27 years of historical data on the effects of cyclical unemployment on certain dimensions of psychological/physiological health indicators, liver disease, hospitalization, overall mortality among others. For details, see Kates et al. (1990).

<sup>61</sup> D'Arcy, C., and C. M. Siddique. (1985). "Unemployment and health." *International Journal of Health Services*, 15:609-35.

<sup>62</sup> Jones, Jeffrey. (9 March 2010). "In U.S., 45% Favor, 48% oppose Obama healthcare plan."

<http://www.gallup.com/poll/126521/favor-oppose-obama-healthcare-plan.aspx>. (28 December 2010).

<sup>63</sup> Poll Watch-KFF. (13 December 2010). "Kaiser December tracking poll. Public remains divided on health reform law, significant number of people struggling financially." <http://healthreform.kff.org/public-opinion.aspx?tag=KFF>. (28 December 2010); Rasmussen Reports. (27 December 2010). "Health care law. Support for health care repeal at 60%." [http://www.rasmussenreports.com/public\\_content/politics/current\\_events/healthcare/health](http://www.rasmussenreports.com/public_content/politics/current_events/healthcare/health). (28 December 2010).

<sup>64</sup> Watcher (2010), Supra.

<sup>65</sup> <http://www.politico.com/news/stories/0111/47534.html>.



Economist Newsmagazine<sup>66</sup>, everyone of Republicans' proposal to weaken the ACA either increases costs of health care and the size of federal deficit or has no effect on them. The Amicus Brief filed by some Governors/Attorney Generals, though assuming a neutral stance in the suit, focuses "solely on the economic consequences that would occur if the personal coverage requirement is removed from the ACA while major insurance markets reforms remain" and that the overhaul's "guarantee issue and adjusted community rating requirements and prohibition on pre-existing conditions exclusions would not be economically and actuarially sound if the individual mandate were struck out"<sup>67</sup>.

### **Repeal Process, Legal/Socio-Economic Implications**

"These struggles always boil down to a contest between hope and fear.

That was true in the debate over Social Security, when FDR was accused of being a socialist. That was true when JFK and LBJ tried to pass Medicare.

And it's true in this debate today" (President Barack Obama 2009).

The huge gains made in Congress by Republicans, powered by the Tea Party rhetoric, instilled in them high hopes of repealing the ACA and perhaps also making President Obama a one-term president instead of focusing on improving the economy which many Americans think is the right thing to do<sup>68</sup>. Endowed by midterm gains, the Republicans' tools to aim at achieving their goal of complete repeal of the ACA include the scope for delaying or derailing the implementation of the law, budget maneuvers designed to defund the ACA programs, frequent embarrassing repeal votes and endless House sub-committee oversight hearings to attack the reform law programs citing the bureaucracy and wasteful spending, not the party, as the "enemy"<sup>69</sup>, especially the two programs designed to provide help to all Americans with pre-existing conditions, namely, the Early Retiree Reinsurance Program (ERRP) and the Pre-Existing Condition Insurance Plan (PCIP) both of which are bridge programs aimed to help cover people without health insurance until they qualify for Medicare in 2014<sup>70</sup>. The non-partisan Congressional Budget Office (CBO) informs that the ACA, if repealed, would increase the deficit by \$230 billion in the first decade, and roughly by half of one percent of Gross Domestic Product (GDP) or over a trillion dollars in the second decade; will increase the number of uninsured by 32 million; impose higher premiums on large firms causing customers who buy coverage in the individual market to pay more out-of-pocket for fewer

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<sup>66</sup> The WEEK OPINION Brief. (5 November 2010). "Can GOP repeal health care reform?" <http://theweek.com/article/index/209023/can-the-gop-repeal-health->. (6 January 2011).

<sup>67</sup> California Healthline. (9 March 2011). "Justice Department files appeal in ruling against health reform." <http://www.californiahealthline.org/article/2011/3/9/justice-department-files-formal-appeal>. (7 April 2011).

<sup>68</sup> In a question: "Hey Republicans, where are the jobs?" GottaLaff comments: "If the GOP would spend less time worrying about destroying the Obama presidency, and more on the welfare of the american people, they might actually attract more voters" referring to the Senate Majority leader's focus on getting "this whole annoying endless push for repeal of the health care law out of the system" so the Senate can actually get a few worthwhile things accomplished. Senate Republicans wanted an amendment to a repeal amendment but Democrats used the budget challenge as a camouflage for voting for fiscal responsibility. <http://thepoliticalcarnival.net/2011/02/02/senate-to-vote-on-repeal-of-health-care-law/>. (3 March 2011).

<sup>69</sup> [http://articles.cnn.com/2011-01-02/politics/news.congress\\_1\\_health\\_care\\_julian-assange-issa?](http://articles.cnn.com/2011-01-02/politics/news.congress_1_health_care_julian-assange-issa?)

<sup>70</sup> Trapp, Doug. (11 April 2011). "GOP blasts early coverage under health care reform." <http://www.ama-assn.org/amednews/2011/04/11/gvsb0411.htm>. (20 April 2011).

benefits; accelerate Medicare insolvency and worsen long-term fiscal burdens on American business and families, significantly<sup>71</sup>.

On the Republican budget maneuvers to defund the ACA, the CBO states that the ACA contains about \$106 billion in authorization that still need to be appropriated, \$86 billion of which is for continuation of existing activities such as programs for the Indian Health Service and Federally Qualified Health Centers. The Republicans may not want to defund them following their HR 2 repeal bill because the repeal of these authorizations would not actually result in discretionary savings of that amount. Defunding may not be as easy as thought because most of the ACA provisions such as insurance subsidies start in 2014, and Medicaid expansion are paid for in the law so cannot be cut without a vote to repeal them; a move that would tantamount to “starving” the ACA. The republicans could target the ACA Center for Medicare/Medicaid appropriated \$10 billion for defunding but the Democrats vow to resist such efforts<sup>72</sup>. With some provisions, however, such as Section 9006 of the ACA which adds purchases of goods to the type of payments companies must report to the Internal Revenue Service (IRS), Democrats, in a reconciliatory move, repealed the IRS “1099” language requiring companies to complete IRS Form 1099 for any vendor from which it purchased more than \$600 of goods or services in a year<sup>73</sup>.

According to Stephanie Mencimer<sup>74</sup>, ultra-conservative Tea Partiers and conservative activists are organizing behind 12 radical states’ rights proposal that, inter alia, push for legislation under a vehicle of “Healthcare Compact” supporters that would allow them seize control of and administer all federal health care programs operating in their states and exempt them from the ACA requirements, including Medicare<sup>75</sup>; efforts aimed toward repealing the ACA, eventually.

Angry that the Senate repealed House HR 2 bill, 26 Republican states and the National Federation of Independent Business, supported by opponents of the law, filed lawsuits in federal District courts challenging the reform law. They argue that the new law adds tens of millions to the entitlement at a greater cost with loss of quality and service. They oppose the overhaul because it includes provisions allowing young adults to remain on their parents’ insurance and prevents insurers from denying coverage for pre-existing medical conditions; issues they used successfully to make big gains in the midterm elections. The ACA, however, does not extend coverage to everyone but only to the 32 million now uninsured. According to the Center for American Progress report, the costs of treating the uninsured in 2009 were passed to insurance companies by providers and families paid about \$1,00 extra in premiums and individuals paid \$140 extra or higher, annually<sup>76</sup>. Under the new law, the tax burden falls on persons making more than \$200,000 a year and married couples making \$250,000 a year; the latter paying an increase in Medicare payroll taxes on wages and investment income and states are provided \$250 million in Health Insurance Premium Grants to assist them curb insurance premium hikes<sup>77</sup>.

The ACA reduces current \$1. 4 trillion national debt by \$143 billion. The Plaintiffs/opponents claim that the law degrades healthcare, reduces the freedom to choose doctors or coverage leading to

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<sup>71</sup> [http://www.tucsonsentinel.com/nationworld/repo/010711\\_health\\_care\\_repeal](http://www.tucsonsentinel.com/nationworld/repo/010711_health_care_repeal).

<sup>72</sup> <http://thehill.com/blogs/healthwatch/health-reform-implementation/137065-cbo..>

<sup>73</sup> See Rob Mandelbaum (18 November 2011). “Will Congress repeal the 1099 expansion?” <http://boss.blogs.nytimes.com/2010/11/18/will-congress-repeal-the-1099-expansion/>. (3 February 2011).

<sup>74</sup> Mencimer, Stephanie. (20 March 2011). “The T-Party’s latest scheme to kill health care reform.” <http://motherjones.com/politics/2011/03/tea-party-health-care-compact?amp&amp>. (13 April 2011).

<sup>75</sup> Mencimer, *ibid*.

<sup>76</sup> <http://howstuffworks.com/medicine/healthcare/insurance/10-myths-about-health-care;>  
<http://www.virginia.edu/newsRelease.php?id=9522>.

<sup>77</sup> <http://www.healthcare.gov/factsheets/>.

government rationing of health service. The proponents would argue that they focus more on losses than gains of equal size and by doing so have put fear in older adults that their medical benefits will be cut even though they are among those to benefit more from the new law<sup>78</sup>.

An Amicus filed by Attorney Generals for Oregon, Iowa and Vermont opposing 26 states' lawsuit in the District Court, Tallahassee, FL., argues against repeal and describes the ACA provisions as critical to the future affordability of health care for residents/business/state agencies/public employees/tribal governments in their states, and are constitutional: "The role of Amicus states is particularly important here, where the plaintiff states are trying to block, on federal grounds, a federal law that the Amicus states believe is both constitutional and important to the health and welfare of their citizens"<sup>79</sup>.

Gallup polls conducted nationwide in 2010 and reported in *The WEEK*, show 47% Americans do not want the ACA repealed while 48% do. The question, therefore, remains whether those 47% are accurate representations of opinions polled or are the independents, females, minority voters waiting to express their dissatisfaction over the way Republicans are pushing for repeal so drastically, or are intimidated by raucous confrontations and sound bite employed by Republican/Tea Partiers during the midterm elections to advocate people's insecurity with the ACA provisions thus making them think losing their coverage would make them go bankrupt with their families.

The District Court Judges have ruled on the opponents' lawsuits. Three upheld the law as constitutional but two struck them out, one partially and the other entirely<sup>80</sup>. Thirty-one lawsuits so far are challenging the validity of the law. There are nine appeals. The 4<sup>th</sup> Circuit Court heard appeals from the Liberty University and State of VA. in May 10, 2011<sup>81</sup>. Other appeals are pending in the 11<sup>th</sup>, 6<sup>th</sup> Courts and one in Washington DC. Legal observers suggest the final ruling may come from The Supreme Court by early 2012 just about time for the Presidential election<sup>82</sup>.

At the center of the lawsuits is "personal liberty and autonomy versus corporate obligation and security"<sup>83</sup>; the right of a citizen to choose whether to buy health insurance or be trumped by government's desire to force that citizen to offset the financial burden of a massive entitlement program. Attorney Generals of plaintiff states/opponents argue that the "individual mandate" not only imposes penalties on consumers who do not want a commercial product and absolves "free riders" but also destroys states' constitutional sovereignty by burdening them with uncontrolled Medicaid costs; that the federal government is overreaching its taxing authority by penalizing people for not taking an action of not purchasing health insurance and by imposing a mandate on "inactive" individual, it eviscerates states' sovereignty<sup>84</sup>. Opponents' argument relating to Medicaid has some substance in that while most states

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<sup>78</sup> See Thompson (2010); Elrod (2010), *supra*.

<sup>79</sup> See O'Brien (2010), *supra*.

<sup>80</sup> For details of District Court suits decided and appeals, see David Savage (11 January 2011).

<http://www.latimes.com/business/la-na-health-court-20110510.0.729942.story>;

[http://www.huffingtonpost.com/2010/09/14/states-lawsuit-against-he\\_n\\_716470.html](http://www.huffingtonpost.com/2010/09/14/states-lawsuit-against-he_n_716470.html). (11 May 2011).

<sup>81</sup> See Va. Solicitor-General's argument in 4<sup>th</sup> Circuit Court hearing on state laws v. federal laws.

[http://www.cnn.com/2011/POLITICS/05/10/health.care.courts/index.html?section=cnn\\_lat](http://www.cnn.com/2011/POLITICS/05/10/health.care.courts/index.html?section=cnn_lat);

<http://www.nejm.org/doi/full/10.1056/NEJMp1001345>. (10 May 2011).

<sup>82</sup> Savage, (2011), *supra*.

<sup>83</sup> <http://www.outsidethebeltway.com/federal-judge-dismisses-lawsuit-challenging-health-ca>.

<sup>84</sup> Nelson, Melissa. (14 September 2010). "States' lawsuit against care reform likely to see trial, Federal judge says." [http://www.huffingtonpost.com/2010/09/14/states-lawsuit-against-he\\_n\\_716470.html](http://www.huffingtonpost.com/2010/09/14/states-lawsuit-against-he_n_716470.html). (14 December 2010).

charge from 25% to 100% more than standard rates for those at-risk-pool, some ask to increase their premiums rates, and some threaten to pull out of Medicaid program completely<sup>85</sup>.

Advocates of the reform argue that the Senate bill, HR 3590, requires Americans and legal residents to have “qualifying” health coverage which is marked as an “individual responsibility requirement,” beginning from 2014 and thereafter; no “free rider.” Those without coverage will then pay a tax penalty of \$750 per annum up to a maximum of three times that amount to \$2,250 per family; a penalty to be phased-in from 2014 to 2016. If it results in a higher amount, the non-compliant must pay 5% of the household income for 2014, 1% for 2015, and 2% for 2015 and above years. The ACA grants exemptions for financial hardship, religious objections, American Indians, those without coverage for less than three months, the undocumented immigrants, the incarcerated, if a person’s income is below the Commerce Department poverty level, and if the lowest cost of available plan option exceeds 8% of person’s income. Similarly, while the Senate bill provides that failure to pay the penalty cannot result in a criminal liability, the House bill, HR 3962, does not mention mandate to carry health insurance<sup>86</sup>. Advocates contend that the mandate requires all uninsured to purchase insurance coverage if it is affordable. The 58% Americans currently covered by employer, professional, or non-sponsored group health plans will require no change in their status meeting this requirement, provided they maintain their jobs or find new work not covered by a group plan. The 32% Americans covered by Medicare/Medicaid or other governmental insurance plans will likewise meet their obligation to acquire health insurance that meets the statutory criteria for adequate coverage. The ACA establishes a new market for policies for individuals offered through and regulated by a national “exchange” and state-based “exchanges” for those not covered by above criteria; policies provided without regards to pre-existing medical conditions, guarantee renewability of insurance coverage, prohibit discrimination based on age, other inappropriate factors, and eliminate or reduce barriers that heretofore put quality health insurance beyond reach of many people uncovered by group plans that provide for subsidies designed to make mandatory insurance affordable to persons eligible. The Republican Governors/Attorney Generals/opponents say “no” to whether Congress and government have to force Americans to buy health insurance but the so-called “individual mandate” specter was crafted by Republican Think Tank in 1991 as a proposed alternative to a single-payer system to imply that everyone who can afford health insurance has to buy it, no “free rider.”<sup>87</sup> Surprisingly, after 18 years, the Republicans are opposing it.

The government rationale for the “individual mandate” is to make part of the bill cover costs of the millions of people with pre-existing conditions added to the insurance rolls but while the opponents complain about the ACA being a budget buster, surprisingly, they want to strip out the cost controls that pay for it. While the opponents advance cogent reasons for opposing the ACA individual mandate provision, the answer to their doubts lies in the Constitutional Commerce clause, Article 1, Section 8 “to regulate commerce . . . among the several states.”<sup>88</sup> Opponents believe “insurance” has traditionally been regulated by states and that insurance contracts were never considered “commerce,” historically. However, in his ruling in Lynchburg, VA., District Court Judge Norman K. Moon granting the

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<sup>85</sup> <http://www.tnr.com/blog/jona-cohn/80158/Republican-Medicaid-Texas-Perry-health>.

<sup>86</sup> Lazarus (2009), supra.

<sup>87</sup> Sloan, Tim. (6 February 2010). “The Justice will see you now.” <http://www.newsweek.com/2011/02/06/the-justice-will-see-you-now.html>. (6 March 2011).

<sup>88</sup> See January 11, 2011 Supreme Court ruling suggesting a reluctance to rein in Congress’ power under the Constitution’s Commerce Clause <http://www.latimes.com/business/la-fi-court-commerce-20110111.0.6767451.story>;  
[http://www.cnn.com/2011/POLITICS/05/10/health.care.courts/index.html?section=cnn\\_lat](http://www.cnn.com/2011/POLITICS/05/10/health.care.courts/index.html?section=cnn_lat).

government's request to dismiss, declared that individual mandate extends the commerce clause's authority beyond from the borders of "economic activity" to "economic inactivity,"<sup>89</sup> and that Article IV clause 2 of the federal Constitution puts federal legislation high above states<sup>90</sup>. Once Congress enacts a law pursuant to one of the "powers delegated to the U.S by the Constitution," says the Judge, that law is supreme. In the 1968 Cooper versus Aaron, for example, the Supreme Court reaffirmed the supremacy of federal legislation and rejected Arkansas' claimed right to nullification in a school desegregation case. A number of federal courts have also rejected claims of such including that a state could refuse Medicaid coverage of abortion in case of rape/incest following the Hyde amendment<sup>91</sup>. A similar case has been heard in the 4<sup>th</sup> Circuit Court filed by the State of Virginia and similar Court declaration is expected. Although the power of the federal government has been expanded during the New Deal era of the 1930s<sup>92</sup>, the commerce clause, the 14<sup>th</sup> Amendment, and the spending power allow Congress to do things affecting the states.

Opponents of the ACA argue that the new law slices Medicare by \$136 billion and costs \$938 billion to implement. Advocates content that the slice is on Medicare Advantage program is a privately-run program different from the traditional Medicare and subsidies paid to this program costs the government additional 14% per person in that program and that this cut will not affect those in traditional Medicare.

Medicare trust fund is expected to exhaust from 2029-2034 due to weaker economy. The problems may be found in the weaker economy/unemployment/lifestyle issues. As opponents and advocates of healthcare reform fall prey to their myths and misunderstandings (Republicans wanting to have private health care system when in fact what exists is a mixed private/public system and advocates engrossed with the idea the Americans overwhelmingly dislike current health care system while most are satisfied with the quality of their medical care), one thing needs not be gainsaid, that is, health care costs are here to stay, to outpace economic growth and continue to strain government budgets but neither sides of the argument has satisfactorily explained to Americans certain factors forcing up the Medicare costs. Considering the demographics and the aging population in the U.S., there is need for more care of older adults as they age fast<sup>93</sup> that force up the aggregate costs of health care. The number of tax payers is dropping<sup>94</sup>, leaving the young with the tax burden and the burden of each tax payer increases rapidly. Fewer people are now working and paying Medicare premiums into the fund in the face of continuous increase in health care costs<sup>95</sup>. For Americans who smoke too much, drink too much, eat too much and eat

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<sup>89</sup> District Court judges, Norman K. Moon and George C. Steeh rule that the individual mandate provision gives the federal government power to regulate commerce and includes power to regulate the practices affecting prices of commodities in interstate commerce. See Wickard, 37 U.S. at 128; Gonzales v. Raich case No. 03-1454, 2004. [http://en.wikipedia.org/wiki/Gonzales\\_v.\\_Raich](http://en.wikipedia.org/wiki/Gonzales_v._Raich). See also <http://www.outsidethebeltway.com/federal-judge-dismisses..> (14 December 2010).

<sup>90</sup> Mataconis, Doug. (1 December 2010). "Federal judge dismisses lawsuit challenging healthcare reform law." <http://www.outsidethebeltway.com/federal-judge-dismisses..> (14 December 2010).

<sup>91</sup> See Timothy Jost (11 March 2010), supra; Jonathan Cohn (2010), supra. <http://tnr.com/blog/jonathan-cohn/80158/Republican-Medicaid-Texas-Perry>.

<sup>92</sup> History has it that many expansions of the federal power enacted during the first phase of the New Deal in the 1930s were struck down by the Supreme Court until FDR proposed increasing the number of justices from nine to 15. In what was termed "the switch in time that saved nine," the court reversed course and upheld new expansions of federal power saving the number of jurists at nine.

<sup>93</sup> O'Brien, (2010); Cohn (2010); Briand (22 March 2010). <http://www.examiner.com/baby-boomers-in-national/> (29 December 2010).

<sup>94</sup> <http://health.usnews.com/health-news/family-health/>.

<sup>95</sup> <http://www.freep.com/article/20110513/NEWS07/05/3031/Future>.

the wrong foods, and get too little activity, making such bad lifestyle choices will continue to force up care expenditure. According to AARP International, global life expectancy, in comparison to other industrialized world can be increased by almost five years and millions of premature deaths prevented if five risk factors affecting health are addressed<sup>96</sup>: Poor childhood nutrition, unsafe sex, alcohol, bad sanitation and hygiene, and high blood pressure are responsible for one-quarter deaths worldwide yearly, all coming from lifestyle issues<sup>97</sup>. What about costs of obscene medical malpractice award passed to insurance consumers, the costs of doing business of drug companies, hospitals, medical equipment, physician, and the rates and prices charged to health insurers that are forcing up costs of malpractice insurance? Both sides of the debate apparently have overlooked them or are these facts an oversight?

There are suggestions that both the Republicans/Democrats might want to consider repealing the ACA provision targeting Medicare thus creating more than \$500 billion in savings over a 10-year period; savings that come from curbing the growth of Medicare costs regarded as key to holding down the price of extending health care to the 32 million uninsured without results. Even with the many changes in the ACA to effect delivery/payment of healthcare services, the expectation is that healthcare costs will continue to outpace economic growth and strain government budget. One window of opportunity open to policy makers to fix Medicare costs which the ACA provides is changes made in 2010 report extending Medicare fund life by 12 years to save Medicare trust fund from exhausting in 2016.

Enhanced by the existence of the ACA<sup>98</sup>, the Ryan Plan was passed in the House which would replace Medicare with a voucher-like payment system for retirees even as the Republican leaders in Congress envisage its passage in the Senate as unlikely and as unlikely to get traction in the October upcoming budget battle. While some political observers see the Ryan Plan as possibly saving the government costs, costs will not go away but just get shifted to older adults and others 22 years or more; others see a flaw in the plan: the capon Medicare voucher amount which the Congressional Budget Office (CBO) says will be based on the federal cost of a Medicare beneficiary in 2012 and the amount indexed to Gross Domestic Product (GDP) plus 1%. However, the main caveat is that Medicare costs uncontrollably soar than the Gross Domestic Product (GNP) as the vouchers wane in their purchasing value over time. Smart money says Medicare needs profound reform as the long-term driver of federal deficit.

Similarly, Social Security trust fund is projected to exhaust in 2036 despite the 2010 projection that it will exhaust 2037 and that the government will be able to collect Social Security payroll taxes in 2037 to pay three quarters existing benefits. The report is not all that scary; it just calls for a fix in 25 years to come to address cost-of-living adjustments or raising the cap on earnings to a level covering about 85-90% of working people as was the case in 1983 when Social Security was amended. Some suggestions to maximizing benefits under the ACA entail working till age 70<sup>99</sup>.

Medicaid costs come primarily from taking care of the disabled/elderly. Advocates of health care reform believe the program could do better in terms of promoting the management of chronic diseases, fraud from states and being more funded to pay providers for its beneficiaries just as Medicare and private insurance pay. Opponents of reform want it to spend less due to costs but according to KFF, Medicaid is

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<sup>96</sup> AARP International. (3 November 2009). "Global News, WHO says global life expectancy can be raised." [http://www.aarpinternational.org/news/news\\_show.htm?doc\\_id=1072193](http://www.aarpinternational.org/news/news_show.htm?doc_id=1072193). (6 November 2009).

<sup>97</sup> Ibid.

<sup>98</sup> See <http://swampland.blogs.time.com/2011/03/31/how-the-affordable-care-act-paved-the>.

<sup>99</sup> For additional readings, see <http://swampland.blogs.time.com/2011/03/31/how-the-affordable-care-act-paved-the> ; <http://www.freep.com/article/20110513/NEWS07/0513031/Future-Medicare-Social-sec>; [http://www.nasi.org/sites/default/files/research/social\\_Security\\_Finance\\_of\\_the\\_2011\\_trustee\\_Report.pdf](http://www.nasi.org/sites/default/files/research/social_Security_Finance_of_the_2011_trustee_Report.pdf).

already spending less; \$2,500 on the average yearly for no-elderly, roughly half what a single person pays today for a private insurance premium.

Does the need for healthcare connote a moral and legal right to it? Proponents of “moral” connotation of “obligation” to the society from the conservative Right say “no,” when the ACA is expected to cost tax payers \$938 billion over the next 10 years and when the tax increase weigh most on the 85% wealth holders of health insurance. According to A. G. Martin “It is immoral to rob citizens of their hard-earned money in order to give to other citizens something that they did not earn . . . And it is anti-Christian to take something out the hands of individual believers something that they should voluntarily do out of their compassion for the poor, and place it in the hands of government to do through a mandated program”<sup>100</sup>. In the healthcare debate, the Right maintains that it started first as a fiscal imperative then shifted to controlling “greedy” insurance companies, and now to that of moral obligation arguing that a moral act must involve choice and that a coerce act says nothing about morality of the person acting, it says something about the morality of one initiating the coercion<sup>101</sup>. The Right draws on the New Testament (NT) teaching as an injunction on how to treat the poor inferring that the wealthiest should decide whether or not to contribute and so it is irrational to claim they are morally obligated to contribute because in contributing, the act becomes supererogatory and so morally wrong<sup>102</sup>. The Liberal Left which admitted has not been counteracting the conservative Right argument aggressively, could have referred to Jesus’ encounter with the Sadducees, Herodians, and Pharisees re: which is the right thing to do, to pay tribute to Caesar or God<sup>103</sup> to educate the Conservative Right on social rationality of government action to provide affordable healthcare coverage for the poor, sickly Americans who have no way of affording it. The lesson from Jesus’ encounter with his tempters is that people should abide by the rules of the government partly because it is God’s instituted authority to provide such activity as affordable healthcare and partly because it governs with Gods approval and is morally and judgmentally held accountable for failures. When will community morally ethical considerations supersede individualistically morally ethical consideration? If we say every individual’s consent should be the barometer for measuring responses to emergencies, what is our obligation to people displaced by floods in New Orleans, along the Mississippi river? Wait until every individual’s consent is sought? What about military service? Should we end the draft based on individual self-interest or morality? Or should we just live in our society and resist contributing to help others? The question will be “what are our obligations as individuals and what are we ready to do collectively for one another? Or in the case of disasters that have ravaged New Orleans<sup>104</sup> and people displaced along the Mississippi river, should we wait to be survivors

<sup>100</sup> Martin, A. G. (22 August 2009). “A moral obligation to oppose Obama healthcare plan.” <http://www.examiner.com/conservative-in-columbia/a-moral-obligation>. (14 December 2010).

<sup>101</sup> <http://www.quando.net/?p=4194>.

<sup>102</sup> Zhang, Meng. (15 April 2010). “Health care reform: Confounding moral obligation and supererogation.” <http://triplehelixblog.com/2010/04/healthcare-reform-confounding-moral-obligation>. (14 December 2010).

<sup>103</sup> See New Testament Matthew 22: 15-22 on “Is it lawful to pay taxes to Caesar or not?” A question posed to Jesus by a combined group seeking to implicated him, and Jesus’ answer informing us that obeying a “constituted authority” put in place by God is the right thing to do because that authority means good for its people in the “individual mandate situation thusly calling for both individually morally obligated/socially rationally considerations.

<sup>104</sup> Harvey Morris and Sheila McNulty. (20 May 2011). “Mississippi floods revive debate over future of delta.” Poses a moral question for opponents of the ACA. Is it morally irrational or socially rational for the government to not get everyone’s individual consent/permission to address emergencies in New Orleans area that have experienced many disasters (the Great Flood of 1927, the Hurricane Katrina of 2005, the BP oil spill of 2010, and now the Mississippi River angst. <http://www.ft.com/cms/s/0/17848598-8304-11e0-85a4-00144feabdco.html>. Those who

before contributing and volunteering to help the victims? If the solution to healthcare costs, as the Right would prefer, is for individuals to pay their physicians' malpractice insurance and expect quality care in return, how would that impact the elderly, children, the poor and unemployed who cannot afford it, and do we owe them a duty to help as Americans? What about the "other people?" The Senate on December 18, 2010 killed the Dream Amnesty Act that would have given legal status to immigrants younger than 30 who were brought into U.S. before age 16, have graduated from High School or military service and had no criminal records<sup>105</sup>. According to CBO estimate, 11million immigrants live in the shadow<sup>106</sup>. The Act would have granted conditional no-immigrant status to 300,000 to 500,000 undocumented, uninsured immigrants (who because they also contribute to forcing up healthcare costs should have been allowed to contribute toward paying for the costs) for 10 years allowing them to work without being deported before becoming citizens. The Federation for American Immigration Reform, however, estimates 2.1 million illegal immigrants would have benefited from the Act. Do we have the obligation to welcome and make them feel at home since they are already here with us?

The opponents of the Act argue that granting legal status to them tantamount to saying that it is okay for everyone to enter the U.S. illegally, that it gives a green light to "free riders thus swelling the population of the uninsured and tax payers' burden. Although the opponents have a legitimate argument, where do we draw the line of who to punish and not to punish? The innocent children who met government requirement for the amnesty or the parents who brought them in? According to the CEO of America's Voice, advocates of immigration reform: "If you are a Republican who voted against this, you will be forever known for standing in the schoolhouse door and saying 'no' to the best and brightest."<sup>107</sup> Although not all who voted against the Act were Republicans, the Republicans presented as the most raucous and user of sound bite to derail the Act.

The media/interest groups have a moral obligation to educate Americans on the issues at stake rather than taking sides and manipulating public opinion for selfish interests and presenting it as verified expert information<sup>108</sup>. They would have devoted time to explaining fully the stakes in healthcare debates especially in educating Americans on the factors forcing up Medicare costs and on investigating properly the intense lobby activities that were not doing justice to the issues of healthcare reform.

### **Will the ACA survive?**

Assuming the Supreme Court rules that the ACA is unconstitutional and a new law is to be formulated then many of the key reforms could be lost. One of those that most Americans have tested to be crucial is that insurance companies can no longer deny coverage due to pre-existing conditions and it very likely that the Republicans will attempt to block it. Who knows how long it will take a new law to be created based on consensus? The impact on many Americans already benefiting from other provisions of the ACA could be tremendously negative. It could hamper efforts to curb fraud and waste in

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want to wait until the government sought their opinions before they can volunteer and contribute are the ones "stealing" from the government see Walter Williams' comment in A. G. Martin), supra.

<sup>105</sup> The Daily Herald. (19 December 2010). "Dream Act failure kills immigration reform hopes." <http://www.thedailyherald.com/us/3-news/11559-dream-act-failure-kills-> (28 December 2010).

<sup>106</sup> Milbourn, Mary Ann. (18 December 2010). "Senate kills immigration bill." [http://articles.oregister.com/2010-12-18/news/25209436\\_1\\_legal-status-Immigration](http://articles.oregister.com/2010-12-18/news/25209436_1_legal-status-Immigration). (28 December 2010).

<sup>107</sup> <http://www.thedailyherald.com/us/3-news/11559-dream-act-failure-kills>.

<sup>108</sup> [http://www.washingtonpost.com/wp.srv/politics/postpoll\\_062209.html](http://www.washingtonpost.com/wp.srv/politics/postpoll_062209.html); <http://www.fivethirtyeight.com/2009/06/public-support-for-option.html>.



Medicare/Medicaid programs and the massive federal programs providing services to the older adults, the poor and children.

Based on the results so far from hearings in District Courts and skepticism expressed by the three-panel of Judges in the 4th Circuit Court hearing, it is very likely that the ACA will be upheld by the Supreme Court. Some among the opponents of “individual mandate” provision have even predicted less than 1% chance that the courts will invalidate it as exceeding Congress’ Article 1 power and Article VI clause 2 of the U.S. Constitution’s supremacy over state laws, even doubting it will ever reach the Supreme Court or that the Circuit Courts will be split-less thereby making the Supreme Court to decline the case. If this happens, the result, some say, will be a 9-0 or 8-1 vote upholding the ACA. Howbeit, it is still uncertain how the High Court will rule because there is always the theoretical possibility of the High Court doing something totally unexpected. History indicates that early court decisions are hardly predictive<sup>109</sup>. The “liberal” nature of the judiciary<sup>110</sup> and the pull of *Stare decisis*,<sup>111</sup> many argue, will guide the appellate courts in upholding the “individual mandate.” The likely decision of the 4<sup>th</sup> Circuit Court is predicted to result in favor of the government and with the 6<sup>th</sup> Circuit Court ruling in favor of the government recently, it becomes clearer and clearer that, if reaches the Supreme Court, the same ruling will stand. However, the Supreme Court or no Supreme Court, it is also predicted that the issue will be finally resolved in ballot come 2012 elections.

## Conclusion

The social rationality behind the enactment of the ACA is that the legislation requires all such policies be provided without regards to pre-existing conditions and guarantees renewability of coverage, prohibits discrimination based on age and ethnicity, among other in-appropriate factors. It eliminates or reduces barriers that have heretofore put quality health insurance beyond the reach of many people uncovered by group insurance, and provides for subsidies designed to make mandatory coverage affordable to all eligible persons. Proponents who advance the reform should bear in mind that the health care overhaul may not be the panacea for reducing health disparities and inequities they fight for. The cure will require people, parties, and elected officials working together beyond just reforming the healthcare to include innovations that address the socio-econ and political inequities populating disparities. As opponents of the ACA demonstrate in their argument, the direction should have been to tackle health care reform in incremental steps, combining trust and partnership among people active in a system with power craftily apportioned to maintain checks and balances to large-scale change but all the actors involved should demonstrate commitment for partisanship and compromise.

The healthcare debate should be viewed as a forum not only to promote socially rational change but also to inform Americans of the need to rebuild the institutional capability of their health care system. Research studies show that the U.S. spends more in healthcare expenses than other industrialized nations

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<sup>109</sup> In her question: “How will Supreme Court rule on healthcare law,” Nina Totenberg (2 February 2011), warns against celebrating early victories only to discover that the Supreme Court overturns the decisions of the lower courts. <http://www.upr.org/2011/02/02/133416600.how-will-supreme-court-rule-on-health-care-la>.

<sup>110</sup> According to David Savage, the Supreme Court, since the arrival of Chief Justice John G. Roberts Jr in 2005, has not moved to restrain federal laws. However interests in disputes involving federal/state powers under the Constitution has grown since 2010 as many Conservatives/Tea Partiers activist movements demand more limits on the federal government power groups. <http://www.latimes.com/business/la-fi-court-commerce-2011>.

<sup>111</sup> *Stare decisis*, a doctrine stating that when court has once laid down a principle of law as applicable TO CERTAIN state of facts, it will adhere to that principle applying it to all future cases where facts are substantially the same regardless of whether the parties and property are the same Black’s Law Dictionary, 5<sup>th</sup> ed. 1997).

yet its citizens do not get commensurate value for their dollar; 46 million lack health coverage and 1.8 million working families are uninsured while 45,000 Americans die annually from lack of access to medical care. The ACA should be given time to mature. Repealing it now will create uncertainties and obstacle that would never be overcome creating a similar or better healthcare law. Based on the relevance of arguments for and against the ACA, the process taken to enact it, its constitutionality, and the rationale behind its creation, it is morally imperative and socially rational to argue that the government did what is the right thing to do by enacting the law that addresses important issues like discrimination against Americans with pre-existing medical conditions and coming up with a formula to pay for it. It is both an act of moral obligation and social rationality to provide health insurance to millions who need but cannot afford it.

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