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## The Individual Mandate: The Ultimate Conservative Idea

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## **The Individual Mandate: The Ultimate Conservative Idea?**

"ObamaCare raises taxes on the American people by \$500 billion" – Mitt Romney (2012)

"The federal law compels American citizens to contract for health insurance they do not want, do not need, or find morally objectionable" -Bob Marshall, state legislator in Virginia (2012)

"I am firmly against the individual mandate. I think it is unconstitutional, whether it's put into place at the state level by a state legislature or whether it's put into place at the federal level. I think it's unconstitutional." -Michele Bachmann (2012)

Erin Ellwanger  
12/10/12  
Research Paper

The individual mandate is perhaps the most contested and least popular provision of the 2010 Affordable Care Act (ACA). The mandate, which requires most Americans to obtain health insurance or pay a penalty, was put in the ACA as a means to increase the number of Americans with access to health care insurance. When the ACA first passed in 2010, 27 states filed suits questioning the constitutionality of the both individual mandate and the Medicaid expansion, believing that the mandate was a good reason to repeal the ACA (Parmett 2011, 403). A public opinion poll from January 2012 by the Kaiser Family Foundation revealed that two-thirds of Americans with unpopular views of the mandate felt this way for reasons such as: the government shouldn't be able to force people to do something they don't want to do (30%), that health insurance is too expensive (25%), and complaints about fines for those who are noncompliant (22%) (KFF, Snapshot). Similar to the results of this report, Kaiser also concluded from public opinion poll in March 2012 that 51% of Americans believed that the Supreme Court should rule the mandate unconstitutional, while 28% said constitutional, and 21% refused or didn't know enough to say (KFF Snapshot 2012). Currently, 72% of Americans view the individual mandate as unconstitutional and Democrats who initially thought the mandate would be supported by both parties "wonder whether the provision is an albatross that should be jettisoned to save reform" (Gallup poll, and Parmett 2011, 403).

Opponents of the mandate, who are mostly conservative republicans, lashed out against the July 2012 Supreme Court ruling that upheld the health care law and

declared the individual mandate constitutional under the Congress's power to tax. Challengers of the mandate argue that Congress's power to tax does not authorize the mandate "because it is not called a tax and it aims to regulate behavior rather than raise its revenues" (Parmett 2011, 403). Republican presidential candidate Mitt Romney promised to repeal not only the individual mandate, but the entire Act, if he had been elected president.

My goal for this paper is not to argue whether the individual mandate is a good provision or not, but rather to reveal that the Republicans opposition towards the mandate is misguided. Careful examination of the individual mandate's history reveals that it was originally a conservative idea and encompasses many conservative values, specifically the value of individual responsibility. By reviewing the individual mandate in health care legislation throughout the years, one can see that republican opposition towards the individual mandate has evolved only recently in the past few years. What was once, accepted by many democrats and republicans as a logical way to expand access is now seen as overstepping individual freedom and rights.

In my paper, I present the critics' arguments against the mandate and propose solutions that can turn this opposition into acceptance of and support for the mandate. The Republicans have failed to see the conservative principles at work in the mandate. The question at hand is how to get the Republican Party and the majority of the public to realize the mandate is a positive provision for not only the individual, but also the society as a whole? I believe using language like "individual responsibility" and "ultimate anti-free rider provision" to describe the individual

mandate will resonate with conservatives because this is the language they once used themselves. Today's Republican party has corrupted the meaning of the mandate to advance its own political agenda and they need to be reminded of the mandate's conservative roots. It is also essential for policy makers to come together as they did in the past to create a consensus and build support for the individual mandate provision. If policy makers choose to utilize my suggested strategies, opposition towards the individual mandate will be eradicated and the ACA can be accepted by both parties and lead to a necessary expansion of healthcare coverage. A close examination of the political history of the individual mandate provision in the Affordable Care Act will reveal that Republican opposition towards the mandate is misguided and reframing how policy makers think and therefor promote the mandate will lead to further public acceptance of it.

### The Individual Mandate in the Affordable Care Act

Let us now dive into the details of the individual mandate provision of the health reform law to see what all the fuss is about. The individual mandate provision of the Affordable Care Act (ACA) requires most individuals as of 2014 to maintain "minimum essential coverage" or pay a penalty that in 2014 for adults will be the greater of one percent of income or \$95 (Parmett 2011, 402). Each year the penalty will gradually increase for those who choose not to purchase health care insurance. The penalty will be administered by the Internal Revenue Service (IRS) and assessed by one's tax return (Sahadi 2012). Failure to pay the penalty will not result in government criminal prosecution or levying liens on the property of the

individual (Parmett, 402). According to the Kaiser Family Foundation Health Reform Source, individuals who will be exempted from the mandate include: those who are undocumented immigrants, certain religious groups, incarcerated individuals, families with very low incomes that don't have to file tax returns, and those individuals who have insurance premiums that would exceed 8% of family income after including employer contributions and federal subsidies (KFF Requirement to Buy Coverage).

Congress enacted the Patient Protection and Affordable Care Act in April 2010 "in order to increase the number of Americans covered by health insurance and decrease the cost of health care" (*NFIB v. Sebelius*). In order to reach this goal, the act significantly expands the Medicaid program, offers subsidies for low and moderate-income individuals and small businesses, and enacts an employer mandate and individual mandate. As well as being the most controversial, the individual mandate is a crucial provision of the act because it prevents adverse selection therefor allowing insurance reforms under the ACA to be possible. In an attempt to expand health insurance coverage, the Act proposes multiple insurance reforms, like guaranteed access to insurance regardless of pre-existing conditions; a limit on out-of-pocket costs in all insurance plans; preventive benefits with no patient cost-sharing; and allowing parents to cover children on their insurance plans up to age 26 (KFF Mapping Effects 2012). Without the individual mandate, however, these reforms would be unsustainable because of adverse selection. Adverse selection is the phenomenon of individuals waiting to purchase health insurance until they need care, which often leads to more sick individuals and

therefor an erosion of the insurance markets (Parmett 2012, 403).

From a health policy prospective, the rationale for the individual mandate is straightforward and logical. The mandate eliminates adverse selection by inducing “healthy individuals to purchase health insurance, thereby broadening the health insurance risk pool and lowering costs” (Parmet 2012, 403). With the insurance reforms, the state exchanges would attract sicker and more costly enrollees, driving up premium costs and threatening the exchanges’ stability (Oberlander 2011, 1085). The mandate is crucial because it ensures that healthier people will be joining the state-based insurance exchanges set up by the ACA. In sum, the “unpopular” individual mandate provision of the ACA essentially makes it possible that the more popular health insurance reforms can exist.

#### Supreme Court Decision June 2012

The passage of the Patient Protection and Affordability Act created a backlash by states and individuals who challenged the constitutionality of the individual mandate, believing that Congress lacked the authority to enact it. In the Supreme Court ruling of June 2012, however, five Supreme Court Justices declared that the individual mandate provision of the Affordable Care Act was constitutional because it fell under Congress’s power to tax. In the opinion, Chief Justice Roberts held that the Anti-Injunction Act did not bar the suit, and that the individual mandate was not a valid exercise of Congress’s power under the Commerce Clause and the Necessary and Proper Clause (*NFIB v. Sebelius*, 2). The Supreme Court ruling ultimately declared that the individual mandate, which required most Americans to obtain

health insurance coverage or pay a penalty, fell within Congress's power under the Constitution to "lay and collect taxes" (Sacks 2012). Justice Robert's opinion maintained that the Affordable Care Act did not attach any negative legal consequences to not buying health insurance, beyond a payment to the IRS, but rather that it simply increased taxes on those who had a certain amount of income (*NFIB v. Sebelius*, 32). Therefore, the individual mandate was not a legal command to buy insurance.

### Dissenting Opinion

Anthony Kennedy, Clarence Thomas and Samuel Alito joined Justice Antonin Scalia in the dissent, which declared the statute "inoperable" and called for the Affordable Care Act to be repealed in its entirety (*NFIB v. Sebelius*). The dissenters discussed why the justices felt the Act should be struck down, why the commerce clause did not, in fact, authorize the mandate, and finally why they believed the individual mandate should not be considered a tax (Klukowski 2012). The justices focused on the language used in the legislation differentiating between what was defined to be a tax and a penalty. The conservative dissenters wrote, "When an act adopts the criteria of wrongdoing and then imposes a monetary penalty as the principal consequence on those who transgress its standard, it creates a regulatory penalty, not a tax" (*NFIB v. Sebelius*). They believed that Congress overstepped its powers when it enacted a law with a mandate, which required individuals to purchase a minimum amount of coverage, enforced by a penalty. In sum, the dissenters determined that Congress imposed a regulatory penalty, not a tax (Klukowski 2012). In response to Justice Robert's interpretation of the statute, the



dissenters wrote, "It amounts instead to a vast judicial overreaching" and "creates a debilitated, inoperable version of health-care regulation that Congress did not enact and the public does not expect" (Sacks 2012).

### Current Conservative Views of the Mandate

Other conservative commentators also support the dissenters' opinion that Congress overstepped its powers by enacting the Affordable Care Act. Rush Limbaugh, a conservative political talk show host even went as far as to threaten he would move to Costa Rica if the health care legislation was passed in 2010 (Shapiro 2012). Ironically, Costa Rica has universal health care and it is has been two years since the act has passed and he is still in America. Nonetheless, Limbaugh described the Supreme Court ruling as "the biggest tax increase in the history of the world" and that Americans were now "governed by a monstrous assault on [their] personal liberty and freedom" (Shapiro 2012).

Conservative economist John Cogan, dean of Columbia's Business School Glenn Hubbard, and Professor of Economics, Law, and Policy at Stanford Daniel Kessler wrote an op-ed piece in the *Wall Street Journal* just days after the 2010 Supreme Court decision. The article warned that the Affordable Care Act puts America's strengths such as the ability to produce innovative medical technologies, surgical procedures and pharmaceuticals at risk (Cogan et al. 2010). The commentators also attack the individual mandate stating that the provision only exacerbates the central problem of our health care system, which

they believe to be “high costs without corresponding value” (Cogan et al. 2010). The authors claim the argument made by supporters of the mandate that failure to purchase conventional health insurance causes harm to the uninsured person and to others is flawed (Cogan et al. 2010). They rely their opinion on peer-reviewed studies from the National Health Insurance Experiment, which found that there is little or no causal relationship between health insurance and a person's health outcomes (Cogan et al. 2010). The conservative commentators conclude that the “problems with the U.S. health-care system are mainly the result of a handful of government policies that have prevented market forces from reducing costs and making services more widely available” (Cogan et al. 2010).

### Conservative Ideology

These arguments made by conservative commentators reveal the traditional conservative ideology encompassed by the Republican Party. The US conservative Republican Party has traditionally had very strict views of the role of the federal government in individual lives. They believe that the proper function of government is to provide security for defense and protect the freedom of the individual (*NewsBasic*). When it comes to the individual, citizens are responsible for themselves and their family and therefore have no obligation to help a stranger involuntarily (*NewsBasic*). For this reason, conservatives tend to be hesitant about social programs and their redistributive nature, in fear that these programs will lead to a society that is dependent on the government. Entitlement programs have

exploded over the last half-century and conservatives argue that these programs invert the priorities, structure and functions of federal administration (Eberstadt 2012). The concept of “ownership society” under the Bush administration in the 1990s perhaps best encompasses conservative ideology. In an “ownership society,” public programs are transferred to individual private ownership, specifically Social Security and health insurance (Bodenheimer 2005, 1428). For conservatives, the ownership society “exalts individual freedom and responsibility and eschews public, population-oriented approaches” (Bodenheimer 2005, 1428).

When it comes to the US health care system, conservatives emphasize “the values of being able to take care of oneself and others, preventing irresponsible free riding, and alleviating the inefficiency, waste, and other weaknesses that limit business and entrepreneurial activity” (Menzel and Light 2006, 37). In addition to these values, conservatives traditionally oppose compulsory, government-mandated insurance, which authors Menzel and Light believe can be attributed to a general opposition towards effective universal access (Menzel and Light 2006, 37). For conservatives, the individual mandate is “an unprecedented intrusion by the federal government on individual liberty” and turns individuals into “ward[s] of the state, unable to exercise individual choices” (Parmet 2011, 401). They believe that through the mandate Congress is regulating inactivity and therefore goes beyond their scope of power under article I of the Constitution (Parmet 2011, 401). For conservatives, a government with too much power is something akin to socialism. Conservatives do, however, recognize that there is a fundamental problem with the current system in which health care costs continue to rise at an unsustainable rate

with limited access to care, but unlike the liberals who believe government regulation is needed to contain costs, they believe patient cost sharing and free market competition can solve the problem with little or no government intervention. (Bodenheimer 2005, 1434).

Historically conservative President Dwight Eisenhower was known for weighing the features of domestic policy proposals against what he considered to be the proper “duty of government” (Blumenthal and Morone 2009, 123). When it came to making a final decision regarding Secretary Flemming’s Medicare program proposal, Eisenhower inquired “How much can be allocated to the Federal Government to do?” (Blumenthal and Morone 2009, 123). When Ronald Reagan took office in 1981 he pushed for a program of tax cuts, budget cuts, and deregulation (Blumenthal and Morone 2009, 299). The Republican President’s budget included a \$750 billion tax cut, more than \$35 billion in domestic program reductions, removal of 400,000 people from the food stamps program and potential Social Security cuts (Blumenthal and Morone 2009, 299). David Stockman, Reagan’s director of the Office of Management and Budget, justified the attack on Social Security because the program had become “closet socialism,” and “the only way to end Big Government was to confront its ‘original sin’” (Blumenthal and Morone 2009, 300). The U.S.’s most recent republican President, George Bush was remembered for his “compassionate conservatism,” which was illustrated best in the passing of the Medical Modernization Act (MMA) of 2003. The MMA combined conservative ideals of competing private insurance plans with the existing social welfare Medicare program to offer drug benefits to all enrollees (Blumenthal and

Morone 2009, 394). Republican presidents, Eisenhower, Reagan, and George W. Bush, all shared the same conservative goal of keeping government small.

## **Part II**

### **The History of the Individual Mandate (1989-2009)**

The next section of my paper will examine the history of the individual mandate, which will reveal that it was originally a Conservative idea with bipartisan support. Conservative Republican's must remember that the mandate was conceived by members of their own party. In the mid to late 1980s, Democratic policy makers began to promote a single-payer system and the employer mandate in their health care reform plans (Klein 2012, 30). Republicans were concerned about the specter of single-payer insurance in the Democratic plan, so President George H.W Bush and his administration began developing their own health care proposal. In 1991, economists Mark Pauly and Paul Feldstein, published a plan in *Health Affairs* Journal that featured the individual mandate (Klein 2011). Pauly and Feldstein compared mandatory health insurance to requirements to pay for Social Security, auto insurance, or workers' compensation (Volsky 2011). When asked if the constitutionality of the provision was in question in the early 1990s, Pauly responded, "I don't remember that being raised at all. The way it was viewed by the Congressional Budget Office in 1994 was, effectively, as a tax. You either paid the tax and got insurance that way or went and got it another way" (Klein 2011). This reveals that, in the early 1990s, not only were the Republicans in support of the

individual mandate provision, but that there was no question about its constitutionality.

Around the time the *Health Affairs* article was published, the conservative Heritage Foundation was also considering the idea of the individual mandate. The Heritage Foundation proposed a plan by Stuart Butler entitled “Assuring Affordable Health Care for All Americans.” In the plan Butler noted, “neither the federal government nor any state requires all households to protect themselves from the potentially catastrophic cost of a serious accident or illness. Under the Heritage plan, there would be such a requirement.” (Klein 2012, 30). This plan and its notion that individuals should “protect themselves” invoked the idea of personal responsibility in health care. When an individual becomes ill or suffers from a serious accident it is his/her responsibility to pay for that care, not the taxpayers and those who do have health insurance. The individual mandate that requires all citizens to buy insurance assures that one is taking responsibility for the costs of inevitable medical care in one’s future, not pawning it off onto others. They are your medical bills, not anyone else’s. Just as if you receive a credit card bill, you would not expect anyone else to pay for those costs. One who does not have health insurance is “gambling with your financial future, the financial future of your family, and the financial future of our country” (Ray 2009). The individual mandate assures that an individual who shows up in an emergency room because of some unexpected health crisis will most likely have health insurance (Ray 2009). **This is about being personally responsible for ones own future, an idea conservatives traditionally agree with.**

In the 1992 political campaign, achieving universal health care reform was the number one issue on William Clinton's political agenda. His proposal for universal health care coverage would be made possible through managed competition and the employer mandate (Avik 2012). The Republican Party looked for a more free market approach to the healthcare goals of the Clinton administration and began to examine the Heritage Foundation's individual mandate idea as an alternative to the employer mandate.

On November 23, 1993, the Republicans introduced their own health reform bill entitled the Health Equity and Access Reform Today Act, and at its center was the individual health insurance mandate (Klein 2012, 30). The bill was sponsored by John Chafee, a Republican from Rhode Island, and cosponsored by two Democrats and eighteen Republicans (*ProCon*). Embracing the mandate, the Health Equity and Access Reform Act required "each citizen or lawful permanent resident to be covered under a qualified health plan or equivalent health care program by January 1, 2005" with an individual exceptions for religious and spiritual reasons (*ProCon*).

On Sept. 7, 1993 Chafee stated that "I and the majority of Republicans... strongly believe the route to go is an individual mandate" (*Daily Kos* 2012). The National Federation of Independent Business, a conservative small-business group, even praised the bill "for its emphasis on individual responsibility" (Volsky 2011). Among the long list of Republican politicians who favored the individual mandate in the 1990s, but opposed the mandate in the ACA are Bob Dole, Newt Gingrich, George H.W Bush, Alan Simpson, and Mitt Romney (Avik 2012). On October 3<sup>rd</sup>, 1993, in NBC's *Meet the Press* interview Gingrich stated "I am for people, individuals —

exactly like automobile insurance — individuals having health insurance and being required to have health insurance,” but as recently as May 2011 he reversed his opinion regarding the mandate, referring to it as “unconstitutional” on his campaign trail for President (Below 2011). Senator Bob Dole also reversed his support for the mandate sometime between 1994 and 2012 because in an interview with ABC news this past year, he expressed that Romney was going to have to “answer for” the mandate in his Massachusetts health care plan (Ohlheiser 2012). These Republican politicians’ endorsed the mandate in the 1990s because they believed it was a good market-based approach to universal health care in the US, not something that was an unconstitutional assault on liberty (The Week Editorial Staff 2012).

The individual mandate appeared several more times health reform legislation between 1993 and 2009. In 1994, Senator Don Nickles and Representative Cliff Stearns, both Republicans, introduced ‘The Consumer Choice Health Security Act’ which requires “all Americans to purchase a standard package of health insurance benefits” (Miller, 1994). Tom Miller, senior policy analyst for the Competitive Enterprise Institute and director of its Economic Policy and Regulatory Reform program described the legislation in 1994 as undermining “the traditional principles of personal liberty and individual responsibility that provide essential bulwarks against all intrusive governmental control of health care” (Miller 1994). Later in my paper, I will disprove these ideas and show how the mandate actually promotes and upholds personal liberty and individual responsibility, two values championed by the conservative party.



The next time the mandate appeared in legislation was in the 'Healthy Americans Act' of 2007. Democratic Senator Ron Wyden of Oregon decided to look back in history to come up with a health care reform proposal that would satisfy both Democrats and Republicans. Focusing in on the Chafee bill from 1993, Wyden built his proposal around the individual mandate and was joined by Utah Republican Bob Bennett (Klein 2012, 30). The Wyden-Bennett plan was cosponsored by eleven Republicans and nine Democrats, "receiving more bipartisan support than any universal health-care proposal in the history of the Senate" (Klein 2012, 31). Wyden even remembers speaking with over eighty members of the Senate between 2004 and 2008 and very few objected to the individual mandate provision of the plan (Klein 2012, 30). In an interview on "Meet the Press," Mitt Romney said the Wyden-Bennett was a plan "that a number of Republicans think is a very good health-care plan –one that we support" (Klein 2012, 31). By 2009, however, in a vote for the bill, every single Senate Republican voted to call the mandate "unconstitutional" (Klein 2012, 30). This opposition towards the mandate by the Republican Senators was carried over into the Patient Protection and Affordable Care Act (PPACA) of 2009, which required individuals to maintain minimal essential health care coverage beginning in 2014. The act also imposed a penalty for individuals who failed to maintain such coverage by January 2014 (*ProCon*). The PPACA was written by Democratic Senators and not one Republican Senator voted for the bill in the December 2009 vote (*ProCon*). The frequency that the individual mandate appeared in proposed health reform plans from 1989- 2010 reveals that it was popular provision among conservative policy makers and

politicians, one that allowed for a more Republican way of reforming the insurance market (Below 2011). The mandate would not have kept coming back if this were not true. The only explanation for the Republican's sudden change of heart is that it was "driven by the political need to unravel the Democrats' crowning social achievement, not concerns about policy, constitutionality, or freedom" (Volsky 2011).

### Why The Opposition From The Republican Party?

This examination of the history of the mandate reveals that it was originally a Republican idea, but support for the mandate has evaporated in the heat of the political spotlight of the 2009 Patient Protection and Affordability Act (Oberlander 2011, 1087). GOP Senator Grassley agrees with this notion; in June of 2009 in an interview with Fox News he stated: "once the Obama administration agreed and adopted the "individual mandate" the concept suddenly became tyranny, unconstitutional and part of the "liberal socialist agenda" (*Daily Kos* 2012). Senator Wyden sums up Washington D.C's relationship with the individual mandate as "truly schizophrenic" (Klein 2012, 31). Analysts and researchers have attempted to come up with logical reasoning for the schizophrenic-like personality towards the mandate. Research has led me to conclude that at the heart of the Republicans opposition to the provision is the fact that it is apart of ObamaCare, which is the Democratic healthcare reform initiative. Professor of psychology as New York University's business school, Johnathan Haidt, explores the concept of human beings and political group loyalties. Haidt writes in his book, *The Righteous Mind*, "our

minds contain a variety of mental mechanisms that make us adept at promoting our group's interests, in competition with other groups" (Klein 2012, 31). Persons will form their assessment of information towards some interest or goal, like winning an election or argument, which may be completely independent of accuracy (Klein 2012, 31). Thinking as part of a group is, therefore, searching for supporting evidence of your "team's" argument. In light of this research, it is safe to say that Republicans have become excellent team players throughout the decades when it comes to supporting and promoting conservative policies. Since 2009, Republicans have used political rhetoric as ammunition, which mostly relies on their conservative ideology, to fight the battle against the individual mandate. In the next section of my paper I will examine how their conservative reasoning falls short and remind them of their prior supportive relationship with the concept of the individual mandate.

### **Part III**

#### **The Individual Mandate Supports Conservative Values**

Republicans have it wrong, the individual mandate provision of the Affordable Care Act supports conservative ideas and principles. A careful reading of the proposal mandate shows that the provision is aligned with many of their core values, something that they recognized only 10 years ago. I hope to reeducate the party about the nature of mandates and reveal how they have been used in past U.S.

policies and advise both Democratic and Republican parties to reestablish the bipartisan relationships from which the individual mandate was first conceived.

“The hardest part isn’t having principles. The hardest part is remembering them” (Joyner 2012). It is my belief that in light of the passing of the Democratic health care reform plan, the Republican Party has chosen to forget its basic conservative ideals so that it can seek short-term political gains. Traditionally, conservatives have emphasized the irresponsibility of free riding, which is based on larger conservative values of individual responsibility (Menzel and Light 2006, 39). A free rider is a person who benefits from something without paying for it, resulting in someone else shouldering the cost (Shwarz 2010). In health care terms, someone who “free-rides” will remain uninsured and receive access to medical care only when necessary, therefore leaving others to indirectly pay for his or her medical bills.

Unfortunately, the problem of freeriding has been built into the voluntary U.S. health insurance system. The Emergency Medical Treatment and Labor Act (EMTALA) requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay (EMTALA 1986). Therefore, providers are legally required to deliver medical services to those who need it regardless of whether they have coverage for that care and if the law can mandate providers, why not the patients? Although the EMTALA law is humanitarian and necessary, it has led to significant cost shifting in the U.S. health care system. In an article in the Washington Post, U.S. Attorney General Eric Holder and Health and Human Services Secretary Kathleen Sebelius wrote “Every insured

family pays an average of \$1,000 more a year in premiums to cover the care of those who have no insurance” (Holder and Sebelius 2010). Menzel and Light suggest that free riding in the system can lead to a vicious circle in which those who go without insurance result in higher premiums for the less healthy who are insured. The latter group has to pay for the cost-shifted expenses of the uninsured and underinsured. These higher premiums costs can lead to more people dropping their insurance, thus causing even more of a rise in premiums for those who remain insured (Menzel and Light 2006, 39).

The individual mandate will prevent free riding in the system, thus promoting individual responsibility, two things that Republicans should admire. By requiring that every individual carry minimum health insurance, unfair costs will no longer be shifted onto the insured because individuals will be required to take responsibility for the costs of their own health care. Republicans, in line with their values, should think of the mandate as a part of an “ordered liberty, in which the state enhances peoples’ ability to take care of themselves and immediate others” (Menzel and Light 2006, 40). Requiring citizens to acquire health insurance coverage can also have significant effects on an individual’s health outcomes, which are important to one’s individual liberty. Studies show that there are causal relationships between health insurance and health care utilization and that health outcomes consistently show health insurance increases utilization and improves health (Freeman, et al. 2008, 1023). Threats to one’s wellbeing can quickly compromise one’s individual freedom, opportunity, and responsibility, something that conservatives vehemently oppose (Menzel and Light 2006, 38). Paul Starr

agrees with the notion that sickness can make us more dependent on others in his book *Remedy and Reaction*. He explains that “Illness cannot be avoided, but social arrangements can increase our freedom by providing access to care and preventing illness from destroying our means of independence” (Starr 2011, 247). The individual mandate, therefore, can be viewed as a “basic protection” that offers every citizen the opportunity to improve his or her life (Menzel and Light 2006, 39).

### Selling the Individual Mandate

In order to sell, or rather “re-sell,” the idea of the individual mandate, policy makers need to embrace and invoke the rhetoric of personal responsibility. Reformers in favor of the provision have used personal responsibility as an alternative term to “individual mandate.” This was the case in the Massachusetts health care reform in 2006 led by then Republican Governor Mitt Romney. Romney recognized the practical sense the individual mandate made in the reform plan. However, he and his advisors worried over the “politics” of the provision. Romney and his advisors knew that, as a rule, Republicans did not like mandates; therefore they labeled it “personal responsibility,” and promoted it based on the principle “that people have responsibility for their own care, and they don’t look to government to take care of them when they can afford to take care of themselves” (Bebinger 2012, 2110). Although Romney, like most Republicans, eventually switched his position on the individual mandate in the 2012 Presidential campaign, the mandate remains the law in the state of Massachusetts. In fact, Martha Bebinger

writes that once Massachusetts's residents tried living with the mandate "they realized it wasn't a big deal" (Bebinger 2012, 2111).

Menzel and Light wrote that U.S conservatives have recently overlooked "the basic role that health care plays in self-responsibility and individual responsibility" (Menzel and Light 2006, 38). Conservatives and opponents of the mandate have attacked the ACA for moving "a step away from personal responsibility and a step towards socialized medicine" (Frankel 2012). However, as Jeffrey Frankel discusses in his provocative article, *'Obamacare champions personal responsibility. The states that hate it don't,'* there seems to be a disconnect between rhetoric and reality in the discussion of personal responsibility in health care (Frankel 2012). Frankel's main argument is that the conservative states that oppose the ACA because of its lack of personal responsibility are the states where populations statistically exhibit the least individual responsibility when it comes to their own personal health behaviors, such as drunk driving and firearm assaults (Frankel 2012). This shows that conservative views of personal responsibility have been skewed in the light of the passing of the ACA. When the Republicans made their position against the individual mandate and the entire Affordable Care Act they lost sight of their own conservative roots and logical reasoning.

### The Nature of Mandates

The way the Republicans have attacked the individual mandate would make one believe that the mandate is new to U.S. policy. However, as Wendy Parmet points out in *The Individual Mandate: Implications for Public Health Law*, laws

mandating action are far more common than the debate over PPACA's mandate suggests (Parmett 2011, 404). One of the main arguments presented by critics of the mandate is that the government is overstepping its boundaries by compelling activity, that is the activity of buying health insurance even if individuals do not wish to do so. Many past and present public health laws, however, do just that. They regulate in the absence of any voluntary action (Parmet 2011, 405). Take for instance the vaccine mandate, which dates back to the early 1900s when the Massachusetts Board of Health required vaccination against smallpox during a smallpox epidemic (Mariner et al. 2005, 581). This early mandate from the city's board came with a statutory penalty for refusing to be vaccinated in the form of a \$5 fine (Mariner et al. 2005, 582). The Supreme Court Case *Jacobson v Massachusetts* ultimately determined that the state had the right to issue this mandate requiring "healthy adults to accept an effective vaccination when an existing epidemic endangers a community's population" (Mariner et al. 2005, 583). More recently, public health officials have advocated for influenza mandates for health care professionals in order to increase vaccination rates among health care workers (Parmet 2011, 409).

Another example of mandates that compel an action are motorcycle helmet laws. New York was the first state to require motorcycle riders to wear a helmet in 1966 (Parmet 2011, 409). This mandate was enacted on the basis that traumatic brain injuries that may come from motorcycle crashes shift costs onto the rest of society. Vaccination mandates, motorcycle helmet mandates, and the individual mandate provision of the ACA have a major theme in common; they seek to alter



behavior of individuals who are usually healthy and face relatively low risks (Parmet 2006, 408). What Republicans need to realize is that mandates have been used to promote and protect public health for over a decade and that the individual mandate in the Affordable Care Act is just continuing this concept.

### Bringing Back Bipartisanship

As discussed earlier in my paper, throughout the past two decades the individual mandate has been introduced several times in bipartisan legislation. The most recent example (other than the Affordable Care Act) was the Massachusetts health reform plan, which sought to cover the state's roughly half-million uninsured residents (Bebinger 2012, 2105). In 2006, a Republican Governor and a Democratic legislature came together and created a bipartisan consensus, which in turn led to widespread support for the reform effort in Massachusetts. With a legislature that was 87% Democratic, Romney said in the first Presidential debate on October 4 that "I figured out from day one I had to get along, and I had to work across the aisle to get anything done" (Wines 2012). Although initially, Romney and the Republicans disagreed with the Democrats on how to describe the individual mandate, they both agreed that it was necessary if Massachusetts wanted to move toward universal health coverage (Bebinger 2012, 2109).

Bipartisanship tends to be a political goal for many politicians and Presidents, but it is a promise that is not always followed through. One of President Barrack Obama's favorite campaign promises had to do with fostering bipartisanship in the White House. For example, at a campaign fundraiser in Miami

in 2011, Obama stated, "If you're looking for just a bunch of partisan rhetoric, I'm probably not your guy" (Johnson, 2012) and in the light of the impending fiscal cliff Obama declared, "I'm open to compromise. I'm open to new ideas" (Feldmann, 2012).

Similarly, Speaker of the House of Representatives John Boehner applauded Republicans and their role in creating past bipartisan legislation: "We've worked with Democrats. Look through all these jobs bills in the Senate, 30 of them, sitting over there, part of our plan for American job creation. All of them passed with bipartisan support" (Healey 2012). This is a reference to legislation that has addressed everything from environment to taxes and federal spending (Healey 2012).

Several of America's past President's who called for bipartisanship followed through with this promise. William Clinton's presidency rallied bipartisan spirits in the early 1990s to balance the budget, expand the economy, and overhaul welfare (Baker 2012). President George W. Bush demonstrated bipartisanship in the education reform in 2001 stating, "It is a great symbol of what is possible in Washington when good people come together to do what's right," as he signed 'The No Child Left Behind Act' into law at a local high school in Hamilton, Ohio (Brownstein et al. 2001). Finally, Ronald Reagan's tax cuts of 1981 were also passed in a bipartisan atmosphere. After the tax cuts passed and the U.S economy began to boom again, Reagan commented, "the fact that Democrats and Republicans could work together as they have, proving the strength of our system, has created an optimism in our land" (Vanatter 2012).

The reason for the lack of public support for the mandate is because one of the two major political parties in the United States has been publicly bashing it from the moment it showed up in the proposed legislation. If only half of our policy makers believe it is a positive and necessary provision for health care reform, how are we going to get a consensus from the rest of the country? The opportunity to create bipartisan agreements is in front of us, but someone must take the first step across the aisle.

We are all familiar with the popular saying, “two heads are better than one.” What this saying fails to mention, however, is how difficult it is in Washington D.C. to bring these two heads together. Compromise between the Democratic and Republican parties is not going to be easy especially with the current polarized political climate. According to a national poll conducted by CNN.com in 2010, “Two-thirds of Americans think that the Republicans in Congress are not doing enough to cooperate with President Obama” (CNN.com). This is the time to turn the polls around. Republicans should be the ones to reach across the aisle over the issue of the individual mandate and work with, not against, the Democrats in promoting the positive aspects of the mandate. If Republicans “make the first move,” so to speak, they will establish the legacy of creating a bipartisan environment for the ACA. This is their opportunity to follow through with their past promises of bipartisanship. Establishing a consensus around the individual mandate should not be very difficult because the mandate is aligned with traditional conservative values and it originated within its own political party. To channel one of the country’s most iconic and influential Presidents: “Let us not seek the Republican answer or the

Democratic answer, but the right answer" (JFK 1952).

In conclusion, the highly controversial individual mandate provision of the Affordable Care Act has consumed enough of the Republican Party's attention throughout the past few years. Conservatives need to look to the past and remember that the individual mandate was originally a Republican idea, one that is aligned with many of their traditional values. The Republican's opposition towards the mandate stems from the fact that the only way to blunt the Democrats health care reform plan was to pick at aspects of the plan and attack in the public light. The most vulnerable aspect of the plan was the individual mandate because it called into question the concept of freedom of choice. The fact is the individual mandate was pronounced constitutional by the Supreme Court and isn't going anywhere. "The substantive case for the mandate is still strong, even if its political and legal foundations are shaken" Oberlander 2012, 1087). Republicans should stop fighting the provision and embrace it as a conservative idea, something that they came up with in the first place. If Republicans can show their agreement with the Democrats on the mandate, this may open up opportunity for future bipartisan legislature.

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