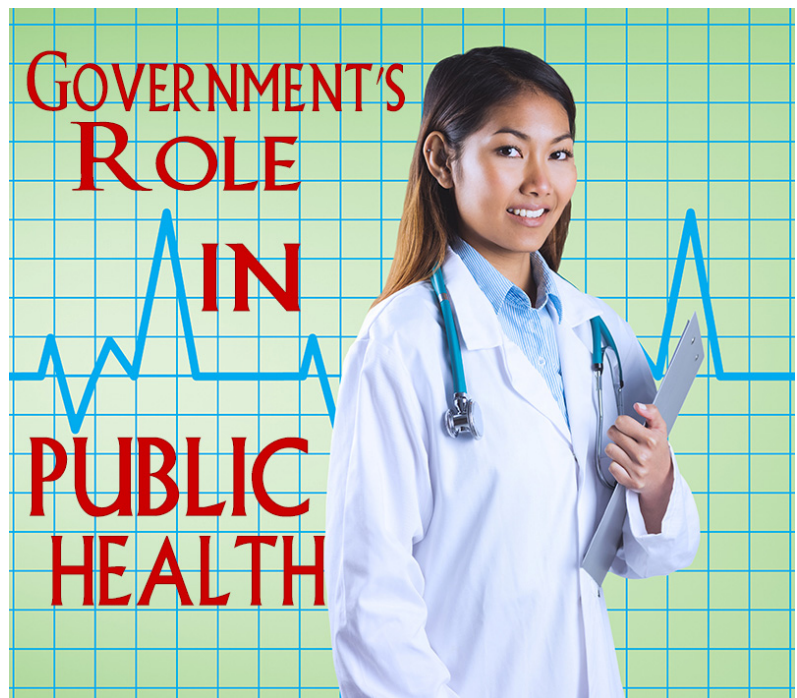


# FIGHTING FOR THE UNINSURED: GOVERNMENT'S ROLE IN PUBLIC HEALTH



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# FIGHTING FOR THE UNINSURED: GOVERNMENT'S ROLE IN PUBLIC HEALTH

BY PETER LYN RENÉ

The Commerce Clause states that Congress has power to specify rules to govern the manner by which people may exchange or trade goods from one state to another, to remove obstructions to domestic trade erected by states, and to both regulate and restrict the flow of goods to and from other nations (and the Indian tribes) for the purpose of promoting the domestic economy and foreign trade (Barnett, 2001). Cases decided specifically based on the Commerce Clause are rare, few and far between. Before its being the chief component of Chief Justice John Roberts decision to uphold the Affordable Care Act (ACA) as constitutional, it was in 1995's *United States v Lopez* that the clause came up in any legal decision by the court. In *National Federation of Independent Business v. Sebelius*, the Supreme Court decided, anchored by the Commerce Clause, that the ACA was constitutional because the mandate was a tax. Since it was in Congress's powers to levy taxes, the ACA was, in fact, constitutional. Under the mandate, if an individual does not buy health insurance, the only consequence is that they must make an additional payment to the IRS when they pay their taxes. How did a benign public policy aimed at providing health care to millions of uninsured Americans end up in the Supreme Court and ultimately rescued by the obscure Commerce Clause?

On January 25, 2007, presidential candidate Senator Barack Obama said, "The time had come for universal health care." In his speech addressing the Families USA Conference, Washington, D.C., the

Senator said: “In the 2008 campaign, affordable, universal health care for every single American must not be a question of whether it must be a question of how” (Obama, 2007). Obama noted the high costs of insurance in our country and revealed that nearly 11 million Americans with insurance spent about a quarter of the earnings on health care in 2006; small businesses, crippled by the high cost of insurance could no longer afford to provide health care to their employees.

In 2006, the Census Bureau indicated that the uninsured Americans stood at a record 46.6 million in 2005, with 15.9 percent of Americans lacking health coverage. In 2006, the Census Bureau indicated that the uninsured Americans stood at a record 46.6 million in 2005, with 15.9 percent of Americans lacking health coverage (CBPP, 2006). On March 23, 2010, President Obama signed the Affordable Care Act (ACA) which aimed to make health care more affordable for individuals and business alike. Between 2010 and 2016, the number of uninsured shrank to 29 million, a stark contrast to the 2005 figures. Therefore, the ACA had achieved its objective: the uninsured rate in 2015 was 9.1 percent with 28.8 percent of Americans lacking health care.

However, the ACA is not without its issues. Today, tens of millions of Americans remain without health coverage and the insurance policies sold on the exchange marketplaces are still unaffordable to too many people, even with subsidies (Young, 2016). The Republican-led Congress had been unwilling to work with President Obama’s administration to fix and plug the holes in the ACA, voting instead to repeatedly to repeal “Obamacare.”

### **Why the mandate from the Obama administration?**

The ACA doesn’t let the IRS come after you if you don’t pay the penalty. Failing to pay isn’t a crime. The government can’t garnish your wages or put liens on your property to collect the money...the only way the IRS can get the dough against your will is to deduct it from your tax refund (Young, 2014). So why this mandate and what’s its objective?

The individual mandate is a requirement that all individuals who can afford health care insurance purchase some minimally comprehensive policy (Kliff, Klien, 2012). Another reason for the mandate was to make or compel everyone to participate in the health care exchange.

By a 5-4 vote, the court held the law's mandate that required Americans to carry health insurance or pay a penalty was completely under Congress's constitutional authority to levy taxes, which is what the mandate is. The opinion written by Chief Justice John Roberts upheld the Affordable Care Act's mandate under the Commerce Clause granting Congress the authority to tax. The mandate 'looks like a tax in many respects,' Roberts wrote...The Constitution allows Congress to tax and spend, giving the federal government considerable influence even in areas where it cannot directly regulate (Levs, 2012).

The Republican plan is the immediate repeal of the health law, then a delay (Pear, et. al, 2016). This emerging "repeal and delay" strategy, which Speaker Paul D. Ryan discussed this week with Vice president-elect Mike Pence, underscores a growing recognition that replacing the health care law will be technically complicated and could be politically explosive. The fight for the uninsured and the government's role in public health is about to undergo drastic changes with a newly elected Republican president set to take the White House on January 20, 2017, with a Republican Congress in tow. I suspect the Supreme Court has not seen the last of the Affordable Care Act.

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**Peter Lyn René** has a Bachelors in Political Science and a Masters in Law and Public Policy, and is currently a candidate for a Doctor of Philosophy in Law and Public Policy degree. He has an extensive background in Non-Profit Administration and Management, and Information Technology Project Management. He is a Consultant in Houston, Texas and is a Mediator having completed courses in Basic Mediation and Advanced Family and Divorce Mediation in 2010, and is certified to mediate cases in the Justice of the Peace Courts, the County Courts, and the State District Courts as well. He volunteers his time mediating cases for the Harris County Dispute Resolution Center and has successfully mediated dozens of cases. He is the Chairman, and Chief Executive Officer of The Singing From The Soul Foundation, The Caribbean American Heritage Foundation of Texas and The Saint Lucia Foundation of Texas, all of which are 501(c)(3) non-profit organizations. He serves on the Executive Committee of the United Nations Council of Organizations. He has published articles in PA Times.