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The Supreme Court's Decision on the Patient Protection and Affordable Care Act

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On June 28, 2012 in a 5-4 opinion by Chief Justice Roberts, the United States Supreme Court upheld the Patient Protection and Affordable Care Act (PPACA), including its controversial individual mandate.[i] In an unanticipated result, Justice Roberts, not Justice Kennedy, was the swing vote[ii] and the mandate was upheld under Congress's power to levy taxes and not under the Commerce Clause.[iii] Reviewing each of the issues before the Court, this white paper analyzes the decision's impact on the constitutional limits of federal power and offers insights on the future role the opinion will serve in shaping public policy and American jurisprudence.

I. Applicability of the Anti-Injunction Act

Before the Court could consider the substance of the PPACA, the Court first considered the relevance of the Anti-Injunction Act to the Court's review. The Anti-Injunction Act prohibits rulings about the validity of a tax before it is imposed.[iv] Generally, someone contesting a tax must already be subject to the tax and have paid it or be in the process of collection proceedings before the challenge is permitted.[v] The purpose of this rule is to keep government functions from being adversely affected by injunctions that block the collection of taxes while the validity of such taxes is being considered. Neither the Federal Government nor the challengers took the position that the Anti-Injunction Act prohibited the Court's review of the validity of the PPACA even though the tax/penalty provisions do not take effect until 2014.[vi] Because of this, the Court appointed an amicus to argue the applicability of the Anti-Injunction Act.[vii] In its decision, the Court held that the Anti-Injunction Act did not prohibit review of the PPACA.[viii]

The decision regarding the Anti-Injunction Act required interesting legal reasoning by Justice Roberts. For the purposes of the Anti-Injunction Act decision, Roberts essentially accepted Congress's description of the payment to be made for not abiding by the individual mandate as a "penalty."[ix] However, later in his opinion upholding the individual mandate under Congress's taxation power, Roberts went to great lengths supporting his conclusion that the very same payment was, in fact, a tax.[x] In this regard, Justice Roberts joined the Obama Administration which, at times, vehemently argued that the payment was a penalty and not a tax[xi] (to comply with President Obama's promise not to impose any new taxes on the middle class)[xii] and at other times, vehemently argued that the payment was a tax and not a penalty (to argue for the constitutionality of the mandate).[xiii]

II. The Individual Mandate Under the Commerce Clause

Justice Roberts was joined by Justices Scalia, Kennedy, Thomas, and Alito in holding that neither the Commerce Clause nor its "necessary and proper" corollary provides a constitutional basis for requiring individual American citizens to purchase health insurance.[xiv] This refusal by five Justices to allow Congress to regulate commercial *inactivity* is one of the most significant outcomes of the decision. Rather than passing on consideration of the Commerce Clause question, five Justices clearly held that the individual mandate as passed by Congress was an unconstitutional exercise under the Commerce Clause. Federal power and its intrusion into

the everyday lives of citizens have been expanding since the New Deal era of the 1930s. In fact, a case from that era, *Wickard v. Filburn*, is often cited as authority for ever-expanding federal power under the Commerce Clause. That case involved the constitutionality of a New Deal era federal statute intended to support the price of wheat by limiting its supply.[xv] The Supreme Court in *Wickard* held that the Commerce Clause allowed Congress to prohibit a farmer from growing wheat in excess of his allotment, even when that excess wheat was intended for consumption by the farmer's family and livestock and would never go into interstate commerce.[xvi] The Supreme Court in *Wickard* based its decision on two doctrines that it adopted and/or expanded, the "substantial effects test" and the "aggregation" doctrine. The "substantial effects test" held that

> . . . even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this irrespective of whether such effect is what might at some earlier time have been defined as direct or indirect.[xvii]

The aggregation doctrine allows Congress to take into consideration the "aggregation" of many individual acts.[xviii]

Liberty Legal Foundation, in an amicus curiae brief to the Supreme Court on the PPACA, asked the Court to overrule *Wickard* and thus go back to pre-*Wickard* Commerce Clause jurisprudence.[xix] Liberty Legal argued that the Supreme Court's Commerce Clause precedents since 1942 have left no meaningful limitation on Congressional authority to regulate non-criminal matters. The Liberty Legal amicus brief stated

> The faulty *Wickard* precedent has introduced a systemic and potentially fatal disease to our system of government. The brilliant structure of our government, balancing power between the three branches as well as between the States, Federal Government, and citizens, simply cannot survive when proper limitations on that power are not maintained. Since *Wickard* Congress has been genuinely *unable* to control its own assertion of power.[xx]

Justice Scalia in his dissent, joined by Justices Kennedy, Thomas, and Alito (agreeing with Justice Roberts that the Commerce Clause does not allow the individual mandate) set out the issue as follows

> The striking case of *Wickard v. Filburn*, 317 U. S. 111 (1942), which held that the economic activity of growing wheat, even for one's own consumption, affected commerce sufficiently that it could be regulated, always has been regarded as the *ne plus ultra* of expansive Commerce Clause jurisprudence. To go beyond that and to say the *failure* to grow wheat (which is *not* an economic activity or any activity at all) nonetheless affects commerce and therefore can be federally regulated is to make mere breathing in and out the basis for federal prescription and to extend federal power to virtually all human activity.[xxi]

Before beginning his Commerce Clause analysis, Chief Justice Roberts did acknowledge some general constitutional principles. First, he acknowledged that "The Federal Government 'is acknowledged by all to be one of enumerated powers.' . . . That is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government's powers."[xxii] Roberts also observes, "The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions."[xxiii] Chief Justice Roberts continued "This case concerns two powers that the Constitution does grant the Federal Government, but which must be read carefully to avoid creating a general federal authority akin to the police power."[xxiv]

Beginning his Commerce Clause analysis, Chief Justice Roberts states

> The power over activities that substantially affect interstate commerce can be expansive. That power has been held to authorize federal regulation of such seemingly local matters as a farmer's decision to grow wheat for himself and his livestock, and a loan shark's extortionate collections from a neighborhood butcher shop.[xxv]

Justice Roberts then points out that the Federal Government's enumerated powers are broader still because of the Necessary and Proper clause.[xxvi]

In his opinion holding that the Commerce Clause did not permit the individual mandate, Chief Justice Roberts did not accept the invitation to overturn *Wickard v. Filburn*. He declined to place specific limits on the substantial effects and aggregation doctrines. Instead, he accepted the proposition that even under those doctrines commercial inactivity does not equal commercial activity that may be permissibly regulated. Justice Roberts points out that almost every case that has been decided under the Commerce Clause has specifically used the term "commercial activity" and has discussed the regulation of existing and ongoing activity.[xxvii] Justice Roberts also notes the fact that the PPACA's individual mandate is a case of first impression before the Court. The fact that Congress has not previously sought to force citizens into activity in order to regulate it raises notable concerns.[xxviii] At the same time, Roberts notes that the fact that Congress has not tried such in the past does not, in and of itself, mean that Congress lacked constitutional authority to do so.[xxix]

With respect to the novelty of the PPACA mandate, Roberts stated

> But Congress has never attempted to rely on that power to compel individuals not engaged in commerce to purchase an unwanted product. Legislative novelty is not necessarily fatal; there is a first time for everything. Sometimes "the most telling indication of [a] severe constitutional problem . . . is the lack of historical precedent" for Congress's action.[xxx]

Getting to the heart of the issue, Chief Justice Roberts notes

> The power to *regulate* commerce presupposes the existence of commercial activity to be regulated. If the power to "regulate" something included the power to create it, many of the provisions in the Constitution would be superfluous. For example, the Constitution gives Congress the power to "coin Money" in addition to the power to "regulate the Value thereof."[xxxi]

Specifically in regard to the individual mandate, Chief Justice Roberts stated

> The individual mandate, however, does not regulate existing commercial activity. It instead, compels individuals to *become* active in commerce by purchasing the product, on the ground that their failure to do so affects interstate commerce. Construing the Commerce Clause to permit Congress to regulate individuals precisely *because* they're doing nothing would open a new and potentially vast domain to Congressional authority.[xxxii]

In analyzing the individual mandate under *Wickard,* Chief Justice Roberts pointed out that if the rationale of the Federal Government had been applied in that case, then instead of merely regulating how much wheat an existing wheat farmer could grow, Congress could actually order the farmer, and others, to purchase wheat.[xxxiii] Justice Roberts stated

> The farmer in *Wickard* was at least actively engaged in the production of wheat, and the government could regulate that activity because of its effect on commerce. The government's theory here would effectively override that limitation by establishing that individuals may be regulated under the Commerce Clause whenever enough of them are not doing something the government would have them do.[xxxiv]

Chief Justice Roberts went on to accept the argument that if the government could force someone to buy wheat, it could also force them to buy vegetables because of the effect that the aggregate of numerous unbalanced diets has on the American healthcare market and costs.[xxxv] In this regard, he said, "That is not the country that the Framers of our Constitution envisioned."[xxxvi] He also stated that giving Congress this power would "fundamentally chang[e] the relationship between the citizen and the Federal Government."[xxxvii] Chief Justice Roberts concluded with a cursory analysis of the Necessary and Proper clause, holding that it does not allow Congress to act in areas that are otherwise unconstitutional.[xxxviii]

III. The Individual Mandate Under the Taxing Clause

As noted above, Chief Justice Roberts, joined by the four liberal-leaning Justices on the Court, upheld the individual mandate under Congress's enumerated power to "lay and collect Taxes."[xxxix] As also noted above, Chief Justice Roberts had already found the payment for failing to abide by the individual mandate to be a penalty, not a tax, for purposes of the Anti-Injunction Act.[xl] In introducing his discussion about the validity of

the mandate under the taxation power, he points out that the government also had to take another divergent position in order to argue validity under the taxing power. He stated

> In making its Commerce Clause argument, the government defended the mandate as a regulation requiring individuals to purchase health insurance. The government does not claim that the taxing power allows Congress to issue such a command. Instead, the government asks us to read the mandate not as ordering individuals to buy insurance, but rather as imposing a tax on those who do not buy that product.[xli]

Roberts goes on to point out, "The text of a statute can sometimes have more than one possible meaning"[xlii] and then pursues a tortured analysis to try to prove that point. He states

> The most straightforward reading of the mandate is that it commands individuals to purchase insurance. After all, it states that individuals "shall" maintain health insurance. . . . Congress thought it could enact such a command under the Commerce Clause, and the government primarily defended the law on that basis.[xliii]

He then goes on to say that it is necessary to determine whether the government's alternative reading of the statute – that it only imposes a tax on those without insurance – is a reasonable one.[xliv]

Roberts next points out all of the similarities that the payment has to a tax,[xlv] despite the fact that the Act itself describes the payment as a penalty and not a tax, and that Roberts had already held the payment to be a penalty.[xlvi] Chief Justice Roberts next discusses the fact that the payment is intended to impact individual conduct. He notes that taxes that seek to influence conduct are nothing new and that indeed "'[e]very tax is in some measure regulatory.'"[xlvii] He then notes that in distinguishing penalties from taxes, the Supreme Court has explained that "'If the concept of penalty means anything, it means punishment for an unlawful act or omission.'"[xlviii] Roberts then maintains that the Act does not attach any legal consequences to not buying health insurance beyond requiring a payment to the IRS. He next notes that the Federal Government actually expects an estimated four million people each year will choose to pay the IRS rather than buy insurance and says that he cannot imagine that the drafters of the Act intended to label such conduct as unlawful.[xlix] Incidentally, Roberts fails to address the attendant penalty and legal consequences for not paying the tax to the IRS.

Chief Justice Roberts tries to make the impact of the individual mandate seem less burdensome by stating

> . . . although the breadth of Congress's power to tax is greater than its power to regulate commerce, the taxing power does not give Congress the same degree of control over individual behavior. . . . Once [the Court] recognizes that Congress may regulate a particular decision under the Commerce Clause, the Federal Government can bring its full weight to bear. . . . By

> contrast, Congress's authority under the taxing power is limited to requiring an individual to pay into the Federal Treasury, no more.[l]

Justice Scalia, joined in his dissent by Justices Kennedy, Thomas and Alito, basically says that the position that the individual mandate payment can be a penalty for some purposes and a tax for others is preposterous.[li] He says that a penalty can be imposed as a tax and vice versa, but they cannot be the same thing at the same time. He points out ". . . We know of no case, and the Government cites none, in which the imposition was, for constitutional purposes, both. The two are mutually exclusive."[lii] Justice Scalia goes on to point out that the payment is in fact a penalty and that it does make the failure to have insurance unlawful.[liii] He quotes from *Powhatan Steamboat Co. v. Appomattox R. Co.*: "'[W]here the statute inflicts a penalty for doing an Act, although the Act itself is not expressly prohibited, yet to do the act is unlawful because it cannot be supposed that the Legislature intended that a penalty should be inflicted for a lawful act.'"[liv]

Thus, the Court upholds the individual mandate as a constitutional tax on the non-ownership of a product. However, the majority stoutly maintains that this payment is not a penalty, and that the conduct that is prohibited (non-ownership) is not unlawful. It appears that the majority, at some point, passes through the looking glass.

IV. Severability

From a purely legal standpoint, because the individual mandate was upheld, the Court saw no reason to address the severability issue. (It was discussed briefly in regard to the Medicaid expansion issue,[lv] but not in near the depth that it would have been if the mandate had been thrown out.) On a related matter, because of the ruling, the guaranteed issue and community rating provisions of the Patient Protection and Affordable Care Act both remain in place.[lvi] The guaranteed issue provision precludes health insurance companies from denying coverage because of pre-existing conditions.[lvii] The related community rating provision prevents an insurance company from basing a premium on an insured's medical condition.[lviii] Instead, the company can consider only "(i) whether the individual's plan covers just the individual or his family also; (ii) the 'rating area' in which the individual lives; (iii) the individual's age; and (iv) whether the individual uses tobacco."[lix] These provisions have already taken effect for children and young adults.[lx] They will take effect for the general population on January 1, 2014.[lxi] Taken in isolation, these requirements would drastically push up premiums, because numerous people could go without insurance and then obtain it, mandatorily and at an affordable rate, only when they were diagnosed with cancer, involved in a serious automobile accident, required surgery, etc. The scheme of the Act, now upheld, was to try to offset these increased costs/premium drivers by forcing millions of currently uninsured, but healthy, individuals into the market. Many analysts have pointed out that this scheme will probably not work and that premiums will continue to rise at a rate higher than the general inflation rate, and maybe much faster.[lxii]

Other provisions of the PPACA that will continue to be implemented include the prohibition on annual dollar limits on coverage[lxiii] and the requirement that certain preventive care be provided with no co-pays, deductibles, or other charges.[lxiv] The abortifacient and birth control coverage mandate that has caused so much controversy

will also continue to be implemented.[lxv] Other provisions that will continue to be implemented include the "minimum loss ratio" requirement, which requires health insurers to spend eighty cents of every dollar of premiums on "activities that improve healthcare quality",[lxvi] and the tax on insurance premiums.[lxvii]

V. Constitutionality of the PPACA Medicaid Expansion

The Court also addressed the PPACA's Medicaid expansion. Justice Roberts was joined in this part of the decision by Justices Scalia, Kennedy, Thomas, and Alito, Breyer and Kagan.[lxviii] The States contended that the Medicaid expansion exceeded Congress's authority under the spending clause because Congress was coercing the States to adopt the changes by threatening to withhold all of a State's Medicaid funding.[lxix] The States argued that this condition violates the principal that the "'Federal Government may not compel the States to enact or administer a federal regulatory program.'"[lxx]

Chief Justice Roberts pointed out "that the [PPACA] dramatically increases State obligations under Medicaid."[lxxi] He noted that the current program, and the program historically, required the States to cover only limited categories "of needy individuals — pregnant women, children, needy families, the blind, the elderly, and the disabled."[lxxii] He then pointed out that the expansion would require States "to cover all individuals under the age of 65 with incomes below 133 percent of the federal poverty line."[lxxiii] The expansion also includes a new minimum benefits package which the States must provide.[lxxiv] Roberts further pointed out that although the Federal Government would initially cover 100 percent of the increased cost, the States would eventually have to pay at least 10 percent and could be required to pay more in future years.[lxxv] The penalty for not complying with these expanded provisions would be a State could lose *all* of its Medicaid funding from the Federal Government, not just the funding for the expanded coverage.[lxxvi]

The majority, in the opinion authored by Chief Justice Roberts, held that this level of coercion of the States is an unconstitutional exercise of Congress's spending authority. Chief Justice Roberts stated: "[B]ut when 'pressure turns into compulsion,' . . . the legislation runs contrary to our system of federalism."[lxxvii]

The majority held that "nothing in [their] opinion precludes Congress from offering funds under the [PPACA] to expand the availability of healthcare, and requiring that States accepting such funds comply with the conditions on their use."[lxxviii] However, the Court held that Congress was "not free to . . . penalize States that choose not to participate in the new program by taking away their existing Medicaid funding."[lxxix]

VI. Future Impacts of the Decision

Numerous economists, healthcare professionals, and others are analyzing the expected impact of this decision. Compliance with the PPACA, political ramifications, and even decisions left for the states to make under the PPACA will be discussed and reviewed for some time to come.

With respect to Commerce Clause jurisprudence, the Court definitively answered that Congress may not conscript individuals into commerce for the purpose of regulating them. While the Court did not accept the invitation to overrule, or at least greatly circumscribe *Wickard v. Filburn*, it definitively declined to expand the Commerce Clause further.[lxxx] Regrettably, Congress has substantial existing Commerce Clause authority permitting unwarranted intrusion into the everyday lives of American citizens through the existing substantial effects and aggregation doctrines.[lxxxi] And, a change of one vote on the Court could allow a full-blown expansion of federal power under the Commerce Clause.

While opponents of the PPACA may disagree with the Court's decision, finding the individual mandate constitutional under the Taxing Clause rather than the Commerce Clause is particularly significant. The Court clearly stated that the individual mandate as passed by Congress could not stand, but the Court permitted it to stand by reformulating it as an individual tax. The political difference between the two is staggering. Simply consider the difference in nomenclature from "required health insurance" to a "tax on the uninsured." In spite of the Obama Administration's continued protests to the contrary, the highest court in the land has determined that the PPACA levies a direct tax on those without health insurance a sentiment that many progressives and supporters of the PPACA may find difficult to swallow. Future legislation with so-called penalties and mandates will immediately be cast as a politically unpopular tax increase. Indirectly, the political realities attendant to tax increases serve as a practical limitation on Congressional power.

Another positive from the Court's opinion is the real limitation on Congressional authority under the Spending Clause. Prior to the Court's PPACA holding, there was little precedent defining the limits of that power or the permissibility of federal conditions attached to spending measures. There is a high probability that the opinion will be used for years to come by States looking to remove burdensome federal requirements that come attached to federal spending.

Conclusion

While the Court unmistakably upheld the PPACA in a decision disappointing to many looking to the Court for assistance in pushing back unpopular legislation, there are positive aspects to the opinion that may go unnoticed. The Court declined to expand the Commerce Clause authority of Congress. Even though the Court arguably increased the taxing authority of Congress, political restraints on raising taxes remain a powerful practical limitation. The Court also bolstered the case for federalism by limiting Congressional spending authority.

None of these results should cover over the fact that the Court upheld the PPACA's individual mandate by the narrowest of margins and only through a tortured legal analysis. Upholding the mandate as a tax has deeply concerning implications regarding whether the Commerce Clause and Spending Clause restrictions of the opinion have real import. The PPACA opinion also raises anew questions about the permissibility of the Court materially altering legislation enacted by an elected legislative body and executive simply to give it the ability to pass constitutional muster. For opponents of the PPACA, probably the most significant aspect of the Court's

holding is it essentially returns the question on the wisdom of the PPACA to the people of the United States in the upcoming election.

[i] *See* National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., No. 11-393 (U.S. June 28, 2012), http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf.
[ii] *See* National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., No. 11-393, 6 (U.S. June 28, 2012)(Syllabus), http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf.
[iii] *Id.* at 3-4.
[iv] *Id.* at 2.
[v] *Id.*
[vi] *Id.* at 1.
[vii] National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., No. 11-393, 11 (U.S. June 28, 2012) (Opinion of the Court), http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf.
[viii] *Supra* note ii at 2.
[ix] *Supra* ii at 2.
[x] *Id.* at 3.
[xi] Jacqueline Klingbiel, *Obama: Mandate is Not a Tax,* ABC News (September 20, 2009), http://abcnews.go.com/blogs/politics/2009/09/obama-mandate-is-not-a-tax/.
[xii] Associated Press, *Obama Pledges to Not Raise Middle Class Taxes,* YouTube (July 30, 2008), http://www.youtube.com/watch?v=UJVMWjTQh_Y.
[xiii] *E.g. Obama Lawyer Laughed at In Supreme Court,* Fox Nation (Mar. 26, 2012), http://nation.foxnews.com/obamacare/2012/03/26/obama-lawyer-laughed-supreme-court.
[xiv] *Supra* note ii at 3.
[xv] Wickard v. Filburn, 317 U. S. 111 (1942).
[xvi] *Id.*
[xvii] *Id.* at 125.
[xviii] James Huffman, *The 'Commerce Clause Mandate,'* Defining Ideas: A Hoover Institution Journal, The Hoover Institution: Stanford University, http://www.hoover.org/publications/defining-ideas/article/105176.
[xix] Breif of Liberty Legal Foundation as Curiae in Support of Respondents, National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., No. 11-393, 2 (U.S. June 28, 2012), *available at* http://libertylegalfoundation.org/wp-content/uploads/2012/02/OCA-Amicus-Brief.pdf
[xx] *Id.* at 2.
[xxi]National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., No. 11-393, 2-3 (U.S. June 28, 2012) (Scalia, et al., dissenting), http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf.
[xxii] National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., No. 11-393, 2 (U.S. June 28, 2012) (Roberts, C. J., opinion), http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf.
[xxiii] *Id.* at 3.
[xxiv] *Id.* at 4.
[xxv]*Id.* at 4-5.
[xxvi] *Id.* at 28.
[xxvii] *Id.* at 18.
[xxviii] *See, e.g., Id.* at 22.
[xxix] *Id.* at 18.
[xxx] *Id.*
[xxxi] *Id.*
[xxxii] *Id.* at 20.
[xxxiii] *Id.* at 22.
[xxxiv] *Id.*
[xxxv] *Id.*

[xxxvi] *Id.*
[xxxvii] *Id.* at 23-24.
[xxxviii] *Id.* at 30.
[xxxix] U.S. Const. art. I, §8.
[xl] *See Supra* 2.
[xli] *Supra* note xv at 31.
[xlii] *Id.*
[xliii] *Id. at 31-32.*
[xliv] *Supra* note vii at 33-42.
[xlv] *Id.*
[xlvi] *Id.*
[xlvii] *Id.* at 37.
[xlviii] *Id.*
[xlix] *Id.*
[l] *Id.* at 43.
[li] *Supra* note xx at 17.
[lii] *Id.*
[liii] *Id.* at 42.
[liv] *Id.*
[lv] *See, e.g., Supra* note xxii at 56.
[lvi] National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., No. 11-393, 12 (U.S. June 28, 2012) (Ginsburg, J., opinion), http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf.
[lvii] *Expert Voices: Community Rating and Guaranteed Issue in the Individual Health Insurance Market,* National Institute for Healthcare Management Foundation, 1 (January 2012), *available at* http://nihcm.org/pdf/EV-LoSassoFINAL.pdf.
[lviii] *Id.*
[lix] *Supra* note xx at 6.
[lx] *What's Changing and When: Prohibiting Denying Coverage of Children Based on Pre-Existing Conditions,* U.S. Department of Health and Human Services: Healthcare.gov, http://www.healthcare.gov/law/timeline/#event15-pane (last visited July 5, 2012).
[lxi] *What's Changing and When: No Discrimination Due to Pre-Existing Conditions or Gender,* U.S. Department of Health and Human Services: Healthcare.gov, http://www.healthcare.gov/law/timeline/#event46-pane (last visited July 5, 2012).
[lxii] *See, e.g.*, Avik Roy, *How Obamacare Dramatically Increases the Cost of Insurance for Young Workers,* Forbes (Mar. 22, 2012, 1:32 PM), http://www.forbes.com/sites/aroy/2012/03/22/how-obamacare-dramatically-increases-the-cost-of-insurance-for-young-workers/.
[lxiii] *What's Changing and When: Regulating Annual Limits on Insurance Coverage,* U.S. Department of Health and Human Services: Healthcare.gov, http://www.healthcare.gov/law/timeline/#event10-pane (last visited July 5, 2012).
[lxiv] *What's Changing and When: Providing Free Preventive Care,* U.S. Department of Health and Human Services: Healthcare.gov, http://www.healthcare.gov/law/timeline/#event14-pane (last visited July 5, 2012).
[lxv] *Affordable Care Act Expands Prevention Coverage for Women's Health and Well-Being,* U.S. Department of Health and Human Services: Healthcare.gov, http://www.healthcare.gov/law/resources/regulations/womensprevention.html (last visited July 5, 2012).
[lxvi] Timothy Jost, *Implementing Health Reform: The Minimum Loss Ratio & Summary Of Benefits And Coverage,* May 13, 2012, *available at* http://healthaffairs.org/blog/2012/05/13/implementing-health-reform-the-minimum-loss-ratio-summary-of-benefits-and-coverage/.
[lxvii] *Supra* note lx.
[lxviii] *Supra* note xxiii at 1.
[lxix] *Supra* note xxi at 45.
[lxx] *Id.*
[lxxi] *Id.*
[lxxii] *Id.*
[lxxiii] *Id.*
[lxxiv] *Id.* at 45-46.
[lxxv] *Id.* at 45-46.
[lxxvi] *Id.* at 59.
[lxxvii] *Id.* at 47.
[lxxviii] *Id.* at 55.
[lxxix] *Id.* at 55.
[lxxx] *See supra* 3-9.
[lxxxi] *Supra* note xv.