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Louis Altobelli

Walden University

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Walden University

College of Social and Behavioral Sciences

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Louis Altobelli

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Public Policy and Administration Faculty

Dr. Lori Demeter, Committee Member,
Public Policy and Administration Faculty

Dr. George Larkin, University Reviewer,
Public Policy and Administration Faculty

Chief Academic Officer
Eric Riedel, Ph.D.

Walden University
2017

Abstract

Examining U.S. Policy Makers' Conceptions of Liberty in Drafting the Affordable Care Act

by

Louis Phillips Altobelli

MS, Champlain College, 2011

BA, University of North Carolina at Chapel Hill, 2008

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

February 2017

Abstract

The U.S. legislators may have incorrectly incorporated outlooks on liberty and natural law associated with the Patient Protection and Affordable Care Act (ACA) of 2010. The purpose of this case study was to use Kersch's conceptualization of declarationism and Hayek & Kamowy's construct of socialism to examine whether the ACA incorporates principles associated with the natural right of liberty as promoted by the Founders of the United States. The central research question that guided this study investigated whether U.S. lawmakers followed the intentions of the Founders in passing the ACA, as demonstrated in the legislation, related bureaucratic reports, and court cases. Data for this study consisted of seminal and foundational document such as the Declaration of Independence and United States Constitution, public law, and publicly available government documents related to the enactment and implementation of the ACA. These data were deductively coded and subjected to a thematic analysis. Findings indicate there was evidence of partisanship in the bill drafting process, possible violations of parliamentary procedure, and judicial activism. The positive social change implications of this study include recommendations to policy makers to remain diligent and cognizant of the risks of drifting from the principles of liberal, constitutional democracy. Doing so may promote more equitable and efficient implementation of landmark and controversial public policy.

Examining U.S. Policy Makers' Conceptions of Liberty in Drafting the Affordable Care Act

by

Louis Phillips Altobelli

MS, Champlain College, 2011

BA, University of North Carolina at Chapel Hill, 2008

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Dedication

First, and foremost, I dedicate this study to God, my rock, my shield, and my soul provider. Psalm 28:7 says, “The LORD is my strength and my shield; my heart trusts in him, and he helps me. My heart leaps for joy, and with my song I praise him.” A study of this magnitude was only completed with the power of the Holy Spirit whom I have praised from the beginning of this journey and will continue to praise. As we walk through the sand at the end our days we will surely look back to only see one set of footprints.

This study is dedicated to my mother and father whom were my steady and guided influence. Select lines from the oft-cited Rudyard Kipling poem, “If”, best portray their encouragement: “If you can keep your head when all about you, Are losing theirs and blaming it on you, If you can trust yourself when all men doubt you, But make allowance for their doubting too; If you can wait and not be tired by waiting … If you can dream—and not make dreams your master; If you can think—and not make thoughts your aim; If you can meet with Triumph and Disaster, And treat those two impostors just the same; If you can bear to hear the truth you’ve spoken … If you can talk with crowds and keep your virtue, Or walk with Kings—nor lose the common touch … Yours is the Earth and everything that’s in it, And—which is more—you’ll be a Man, my son.”

And though those words are as indicative of their support, even the most beautiful poets and their poems in the world are unable to capture the love they gave me during my

time here on this earth. I love ya'll and thank you for raising me to be a faithful, good ole' Carolina (and a bit of California) boy.

Acknowledgements

There are many people I would like to thank. My family was by my side every step of the way. It would not have been possible to complete this work without their support, love, and understanding throughout my academic career, which at times required patience from those around me. To my brothers and sisters in my church family, friends, and colleagues whom I forever indebted, I would like to thank you for your patience and care during the writing of my dissertation. I would like to also thank my committee members for their diligence, ensuring that my dissertation was held to the highest standard and doing so in a timely manner. These individuals provided only encouragement during my journey, which, in many ways, took a village. Throughout the entire process, I have prayed and hoped that this work, a product of hundreds of hours of writing and research, is worthy of the love I have received in the duration of this culminated effort.

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Chapter 1: Introduction to the Study

The Founders of the United States held a deep-seated belief in a collection of values and principles they hoped would last beyond their own lives. Their beliefs are evident in the documents they authored, which include the Declaration of Independence (DOI), the U.S. Constitution, additional amendments to the Constitution, the Anti-Federalist Papers, the Federalist Papers, and the Bill of Rights. Thomas Jefferson also conveyed these beliefs in his *Manual of Parliamentary Practice* (*Manual*). The Founders published these documents in the 1770s through the beginning of the 19th century (Roche, 1961). The most familiar and notable phrase from these documents is “Life, Liberty, and the pursuit of Happiness,” which is included in the DOI.

In this study, I focused on the theory of *declarationism,* which symbolizes the Founders’ view of liberty and is made specific by specific direct in the DOI and Constitution (Kersch, 2011). I juxtaposed the Founders’ conception of liberty with those of socialism, as represented by socialism’s leading document, *The Communist Manifesto* ([*Manifesto*]; Marx, 1848). Socialism is the theory that individuals share liberties in a communal manner as directed from the government to deliver upon the promise of utopia (Hayek and Hamowy, 2013). Hayek and Hamowy wrote that citizens of authoritative governments will favor socialism, even though they do not have a choice, as it has always been a popular contrast to traditional liberty because of the promise of utopian society. Government and citizen appeal to a perfect society has made socialism an attractive alternative to liberty; the government promises to eliminate failure and, if citizens would allow, to take charge over the care of every citizen need (Hayek & Hamowy, 2013).

To determine whether the Founders' conception of individual liberty and of democracy still exists in U.S. law, I completed a case study of a controversial statute, the Patient Protection and Affordable Care Act (ACA) which was passed and enacted in 2010. I examined publicly available legal records, including federal legislation of the ACA and related bills, administrative proceedings, and court cases related to the ACA. I sought to determine what theory lawmakers drew from, whether it was either declarationism or socialism in passing the ACA. The positive social change of the study is the need to closely investigate the legislative process before a major bill is passed. The next chapter is a literature review through scholarly sources of the theories upon which this study is based and provide a deeper insight into what the Founders had intended.

Background

In the texts they composed, the Founders were intentionally vague in how they interpreted structure and function of government. They wanted to ensure that their work would be applicable to the many types of codified law that might be enacted after they were gone. The chaotic nature of the Revolutionary War created an urgency to establish a workable law of the land which prompted the Founders to draft founding documents that featured the most critical principles (Roche, 1961). According to Roche (1961), the Founders believed that it was enough to address the principle of liberty without offering great elaboration. This was manifested in granting individual states rather than an oppressive federal government the ability to solve specific issues through the power of the law (McConnell & Berger, 1987).

Foundational documents such as the DOI, Jefferson's *Manual,* and the Constitution do not explicitly address issues (e.g., universal health care) raised in the

ACA. Health care was not addressed in these documents as the focus was on general principles rather than specific issues. The key dilemma, seems to be how lawmakers can use these foundational but, perhaps, ambiguous texts to create law consistent with them and U.S. law (Roche, 1961). Health care, like other private insurances, would fall under state government lawmaking to avoid a federal government delivering a mandate that would not applicable to differing regions in the country (McConnell & Berger, 1987).

The two main documents I used in my study were the DOI and the Constitution. I used these documents in line with their well-known historical purpose to illustrate liberty and the freedoms derived from it. Another document I included in my analysis was Jefferson's *Manual*, which served as the outline for the development of legislative procedures in Congress (U.S. Senate, 1801). I used this document to determine whether lawmaking related to the ACA took place in a manner and fashion intended by the Founders. Jefferson drew from a combination of British parliamentary law and his own notes to create the *Manual,* in which he supported the natural right of liberty for U.S. legislative procedure (Wilson, 2000). Jefferson's *Manual* has ensured proper procedure and fairness in the lawmaking process (Wilson, 2000). The ACA was strategically passed by lawmakers through narrow means to ensure its passage without adding friction, a process to which would be errant according to Jefferson's *Manual*. In my study of Jefferson's *Manual* and its relationship to the ACA, declarationism may have been favored for socialism.

To better understand my study and what type of research it emulated, Sanders (2016) was research which also used a case study to analyze possibly questionable law.

Sanders' researched ideological polarizations of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or PATRIOT Act, within the legislative process. Sanders' study covered I analyzed a 5-year period (2009-2014) encompassing the ACA's procedural beginning to its legal ending.

Problem Statement

There are no shortage of studies on the progression of policy through the U.S. legal system. The gap in current knowledge is whether or not lawmakers possibly undertook questionable lawmaking of the ACA and disregard the founding principle of liberty. Sanders (2016) conducted a study that is very to the problem statement of this study whom researched the controversial PATRIOT Act. Similar to Sanders, I examined potentially questionable lawmaking; I researched how Congress passed the ACA and how it was ultimately upheld in the U.S. Supreme Court. Many public records and laws contributed to this study's research while the data collection consisted of four areas of data collection through preliminary reviews of the ACA's passage. These four areas of data collection regarding the passing of the ACA were the Constitution, *Manual,* H.R. 7130, the Congressional Budget and Impoundment Control Act of 1974, or the Congressional Budget Act (CBA), and *Manifesto*. These six points of data collection which may have aligned closely with either declarationism or socialism are

1. *Origination Clause:* The Constitution includes the edict that revenue-raising bills must originate in the House. The ACA ensured a revenue-raising bill would originate in the House and, therefore, would become law after being passed once more in the House. Decisions in two appellate cases in *Sissel v. United States*

Department of Health & Human Services (2013, 2014), or *Sissel*, addressed this concern.

2. Vehicle Bill, Jefferson's *Manual*, Section XLV: This section described how amendments are properly offered on bills. A vehicle bill, Service Members' Homebuyer Tax Credit Extension Act 2009 (SMHOTA), was used in the creation of the ACA.

3. *Commerce Clause*: The Constitutional clause that regulates commerce among the states, the Commerce Clause was conjured by the ACA since the law inserted the federal government as the regulator of the health care industry. Selections of different language from the text of the ACA may have differing views from the Founders intentions on the use of the Commerce Clause.

4. CBA: The Congressional Budget Office (CBO) was created to be an independent, non-partisan organization. Lawmakers may have gamed CBO, the ACA included the Community Living Assistance Services and Supports Act (CLASS Act), a health care measure previously deemed problematic included in the ACA to ensure the bill would not increase the U.S. deficit more than $1 trillion.

5. *Taxing Clause:* The majority opinion of the Supreme Court in *National Federation of Independent Business (NFIB) v. Sebelius* (2012), or *NFIB*, did not mention the Origination Clause and dismissed the Commerce Clause in upholding the ACA under the Taxing Clause. These actions may have ignored the questionable constitutionality of the ACA's passage and provided a different

permittable rationale from Congress on the mandate that U.S. citizens buy health insurance.

6. *Manifesto, Section II, Measure 7:* The intention of this measure is to ensure that all production be owned by the state. The ACA intended for health care to be ran by the federal government.

In approach, the theories of declarationism and socialism differ in how individual liberties are disseminated from the federal government. Through declarationism, a theory emerged from the DOI and other founding documents, individual liberties are described as innate and cannot be taken away by the government., Socialism, a principle developed by the *Manifesto* in the mid-19th century, diminishes individual liberties and places power in the government. As presented by Hayek and Hamowy (2013), socialism usually has a connotation mostly associated with authoritative leaders and oppressive regimes. Through this study, I aimed to discover which ideology of individual liberties lawmakers used in passing the ACA.

Purpose of the Study

The purpose of this case study was to determine whether lawmakers traded traditional liberty for the socialization of liberty through the passage of the ACA. This study had a qualitative research approach with a case study design in working with social science values as Yin (2014) explained. This qualitative research approach was used as an innovative way to explore the Founders' influence on contemporary legislation. The case study design handled the data collection in a way that was systematic and objective per social scientific principles and standards.

According to Gomm, Hammersley, and Foster (2000), case study researchers need to rigorously analyze documents obtained as part of their investigations. This type of rigorous analysis was especially essential for my study because official documents constituted most of my data sources. The case study of a law is a design that serves social science studies and has demonstrated positive results through careful analysis as a focused study (Gomm et. al). Conducting a case study laid a foundation on which the research could build and then gave a clear representation of what the study posited.

Research Questions

The ACA was a major legal development which may have violated Founders' traditional view of liberty in the United States, which pitted declarationism against socialism. The main research question for this study was, RQ1) have U.S. lawmakers followed the intentions of the Founders in passing the ACA, as demonstrated in the legislation, related bureaucratic reports, and court cases?

Using this question, I sought to examine the influence of the Founders on contemporary U.S. lawmakers with respect to the natural right of liberty. Subquestions for this study contrast liberty against socialism in the following areas:

RQ2) Did the United States correctly follow the procedures listed by Jefferson's *Manual* in passing the ACA?

RQ3) Did Congress maintain proper oversight on cost estimate report provided by the CBO on the ACA?

RQ4) Did the majority opinion in *NFIB* and *Sissel* appropriately and correctly analyze the procedure and the language of the ACA?

To determine the answers to these subquestions, I analyzed the six main, potential violations of the ACA's proceedings to help demonstrate whether the natural right of liberty was maintained.

Conceptual Framework

Two theories were the basis of this study. The first of these was declarationism, which encompasses a strict view of the DOI and the Constitution. The view of liberty mentioned in the DOI is the purest form of the natural right; this view is further illustrated in the Constitution (Glendon, 2008). Such a strict view by declarationism demonstrates the ways in which the Founders viewed specific issues and policies (Kersch, 2011). The second of these theories was socialism, which essentially opposes declarationism and posits a social contract that distributes services by the government as a path toward diminishing individual liberties (Hayek & Hamowy, 2013).

Harrington (2005) asserted that social science theories are extremely inclusive of many hypotheses because of the nature of policy making having many different perspectives. As one of the most controversial laws passed in recent history (Cannan, 2013), the ACA is an example of what Harrington (2005) alluded to in his writing. Identifying the Founders' influence on Congress, bureaucracy, and on the Supreme Court in their respective decision-making processes was the goal of this study. For the purposes of this study, both theories were tested against the enactment of the ACA. They were used to determine how the legislative, bureaucratic, and judicial processes followed either declarationism or socialism.

Nature of the Study

To better understand the procedural maneuvering that accompanied passage of the ACA and, also, the influence of declarationism and socialism on the process, I examined the legality of the legislative path, CBO reports, and court cases related to the ACA. I was as methodical as possible in researching the intent behind universal health care. The methodical nature of the study was motivated by my desire to maintain objectivity and establish results drawn directly from the ACA's proceedings.

A case study was utilized for data collection and synthesis, as discussed by Yin (2014). The case study of the ACA used a coding scheme that highlighted the missteps made in the legislative, bureaucratic, and judicial histories surrounding the law. The six main issues coded were the procedural utilization of the Origination Clause, the cost of the ACA given by the CBO, the Supreme Court and appellate courts' decision to uphold the ACA under the Tax Clause rather than the Commerce Clause, and the realization of a *Manifesto* tenet. A case study was the most objective tool that could be used, because it delivered straightforward answers directly from the sources. This design of research broke down the actions of the ACA and the laws that surround it by pulling together information from the legislative, administrative, and judicial branches. The case study determined subtle nuances in lawmaking and was decisive in determining how the ACA was passed.

The procedure gave an objective determination of the direction taken by Congress, the CBO, and the courts; specifically, it addressed whether the ACA was passed with proper procedures. I made this objective inquiry by studying the laws passed by Congress that led to the final upholding of the ACA in appellate courts. The study of

these laws included parsing through founding documents and the *Manifesto* and determining both the rationale behind how the ACA was passed and the questionable actions taken during its passage. In the data collection results portion of the study, the data collection is broken down and analyzed through the coding of public documents that focus on liberty. To prevent a loss of objectivity, I have consulted scholarly writing that supports different perception of laws and to the views and ideals of the Founders.

Definitions

Declarationism: The belief in the Declaration of Independence and its main phrase, "Life, Liberty, and the pursuit of Happiness." This outlook is mostly associated with liberty as the main tenet that drives U.S. policy and mindset (Kersch, 2011).

Socialism: An ideology that revolves around the belief that the government is the solution to the problems of the state. Socialism transcends society in every facet, as the government is an ever-involved and commanding mechanism (Hayek & Hammowy, 2013).

Assumptions

The main assumption that I made for this study was that the ACA may have not been properly scrutinized when it was enacted; it may have been passed without proper accordance to the Origination Clause, CBO figures may not have been examined closely enough, and the holdings by the high courts may have overlooked these questionable actions. This research also assumed that the natural right of liberty was endorsed by the Founders as the correct principles of the land, and steered the country in a proper and ethical direction.

Scope and Delimitations

The main delimitation stemmed from the study covering just one natural right, liberty, and one law, the ACA. Using a natural right and a case study as an example of a right helped limit the number of laws to be covered in the study, but it also raised the question: Will the same results be replicated with another natural right and case study? To counteract this delimitation, this study tried to cover liberty and the ACA such that any natural right and case study could be substituted in their places. This study will enable future research that would be achieved through such a substitution, though results would most likely be vastly different. I selected the natural right of liberty for this study to contrast different eras in the country's history which showed the progression of that concept throughout the nation's development; the ACA was selected because of its controversial nature, which was crucial to history and precedence of liberty.

Limitations

The main limitation of the study was that the natural right of liberty may be taken out of context when considering the changing needs of the United States, as the Founders, whom assembled more than two centuries ago, wrote of broad principles. This limitation arose because of human error in researching a principle laid out in late 18th century law; however, by using a case study comparing and contrasting the ACA with the founding documents it would demonstrate how the Constitution is viewed in the 18th and 21st centuries and eliminate most of this risk. The limitation of examining an older natural law is apparent, but it may be minimized or overcame with proper analyses.

Significance

This study has significance primarily in the public policy field, as policymakers, policy scholars, and policy majors may all be able to reference as a foundation for understanding the influence of the Founders through a case study of the natural right of liberty. The knowledge of the U.S. lawmakers' attitudes toward the Founders is crucial to understanding why policymakers have chosen, are choosing, or will choose certain policy initiatives over others. Due to the controversy surrounding the ACA on certain moral principles required investigation, leading to the need to provide clearer lens with which to better understand the direction the country has taken. The significance of this study is imperative because of the country's need to sustain what the Founders endeavored to create: a country of liberty. If the United States has lost its focus on liberty, there should be an empirical way of understanding how and why the focus was lost.

Having an empirical knowledge of the influence on lawmakers by the Founders will inform future decision-making processes within the government. The Founders wanted the United States to grow from the principles that they instituted in the founding documents, rather than have that growth stunted by lawmakers following their individual ideas of the way the country was supposed to move ahead. Those founding principles may have been followed since the country's inception, but there is no way of empirically knowing unless a study such as this reviews subsequent laws and matches them with those foundational principles.

This study may be particularly helpful for resolving the impasses in Congress that have left U.S. citizens frustrated with their government. Congressional representatives on both sides of the political aisle took an oath to obey the Constitution, and if they make

note of this study, they will be doing precisely that. Lawmakers may begin to look at these research results concerning important U.S. legislative history in relation to intentions of the Founders. This objective research provides direction on whether measures are aligned with how the Founders envisioned legislation developing in the areas they valued. Comparison of the effects of past legislation with the founding documents may demonstrate differences and similarities, and that knowledge will provide guidance on how to view legislation in the present and the future.

The existence of a concrete source of research such as this regarding the Founders may be a missing piece in important policy arguments. The referencing of the Founders without access to factual and research-based arguments tends to demean the work the Founders did, and facilitates the defamation of the thoughts and reputations of the Founders without real evidence. The research produced from this study will be crucial information for those whom want to reference the Founders and have more structure to support their arguments.

Understanding how the ACA and its elements became law shaped this study. Regardless of the outcome or effect on legislators and the judiciary, putting the Founders at the focal point of the study will have social impact by reinforcing the Founders' significance. Regardless of whether the research yields conclusive evidence that the Founders' version of liberty has succeeded them for the last 200+ years, the discovery significant questionable behavior by lawmakers through this study would suffice as due diligence.

Summary

To determine whether the Founders are influencing the development of law in the U.S., the overarching theories of declarationism and socialism guided a case study of the ACA. I researched the ACA's creation, the path it took to become a law, and the process of its upholding in the courts. To determine the outcome of liberty versus the ACA, I created a clear outline of how each governmental process directs to either declarationism or socialism.

A case study assisted data collection and guided the understanding and analysis of the ACA's passage relative to the concepts of declarationism and socialism. There were limitations in finding results of abstract theories such as declarationism and socialism, but using the founding documents and the *Manifesto*, this study's data collection proved the ACA's level of accordance with liberty. The strength of these documents, along with official proceedings in Congress, bureaucratic reports, and the Supreme Court, helped maintain consistency and validity throughout the research and analysis phases.

The great vision of the Founders is being tested by this study to determine whether they have been a leading influence in how laws are formed in the United States. This study highlights lawmaking and attempts to determine how laws will be passed for the present and future. This study can serve as a reference for scholars and lawmakers alike in determining the influence of the Founders in lawmaking procedure. In the next chapter, I provide a literature review of the Founders and their influences on lawmaking in the United States, specifically regarding liberty and its dichotomic relationship to socialism.

Chapter 2: Literature Review

Introduction

The gap in current knowledge is whether lawmakers possibly undertook questionable lawmaking of the ACA. The purpose of this study is to discover whether lawmakers dismissed liberty for the socialization of health care with the passage of the ACA. From scholarly sources, this literature review demonstrated the method by which the ACA was passed and enacted and that method's relationship to the Founders' views on liberty and liberty's contradiction to socialism. This literature review evaluates scholarly sources of research regarding the principles of the Founders, the natural right of liberty against the promises of socialism, and the political manipulation of passing a law. This review will help readers decipher the intentions of lawmakers regarding the Founders and liberty, best discerned through a case study of a recent controversial law in the ACA.

This literature review also explains how declarationism contrasts with socialism and how this study used a case study to assess laws and rulings related to the ACA. The following sections concern the Founders and liberty and the influence of socialism as it was pushed forward by political maneuvering. I address (a) who the Founders were in terms of liberty and the main characteristics of the Founders' intentions; (b) the difference in liberty outlooks in the era of the Founders and present-day; (c) the allure of socialism; and (d) the political maneuvering promoting socialism.

Literature Search Strategy

This literature review was compiled through a dedicated research of scholarly articles, journals, and books regarding the case study of laws, reports, and rulings on the

ACA. Most scholarly pieces were chosen because they convey the theories of declarationism and socialism. To better understand the founding documents as prescribed by the Founders' preferences, I deemed it necessary to conduct thorough research and expert analysis of the Founders themselves and the history of their influence.

I searched online databases for dissertations using ProQuest Dissertation and Thesis Database. Via the database, I also searched Google Scholar for scholarly articles, books, and other dissertations. In searches, terms used in a variety of combinations for the Walden University Library included: *policy + case study + qualitative.* For Google Scholar, terms used in a variety of combinations were *Founding Fathers + liberty, Affordable Care Act + liberty, ACA + legislative procedure, National Federation of Independent Business v. Sebelius + liberty, NFIB v. Sebelius + penalty + tax, Affordable Care Act + Congressional Budget Office, socialism versus declarationism,* and *Communist Manifesto.*

Conceptual Framework

I chose declarationism versus socialism for this study's theoretical framework. This framework accounts for liberty on behalf of declarationism, which endorses arguments for policy based upon the natural right of liberty as prescribed in the DOI (Kersch, 2011). It also accounts for socialism, which advocates for laws that favor the power of the federal government and the redistribution of the individual liberties amongst citizens (Hayek & Hamowy, 2013).

The use of theory also helps researchers to reflect on their findings (Harrington, 2005). My research took many different directions in testing different actions of the ACA's process, but the analysis consisted of a case study that forged connections

between theory and the passage of the ACA. To make the study strong in its foundation, I used social science theories to provide direction and scope for my analysis. Doing so allowed me to find a deeper understanding of the *why* of the analysis.

Literature Review Related to Key Variables and Concepts

Before discussing the Founders and their relationship to liberty, I will consider differences between this study and similar studies whose authors have examined the rule of law from the U.S.' inception to the present. Green's (1997) research revealed how the Founders influenced the United States. This research was not the first of its kind, as there have been many researchers whom have used similar methods to uncover trends in U.S. law in relation to the Founders (McCutcheon, 2010). McCutcheon used a content analysis, legislation and court decisions on various topics over the course of U.S. history were examined and delineated trends from those findings.

The Founders and Liberty

More contemporary works other than Green (1997) and McCutcheon (2010) were studies that did not have the same content such as the Founders, but were most related to this study because of the case study of law that was researched. These studies were qualitative studies which were similar in size and scope with less emphasis on overarching theories. Sanders (2016), a qualitative case study with such similarities, studied the PATRIOT Act's ideological polarizations. Sanders coded Congressional hearings and other legal proceedings to determine how ideology impacted the enacting of a law which is highly like this study. Unlike my study, Sanders did not examine legislative procedure, but did use hearing, or floor, records like what this study utilized. Sanders' research relied on the volume of occurrences regarding the mentioning of

certain topics whereas this study, which was more concise, relied on specific occurrences with contradictions to intentions and outcomes. Sanders' study was focused on how there was a lack of compromise surrounding the PATRIOT Act as this study pointed out the inability to able to compromise in the Congressional, administrative, and court settings.

Like Sanders (2016), Lyons (2016) wrote a similar qualitative case study, though Lyons' analysis researched a state-level implementation of a law. Lyons addressed how child abuse education mandate, known as Claire's Law, had been misapplied in the state of Ohio. Lyons' use of a case study in research allowed the researcher to interview health professionals and others involved with Claire's Law and determine what was expected from the state government. This design is like my study in its use of the case study; the issues with the ACA are well-documented, and my research dove deeper into how the ACA was procedurally passed and the government upholding of the law in the aftermath of the Congressional passage.

Finally, Seaman's (2013) study, a qualitative case study about the discrepancy between state and federal government in the passing of immigration legislation. Seaman uses a law passed by Arizona to highlight an occurrence where immigration law was enacted, known as S.B. 1070., and after research drew conclusions as to how the federal government could use a similar policy framework. Like this study, Seaman looks diligently through the process of the legislative process via interviews with participants in its passage or implementation. Seaman then gleaned understanding through these interviews to determine the proper techniques and framework required to have federal legislation enacted. The social implications are like this study because it will provide

future legislative proceedings better framework for putting forth major pieces of legislation done in a more proper manner.

Faith of the Founders.

The characteristics of the Founders are critical to understanding where the theory of declarationism was derived. Stone (2008) suggested that George Washington's beliefs and morals ran very deep. Because of these beliefs, he was one of the first to ensure that God would be a significant part of the new nation’s government and its culture. Merino (2010) used this quote by Alexis de Tocqueville to exemplify how America assembled its beliefs: “A French visitor to the United States in the early 19th-century described Christianity as ‘a fact so irresistibly established that one undertakes either to attack or defend it’” (p. 231). This inclusion of God may have occurred because the Founders knew that acknowledging a deity in an official government document might encourage U.S. citizens to adhere to a moral lifestyle with respect to culture (Epstein, 1996).

The Founders believed that it was not solely out of America’s own efforts that success would be achieved, but rather efforts made under the guidance of a divine power: “Taken all in all, I think history teaches that the benefits of faith in God have outweighed the costs” (Meacham, 2007, p. 31). The faith of the Founders was the most profound influence on the new country because it reinforced the significance of liberty to them. For many generations, it was accepted by U.S. citizens that the reason America had been blessed with sustained liberty was because it had been faithful. Guidance from the Bible, from which the Founders derived their inspiration, may have come from a passage such as the one in Galatians 5:13 (KJV), which reads: “For, brethren, ye have been called unto liberty; only use not liberty for an occasion to the flesh, but by love serve one another.”

Leadership of the Founders.

Meacham (2007) made the point that the phrase "Life, Liberty, and the pursuit of Happiness" could answer the difficult questions of America when he discussed a set of moral values that may govern laws and decisions. Roche (1961) referred to the group of men whom founded the U.S. as having a hodgepodge of ideologies, including a varied collection of attributes, beliefs, and legends, but they all agreed on liberty. As one of the leaders in the Revolutionary War, John Adams was a man of deep belief in liberty; he was one of the few Founders whom never bought a slave, as he was vehemently opposed to slavery. His advocacy in ending slavery would be considered heroic and would set the stage for its eventual abolition.

Thomas Jefferson, as Conant (1962) asserted, was the biggest proponent of liberty in the early colonial period. He was a leader in the Enlightenment, a period that taught individuals to use reason above all else, and he also had the clearest drive regarding liberty among the Founders. Moreover, the creation of the *Manual* for Congress was a direct attempt to institute the procedures that must be followed by legislators to protect the natural right of liberty. Jefferson’s *Manual* was used frequently in this study, and should be most noted as Jefferson’s response to concerns over the endurance of the natural right of liberty through the years following the nation’s inception.

Widely considered to have been the father of the Constitution and the author of the Bill of Rights, James Madison resembled Thomas Jefferson in his pursuit to ensure that liberty in the United States would last; Madison worked closely with Jefferson to form the new laws of the young nation. Roche (1961) described Madison as an even more ardent supporter of liberty and the Constitution than Jefferson. Madison contributed a

great deal to the Constitutional Conventions and initially opposed the Bill of Rights because he believed that future governments would insist that only those rights would be enforced; this hesitation clearly demonstrated his own commitment to the natural right of liberty, even apart from his relationship with Jefferson.

Avolio and Yammarino (2013) discussed the transformational nature of the Founders, who exerted leadership unparalleled in world history and held confidence not only in themselves, but in the principle of liberty. The Founders were opposed to charismatic leadership because of the previous government in Britain, where aristocrats had controlled and managed the masses with their force of personality and popularity (Avolio & Yammarino, 2013). Avolio and Yammarino asserted that the Founders were even uneasy about democracy because of its inherent tendencies toward charismatic, controlling leadership.

The Founders wanted to radically change the way life was lived in conjunction with government, but they may have created an ideal too difficult to maintain, per Avolio and Yammarino (2013): “Ironically, creating new and more democratic practices in elections and other facets of American life has required charismatic, heroic, or transforming leadership to counter the sacrosanct aura of the Founders and their work” (p. 123). Most importantly, Avolio and Yammarino pointed out the necessity of charismatic leadership to combat authoritarianism forming within liberty. As Burns (2003) argued: “I believe leadership is not only a descriptive term but a prescriptive one, embracing a moral, even a passionate, dimension” (p. 79). Certainly, the Founders were

wary of a charisma that would be misguided and void of the social aspects that should accompany such liberty (Avolio & Yammarino, 2013).

Trends in liberty.

As Bernstein (2009) suggested, the Founders have been uniformly recognized as heroes since the Revolutionary War. Bernstein described the mood at the outset of the Revolutionary War as nationalism towards liberty, something that was unlike any other national feeling. Nussbaum (2010) even described U.S. patriotism as a mood that has shaped the key issues and ideas of the world in the vast spectrum of scholarly thought and diplomatic policies. Green's (1997) research followed the perceptions of the Founders' influence and their incorporation (or disincorporation) into common law. Green's work showed that most of America's policy decisions in the 21st century, examined through America's view of liberty, are perhaps different from the perception of what policies should be according to the Founders.

Green (1997) asserted that certain trends within the body of U.S. law showed that though his specific issue, the Christian maxim, was not prevalent enough to call America a Christian nation, arguments made by Christian justices and others were answers to whether America was a Christian nation, a view that tends to sustain liberty. As Green explained, America made attempts in the early 20th century to be like the Founders, who some have thought wanted a Christian nation, to keep the hope of America as a Christian nation alive.

Wilsey (2010) followed a similar approach to Herman and Gandy Jr. (2006) as he examined U.S. history and found primary influences from the Founders. Wilsey, in the first part of his study, charted Christian values brought over from Europe and how they

subsequently affected the colonies and the inception of the Constitution. Wilsey stated that the Founders produced a nation that was Christian, which, because of the similar principles in Christianity and liberty as concepts, significantly contributed to the liberty of the country. Wilsey further stated that this idea did not endure through the years, mostly because it was not explicitly written into the Constitution.

Differences from the Colonial era to the 21st century.

The Founders were deeply rooted in a strong sense of liberty, and Meacham (2007) stated that the most significant success of the Founders was their ability to cohesively put religion and government together. As Meacham suggested, societies prior to the United States collapsed because of a lack of harmony between God and the state. During the Civil War, President Lincoln asserted to be a blessing to America, which he believed would continue regardless of the strife within it (Noll, 2002). President Lincoln could stand tall through the bloodiest war in U.S. history because he was persistent in pursuing what God deemed necessary in the name of liberty, argued Noll:

> But demurrals were far less obvious than clear-eyed moral certainty about God and his will. The great exception to these generalizations was the moral reflections of the sixteenth president of the United States, Abraham Lincoln. To examine his perspective on the mind of God has the significant value of illuminating more clearly the principles, assumptions, and conventional expressions of professional religious thinkers. To make this comparison will also indicate why the Civil War proved to be the climax, but also the exhaustion, of the synthesis of common sense, republicanism, and evangelical Christianity that

had exerted such a comprehensive influence in the early history of the United States. (p. cxx)

Noll (2002) argued that President Lincoln’s ideologies never changed and carried weight through the 21st century. Meacham (2007) wrote about an attack on liberty in a legislative battle in the House of Representatives in 2005, as the House debated a bill to prevent proselytizing in the Air Force Academy; one representative characterized it as the continuous attack on U.S. Christianity. This statement is just one of many that are arguing for the case of God and government in the 21st century.

The future of liberty looks like the Founders would have wanted it, considering the overwhelming debates in the early 21st century regarding the involvement of the government in U.S. citizens’ lives. With health care reform under the ACA and the ways in which the federal government has chosen to address it, discussion has arisen concerning how much government intervention is allowed or desirable in the lives of U.S. citizens (Grusky, Western, & Wimer, 2011).

The ACA may be structured to be as its name suggests, affordable; however, it has raised concerns over liberty, because it may have been improperly passed, and it incorporates a mandate that a person must purchase health insurance if not otherwise insured. Scheuer and Smetters (2014) suggested that the shaky rollout of the health care reform exchanges might result in the law’s demise because of both its individual mandate and its inability to get off the ground after its enactment. Fuchs and Emanuel (2005) indicated that a reaction contesting liberty may arrive in the next decade, from what the Founders designed when they “deliberately set in place political institutions that are

inherently resistant to radical change of any kind, economic, social, or political" (Fuchs & Emanuel, 2005, p. 1411).

Regardless of the outcome of health care reform, America recovered from the Great Recession through government intervention, even though it included a "substantial sum [of taxpayer money]" (Blinder & Zandi, 2010, p. 11); some have argued that without the taxpayer contribution, America might not have recovered as quickly, if at all.

Changing of U.S. Implementation

Total liberty.

As Roche (1961) put it, "the Fathers have thus been admitted to our best circles," (p. 799), but the Founders faced a great number of immediate obstacles, such as war and the battle for independence, and were thus prevented from defining of one of the biggest concepts of all time: the true liberty of mankind. Only a few hundred years ago, nobody needed to defend the Founders on the topic of slavery because it was the cultural norm. No matter how serious their sins may have been, and however greedy their pursuits, the men responsible for the American Revolution were also believed to have kept slavery from growing unchecked (Freehling, 1972, p. 81).

Freehling (1972) stated that, had such inequality been thwarted in the early Colonial Era to ensure that all were treated equally and were free from discrimination, the making of America would truly have resulted in a nation that believed in liberty for all. Unfortunately, that did not take place. The first correction that should have been made was to remedy the inequality that caused the Civil War, as Freehling (1972) pointed out: "To conclude, the Constitution was neither a victory for abstract theory nor a great practical success. Well over half a million men had to die on the battlefields of the Civil

War before certain constitutional principles could be defined . . ." (Freehling, 1972, p. 816). Freehling went on to argue that the Founders never sponsored slavery, but did nothing about it.

Striner (2006) suggested that presidential candidate Stephen Douglas peered into a scenario that was considered by generations before and after:

> Suppose Mr. Lincoln himself had been a member of the convention which framed the Constitution, and that he had risen in that august body, and addressing the father of this country, had said as he did at Springfield: A house divided against itself cannot stand. (Striner, 2006, p. 84)

If not for Abraham Lincoln's efforts, liberty might have been destroyed in America (Striner, 2006).

Taking a stand.

In the late 19th and early 20th centuries, U.S. citizens had opportunities to take a stand against newly-forming totalitarian regimes whose stated goal was global domination. Elkins and McKitrick (1961) formed a thesis around this concept:

> The American public, now full of guilty misgivings, had begun to ask itself searching questions about the evils of the existing order and about the price it had allowed itself to pay for material progress . . . . Thus vested interest came to be seen in the Progressive Era, those years roughly from the turn of the century through the First World War, as the ultimate reality behind the life of affairs. (p. 185)

Elkins and McKitrick's argument demonstrated that the responsibility that comes with being the world's premiere guardian of liberty meant that the protection of those beliefs

must be maintained both within and outside the nation; yet, America was isolationist and inward-focused at the beginning of World War I.

A perfect opportunity to quell disruption in Europe and protect the nation's interests was mishandled prior to the First World War. Schlesinger (1983) examined the Founders and their views towards battling a united Europe:

> "And were the consequences even to be the longer continuance of our war, I would rather meet them than see the whole force of Europe wielded by a single hand." In these arresting words Jefferson defined the national interest that explains American intervention in two world wars as well as in the present cold war. (p. 3)

Had the United States used diplomacy regarding liberty at the beginning of the First World War, the Second World War, and even the Cold War might have been prevented; as Schlesinger (1983) noted: "Neither the arms race nor unilateral disarmament therefore holds out hope. What we must do rather is to revive the vanishing art of diplomacy" (p. 14).

Liberty may have saved America from destruction. Schlesinger (1983) argued: "In this humane spirit we may save not only our generation but posterity, too" (p. 16). After 9/11, there was an instant national instinct to retaliate against the perpetrators, but this notion may have come from U.S. involvement in a great number of wars during the 20th century. "But when students of comparative politics examine the process of nation-building in countries newly freed from Colonial rule, they may find the American experience instructive as a classic example of the potentialities of a democratic elite"

(Freehling, 1972, p. 816). The Founders, however, were involved in a war of their own, so it may have been difficult for them to stress the importance of liberty to future generations of a nation that wanted to responsibly lead the world (Schlesinger, 1983).

Moral standard.

Lambert (2003) discussed 17th century New England Puritans, stating that they "drafted a constitution affirming their faith in God and their intention to organize a Christian Nation" (p. 1). Lambert suggested that the Founders obviously stood for a moral law that included the Christian God as the ultimate authority over the land, and they sought God's wisdom in policy decisions that involved liberty. Lambert described America's present moral interests when he asserted that "the same questions that Williams and Madison raised in the late eighteenth century continue to interest Americans today, sometimes expressed with great passion" (p. 4).

The problem with respect to liberty that persists in America in the 21st century, Lambert (2003) argued, is the debate between those who believe that the nation is or was Christian, and those who believe that the Founders may have been of the Christian faith, but in a personal manner, not as something intrusive or supported by the state. Kennedy and Newcombe (2003) wrote in *What if America Were a Christian Nation Again*? that if America had followed the first of the Ten Commandments, follow the one and only true God, and the last, to not covet a neighbor's possessions, the nation would have been more involved and willing to acknowledge or be repentant for the mistakes made in efforts toward liberty.

Kennedy and Newcombe (2003) quoted from 2 Chronicles 7:14 (NKJV): "If My people who are called by My name will humble themselves and pray and seek My face,

and turn from their wicked ways, then I will hear from heaven, and will forgive their sin and heal their land." According to Kennedy and Newcombe, America's political system has two sides that look to advance America in the name of liberty and they must show actions to be an encouragement to show that as U.S. citizens they care about the true, Founder-principled direction of the nation. Disregarding apathy, in Kennedy and Newcombe's opinion, and taking on responsibility represents the first steps toward a return to the ideals of the Founders.

Dictators and Socialism

Ideology.

Glendon (2008) asserted that liberty in the United States is dramatically different from other countries' interpretation of it, as socialist Karl Marx, the author of the *Manifesto* knew: "The eighteenth-century right of life, liberty, and property, as Karl Marx was the first to note, are preeminently rights of separated, independent, individuals" (p. 47). Socialism recognizes individual liberty as a noninfluential belief that has little power in contrast to the weight of government. The government, according to socialism, takes control of citizens' liberty and then redistributes it with the goal of making all citizens equal, yet much less powerful than the resistant government. What socialism may fail to consider, other than individual achievement, is the ability of citizens to choose within a system; an individual without choice breaks down the socialists' illusory argument that citizens are better off.

Though America may not prefer socialism as an ideology, it admittedly may be sneaking in through a similar ideology: *progressivism*. Less severe than socialism, progressivism seeps through in legislation, court rulings, and administrative

implementation to further a socialistic agenda. Hayek and Hamowy (2013) addressed how socialism and progressivism work together by explaining that socialistic agendas are only possible once social reforms are put into place. Socialism gains leverage through progressivism, according to Hayek and Hamowy (2013), and eventually dominates governments and countries.

In a socialistic society, the system becomes steeped in ideology or rule of law, and inevitably fails to appropriately account for the principle of competition, one necessity for success. Friedman (2009) described the "social responsibility of business" as the requirement to "use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game," and to "[engage] in open and free competition, without deception or fraud" (p. 133). When hard-working citizens are free to create their own products, new ideas for delivering solutions to an admittedly imperfect society are encouraged. As competition produces better outcomes, fantasies of magical societies that occur without hard work and education are discarded. In a system in which competition is the reason for prosperity, citizens are not oppressed by any central power, but are exhorted to work even harder with the inevitable conclusion that society can become better through dedication.

Dictatorship and complete control.

At its core, socialism is more than a theory that dismisses individual rights and independent action. It takes that further by proclaiming that socialism can cure societal ills and create a utopian world, according to Hayek and Hamowy (2013). Not all societies endorsing socialism have a single, oppressive leader; some are watered-down through democracy. Nevertheless, when other nations pressure socialist leaders to embrace

ideologies and systems that support liberty, the leaders often act stubbornly and oppress the countries even further. This type of leader can entrench the society with a wholesale belief in nationalism and in its own deified leader.

As the socialistic leader derides its citizens and other countries, to satisfy his or her agenda, "essential distinctions [are] often deliberately obscured by an assiduous and skillful propaganda," which assures the populace "that the transformation was effected" (Hayek & Hamowy, 2013, p. 410). This agenda, mostly comprised of government programs, aims to make the government individual citizens' sole resource. A citizen in a socialistic government has no option to invest in privatization, because there is none; individual wants and needs are based in the government with little to no upward mobility. Even the most established citizens cannot elude the government's firm grasp on their heavily-surveilled lives.

Socialism seeks to put a hold on the free marketplace of ideas and replace it with a central governmental power that provides all necessary services and goods. This is especially prevalent in the seventh measure of the *Manifesto*'s top 10 measures which read: "7. Extension of factories and instruments of production owned by the state; the bringing into cultivation of waste lands, and the improvement of the soil generally in accordance with a common plan." (Marx, 1848) The entire premise of socialism may fail due to this as individual liberty is infinite and cannot be restricted; citizens will always want to and will create and innovate methods to advance and further society. Beyond the necessity to consolidate power, the leader of this society rules alone, but when these

policies fail, the leader is powerless, since the leader's power is contingent on the government's ability to control (Milton, 2009).

Trends in socialism.

The silent death of liberty through socialism is often found in the early stages of socialism's development in the government and among the people. It is heralded as a solution to societal ills, and promises a type of equality that will free citizens from class warfare (Hayek & Hamowy, 2013). Emphasis is placed on the government and its ability to take care of everything a person needs, while the citizen is expected to contribute a fair share. The reality quickly sets in for citizens when they realize that much of the choice they once held in their lives has been removed and replaced with government-approved and government-provided options. In the beginning, socialism seems to fulfill its promises, and when it is masked with nationalism, citizens are almost forced to give it a chance.

Not only do socialist governments pretend to solve all problems, they will often create problems to have something to solve (Laclau & Mouffe, 2001). Much of the socialist government's aim is to always be a part of the solution, and when there is a dearth of problems, they will create them to continue to be the main influence in its people's lives. For example, this can primarily be accomplished by creating government programs and neglecting the poorest citizens who have no choice but to accept a governmental solution or handout. With most power concentrated in the government, strategies are devised to remain strong, and the public is oblivious, as there is a minimal number of inside media coverage.

Changing the engine of society, even with the progressive trial-and-error approach, will harm society in the long run (Friedman, 2009). Liberty promotes fairness; similarly, capitalism is the belief in fairness to all citizens regarding the ability to rise to success. At their weakest points, either can succumb to too much pressure from competition from other societies, if repeated measures are not taken to uphold their foundations (Friedman). As socialism seeps into a society through the implementation of different programs, other nations can take advantage of a weakened capitalist society, especially if outside nations have a robust economy.

The oft-objectionable socialists standing in the way of society's growth can do so because they gain footholds after planting seeds of doubt (Hayek & Hamowy, 2013). Since socialists see their side as supporting all people, citizens of the country, especially the less educated, are goaded into fighting for principles that they do not entirely understand. This is precisely what socialism seeks to gain power: the mass support of people that allows their misconceived policies to take hold, ruining a system that offered free enterprise, innovation, and creation.

Difference from the Colonial era to the 21st century.

Adam Smith (1776) said, "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest." This quote from Smith exemplifies the principle of liberty because it demonstrates the ability for individuals to work hard, earn more money, and thus reap the benefits of their efforts. This principle is important when considering the ACA, which is counterintuitive for top earners who want to perfect their craft and reap the benefits of their work.

Winston Churchill once said, "The inherent virtue of socialism is the equal sharing of miseries" (Ratcliffe, 2011, p. 56). Churchill did his best to synthesize the main problem with socialism: comparatively few people benefit from the system. Those who do not receive assistance must work hard to ensure that those few are taken care of and are financially secure. Hard-working citizens are rewarded with a modest lifestyle, but they live the same lives as somebody who does not work at all. This type of welfare system, according to Churchill, is miserable because of its inherent lack of fairness. The weak are assisted only at the expense of those citizens who work hard.

Margaret Thatcher once said, “The real problem with socialism is that you eventually run out of other people’s money” (Marlow, 2011, p. 183). This is a profound statement, because socialism’s end goal is the system itself, as opposed to a more optimistic liberal society that has no end because of its endless possibility. A system that recycles wealth and constantly takes from the top earners to give to the bottom earners will inevitably collapse. As previously mentioned, most of the top earners will have less incentive to earn when the benefits are given to someone else.

Hayek (1945) acknowledged that our society has proven that there is no possible way that a government can be the central authority in all areas. Hayek opined that socialism’s most central problem is that it assumes that all available knowledge can be used by a single, central authority. As an example, a program like universal health care is presumed to be socialist because it attempts to centralize the industry to ensure that the government will take care of every citizen’s health. Governments, according to Hayek,

are incapable of grasping every issue, whether it be health, economy, energy, or others, and thus the socialist regime will ultimately fail.

An example of this socialist strategy may be found in a program such as universal health care, as it mandates that U.S. citizens buy health insurance and presents the central government as a solution. As Hayek and Hamowy (2013) stated concerning universal insurance for all, including for those who are unable to afford it, “It is likely to aggravate the evil that it is meant to cure” (p. 526). Universal health care forces citizens to become a part of the process and grants the government more power to institute its ideology. A system that seeks liberty first would provide the *option* of health care, but would never force a citizen to obtain it.

Achieving true socialism.

There are a few tenets that are necessary to enforce socialism. What may go unnoticed for outsiders of the socialist process is the lack of media coverage from multiple sources within the structure of the government. Kern and Hainmueller (2009) asserted that if “global flows of information promote democracy . . . authoritarian regimes will face a stark choice between sealing themselves off hermetically from the rest of the globe, similar to North Korea, or facing their demise” (p. 1). In a truly socialist society, any information transmitted over television, radio, social media, or by other means is either run by the government or is heavily censored. Strategies are formulated for propaganda dispersal through media, and there is a minimal view of what happens inside the government. In North Korea, for example, there is very little that the world sees from inside the entire country (Kern and Hainmueller). If there are media reports

that are released from the country, the statements and videos are heavily calculated and leave little room for observation for outside inquiry.

According to Laclau and Mouffe (2001), to unpack what socialism presents as a societal cure is to review it apologetically by accepting its tenets as legitimate and dissecting its flaws. One of the main tenets of socialism is that it promotes sharing of wealth as top income earners are forced by the government to give away their wealth. The major flaw with this tenet of socialism is that it gives little incentive for top earners to keep earning. The utopian optimism is one of the reasons that governments can convince citizens to adopt this ideology (Laclau and Mouffe), but this major tenet is quickly refuted by the presence of a disincentive for achievement.

Another tenet that is not entirely thought through by the citizens of a socialist country is the tax system. Once citizens approve increased taxes to implement all the popular programs, such taxes then decrease the amount of money available to citizens. With less money, citizens are less able to challenge any overt oppression by the government. Powerless citizens, especially those in the middle class, are necessary for socialist governments to accomplish complete centralization of all services, supported by citizen funding, and given freely (Friedman, 2009).

Socialist nations also centralize their militaries. Militarized states often begin by outcries for a safer nation, and the government steps in to meet this demand, often showing little mercy toward violators of the law (Friedman, 2009). In many of these states, accused criminals are often found guilty without a proper and just trial. A society that accepts safety in exchange for their right to question the government will almost

invariably be socialist (Friedman). These governments have an intriguing allure, but an increase in the police force in any system is best executed with a fair judicial system and process.

Another step to gain power, like redistribution of wealth, is to give the government power for the sake of giving it power (Hayek & Hamowy, 2013). At that point, socialists argue, the system will demonstrate how great it works, but whether it works well or not will be moot once the system is all turned over to a central power. To goad society into giving socialism a try, its proponents mock those who support liberty as unwilling to try out new policies and initiatives to progress society, and as somehow backward or regressive (Hayek & Hamowy). Most of what socialism posits is very grand, and when a society gets large enough, becomes more attractive as society feels it needs a safe way to proceed into the future. However, this false sense of safety is designed to lure the oppressed society into foregoing its own power (Milton, 2009). Socialism finds or create problems where there are none to achieve power and control (Milton); liberty contests that no system is without its imperfections, and understanding that will allow a society to grow.

Socialism's principles do not advocate individualism, but rather a communal share that is distributed evenly, touting the helpless state of the poor. Jesus, as written in Matthew 4:19 of the Bible (ESV), said "Follow me, and I will make you fishers of men," which is symbolic of the way society should treat those who are poor. "I do not see any grounds–liberal or other–on which [redistribution] can be defended. The subsidy to the beneficiaries is independent of their poverty or wealth; the man of means receives it as

much as the indigent" (Friedman, 2009, p. 184). This is a concept that is embraced more by liberty than by socialism, because in this allegorical example, the emphasis is on teaching, not giving.

Every functional society makes attempts to aid the poor, but socialist-leaning societies focus on giving the poor more money than opportunity. Even in those societies where socialism is slowly creeping into public discussion, proponents of socialism will say that the poor will be given more opportunity, but there is no clear line established between giving and teaching. These same defenders of socialism, to gain the vote of the poor, will often attack liberty proponents for not doing enough to help the poor.

Future in socialism.

Schumpter (2013) suggested that the future of socialism is improbable due to the inability to change human nature: "But we need not commit ourselves either way, because no such fundamental reform of the human soul would now be necessary in order to make socialism to work" (p. 203). Socialists are easily offended by the objection that low earners did not work hard enough to receive money from the top earners. Top earners, in a socialist world, need to redistribute their wealth because they must pay their fair share; whether this is logical or not, socialists believe that low earners must be brought into the societal fold whether they work to be productive or not. Capitalists believe that this idea is, in part, a gimmick to gain power over citizens and form a central power that cannot be overthrown. The redistribution of wealth must work, logically or not, for socialism to gain hold as the primary ideology of a society (Hayek & Hamowy, 2013).

Universal health care, as one of the issues that a socialist government wants to enforce, regulates small businesses and removes the free market from alternatives for citizens. The thrust of the concept is to deliver a service that is taken away from the private sector and from entrepreneurial citizens who make a living in that industry. With the government taking over goods and services, there is little way for citizens to innovate and create more opportunity, but the main goal of socialism is to become the universal service provider. Milton (2009) wrote:

> This danger we cannot avoid. But we needlessly intensify it by continuing the present widespread governmental intervention in areas unrelated to the military defense of the nation and by undertaking ever new governmental programs, from medical care for the aged to lunar exploration. (p. 202)

Most socialist policies are made to silence citizens' personal output and to steer policies toward governmental input so that the outcome benefits the government alone.

The redistribution of wealth between the upper and lower classes is one of the basic tenets of socialism, but this policy fails due to an imperfect system. Like putting a hold on the free market, the socialist policy of redistribution is lofty and utopian, but fails because it is improbable (Fischer & Gelb, 2003). The improbability is that the central governmental power can fairly determine every citizen's income--a fallacy. The unfairness of the concept is apparent because the marketplace of ideas cannot be held without stifling innovation and progress. Thus, citizens will find ways to produce more than other citizens, and penalizing those citizens will cause strife and unrest among the populace.

The world of the future consists of a free marketplace of ideas which, simply put, is a type of give-and-take system that attempts to provide genuine opportunity. This give-and-take does not mean that the system takes from a citizen without the citizen's consent; in this system, the citizens will only have something taken from them if they decide to accept larger risks. Citizens will be able to reap benefits from this system just as much as they will be at risk of losing their assets. However, declarationism has no rule of law constricting many people from profiting enough to maintain a standard life; there are very few people who gain an extraordinary amount from the system, but those citizens' gains are examples that success can be achieved through declarationism (Milton, 2009). A socialist system, by contrast, does not allow that success.

Political Maneuvering

Maneuvering is a part of politics regardless of the party that is exploiting the system to gain an advantage. Wilson's (1989) study of the model of bureaucracy discovered much on how large government agencies work and that "citizens are either ignorant of their stake in a policy or included to be 'free riders' on the activities of others" (p. 83). The ACA may have passed without proper regard to the citizens' preferences. as the country's polls were divided. This study investigated whether political agendas were motivations in the design and passage of the ACA.

Rhodes (2003) postulated that President George W. Bush acted with unanimous support with agenda-driven politics for the sake of internationally spreading freedom. This was like the landmark agenda-driven politics of the ACA, passed with minimum support, which demonstrated a disregard for the citizens' right to choose. The ACA was passed with the intent to force U.S. citizens to buy health insurance. Agendas that are

agreed upon unanimously tend to be for the benefit of all, as opposed to those agendas that involve less liberty and more forcible agenda-driven politics (Rhodes).

Mouw and MacKuen (1992), though their scholarly work is older, affirmed the notion that agenda-driven politics is necessary. Mouw and MacKuen termed the process "The Strategic Agenda in Legislative Politics," and found the process to have the greatest legislative procedural effect on policies that were passed. This agenda-driven strategy was used to pass less-than-perfect legislation to satisfy part of an agenda and to further assist future policies. This cycle was not unknown to U.S. politics, but the contrast in laws the Founders passed and the ACA passed by Congress revealed laws that were vividly disparate on the spectrum of liberty.

The subtle takeover by socialism that Hayek and Hamowy (2013) spoke of is analogous to the ACA, which forced universal acceptance of health care, removed the ability of the citizen to choose, and subsequently discarded individual liberties, to which Glendon (2008) alluded. The ACA requires U.S. citizens to buy health insurance through the individual mandate, which illustrates active discontinuation of citizens' right to choose whether to accept the risk of large medical bills instead of paying a monthly fee, or to pay a monthly fee to mitigate the risk of such an expense. The ACA did not, on the face of it, spell out socialism or progressivism; those concepts applied to the actual political maneuvering itself.

Political advantage through procedure.

A party that wishes to gain an advantage politically may climb to the top by taking different routes through the procedural system. According to Chafetz (2009), the system in Congress is ineffective: "Legislative Houses themselves have enforced their

contempt power, using either their sergeants or any of the other political weapons at their disposal" (p. 1155). This system in Congress comes in the form of Jefferson's *Manual,* which is a set of rules by which Congress must abide. Politicians or a party may circumvent these rules by using some of them against each other in order to push through a bill. This allows the bill to go through without raising questions. These forced bills pass using processes that cause most citizens and reporters who are covering Congress to pay more attention to the process than the bill itself. Using the procedure for the benefit of forcing a bill through Congress is not uncommon, but for controversial bills, parties can usurp the process, which may be disastrous for the country (Vermeule, 2003).

The first of many procedural advantages available through Jefferson's *Manual* are vehicle bills. Saturno (2002) commented on this very procedure: "Such an action could also be followed by House passage of an appropriate revenue-raising measure that would then give the Senate a legitimate legislative vehicle for its revenue provisions" (p. 11). Bills that spend money must originate in the House of Representatives and then be subsequently passed by the Senate before going back to the House with a different bill title and text. In some cases, bills will have a completely different intended outcome from what was introduced. This complete bill overhaul is exactly what parties do when they want to pass a controversial bill that would not pass the House unless it was passed as a completely different bill (Saturno, 2002). Parties look for bills within the Senate that have already passed through the House and then overhaul them with their controversial measures. All that must be done, then, is to pass it again in the House with only one vote left to whip rather than the usual two.

The use of a vehicle bill has many side effects that coincide with passing a bill underneath the public radar. Among these side effects are unofficial meetings by Congressional members with people possessing outside influence (e.g., executive branch officials) to discuss the measure's passage (Chafetz, 2009). This contact goes unbeknownst to the opposing party, since they are not able to track a bill that is intended to completely different than publicly known. The parties responsible for passing the vehicle bill may then meet with one another to discuss strategy to determine how the bill will change orientation and what it will take to ensure its passage. It also means that politicians can avoid substantial ties to any bill, as they can pick any bill passed as a revenue-raising bill in the House and then direct all their resources into turning the bill into a completely different measure altogether.

Another side effect to vehicle bills is the dishonesty it implies to the U.S. public at large. Transparency by Congress is necessary to ensure honesty, and the American public is left largely in the dark as to vehicle bills, along with the opposing party in Congress. Vermeule (2003) discussed transparency as follows: "It is thus a favored recipe . . . [of those] who seek to reduce official corruption . . . offering principals institutional arrangements that provide for ever-greater transparency" (p. 38). The educated electorate may discover what the opposing party is doing if they pay close attention, though the activity may be shrouded in so much secrecy that even keeping up with current events may not be sufficient. This type of dishonesty within Congress is the opposite of what the Founders envisioned, but it also signals the corruption that goes on within Washington, D.C. that puts citizens' concerns last in priority. This can create a web of deception

resulting in the removal of innocent officials wrongly implicated as part of the vehicle process, even if they are only guilty of ignorance of the corruption.

The final crucial problem with the use of vehicle bills is the precedent that it sets (Saturno, 2002). Once parties know a more underhanded way to pass measures, they are more likely to use the tactic to appease their constituents and lobbying interests. The top priority for each member of Congress is reelection (Saturno), and the best way to achieve that is to pass the bills that their party favors. This issue bears similarities to the ban of earmarks in the early 2000s; both sides had used the gimmick enough that a moratorium was placed on their use. Earmarks were repeatedly abused to ensure that specific appropriation measures would be included in bills so members of Congress could appease their bases (Saturno). Vehicle bills may not ever be banned, because revenue-raising bills must originate from the House, but they will continue to be used until a rule change prevents them. This could be very problematic, considering many controversial bills could be passed this way, and likely will be unless they are banned.

Political advantage through bureaus.

It is possible for political maneuvering to cause federal agencies to act out of their nature to satisfy their interests. Endorsement from a federal agency represents significant benefits for a party looking to ram a measure through Congress. In eliciting support, legally in the public sphere, a credible source can change the momentum of the entire process (Rose-Ackerman, 2013). Once that happens, opponents may be unable to stop the measure from going forward. Behind the scenes, however, political handshakes between legislators and bureau officials are being made to put out a more favorable opinion of the measure to ensure the security of their own positions. Supporters of the bill understand

that their jobs are ultimately appointed by the Executive Branch, which has power over each federal agency. Though this tactic is usually seen as collusion, or ethically illegal, not much can be done when these conversations go on behind closed doors and the security of jobs is at stake.

Federal agencies are often stuck in the middle of many legislative initiatives due to their heavy endorsement influence, but, because of their wariness of journalists, they find different ways to assist Congress. Federal agencies, often regarded as the middle-men between political parties, have corruptive interests that often hinge on what they can give and receive (Rose-Ackerman, 2013). Since money cannot change hands because of ethical oversight and scrutiny, political clout and favors are the payments used to help push a bill through. This influence can also be evident in reelection bids, where bureaucracies can help shape voter mentality, in exchange for the politician's endorsement of said bureaucracy. Such a cycle of political favors becomes entrenched in the system when a group of politicians seeks to establish an agenda, as it is much easier to support a collection of Congressional members when they are passing favors around as allies. Rose-Ackerman (2013) also described this influence as a legislative cartel that decreases the likelihood of a federal agency being caught and reprimanded for its corruptive collaborations.

Rose-Ackerman (2013) discussed the deep effect of bureaucracy on Congress and its juggernaut capabilities in politics. Rose-Ackerman outlined the many methods by which bureaucracies can overreach into Congressional lawmaking. One of the major ways overreach may occur involves committees, where "insecure junior congressmen

will not choose committees with jurisdiction over agencies whose benefits are so indivisible that one can expect to obtain bureaucratic favors only after several elections" (Rose-Ackerman, p. 79). Bureaucratic agencies are entrenched in Congressional committees so deeply that politicians have to choose their committees based on the control they have over particular agencies. Politicians and federal agencies alike must maneuver themselves into Congress to gain leverage in every possible scenario (Rose-Ackerman, 2013). This may be a surprise for U.S. citizens who do not understand the level of political gamesmanship that occurs even with nonpartisan estates such as federal agencies.

The committee route, as Rose-Ackerman (2013) suggested, is favorable for federal agencies because they can plan and prepare for top leadership in committees. This relationship is demonstrated specifically through contractual work with bureaucracies; since bureaucracies can hire outside work, they are flexible as to how committees, which do their bidding, choose a chairperson among members. Rose-Ackerman related how committees dupe voters in such a way: "Even when voters are ignorant and campaign funds are the major means of buying influences, agencies may not be at a disadvantage, given the leeway they often have in naming contractors and fixing terms" (p. 79). Federal agencies essentially find many different avenues to exert their power, regardless of the voting power of the U.S. public; therefore, it may be vital for U.S. citizens to be better informed on the electoral process, and alert in identifying candidates who are not susceptible to the strong arm of federal agencies.

Political advantage through the courts.

The appointments of Supreme Court justices have long been jockeyed by political parties who manipulate the timing of the appointments to correspond with the election of their party's candidate for President (McCloskey, 2010). When there is a particularly large number of aging justices, the next campaign tends to place more emphasis on winning the election, as the Supreme Court appointments will sway the political pendulum for a long time. A Supreme Court justice is nominated by the President and then confirmed by Congress, as the Founders intended (McCloskey). The Founders were confident that the process was consistent with the checks and balances system in place, as the President and Congress must work together to fairly determine an appointment. The potential political advantage lies in the assurance that a justice supported by a given political party will rule according to that party's agenda. The candidates for an open position are typically selected with the party's agenda in mind.

Outside influence can sway a justice's critical decision in a controversial case. This happened through judicial review in *Marbury v. Madison* (1803), where a decision was made about a constitutional doctrine in a political manner (Feldman, 2013). The Supreme Court has the unique power to determine the way a case is presented. For controversial decisions to be made appropriately, sometimes it is necessary to rule on a case in such a way that significant political backlash occurs. Embarrassment, pressure, and repercussions should not sway the Supreme Court. When the Court stands firm against hefty opposition, it indicates that the decisions of the Court are consistent, key for any court's tenure. The benefits of such a system are found in the way the U.S. citizens public views the Supreme Court as an objective, and thereby honest, arbiter of the law.

McCloskey (2010) discussed the schism between reality and perception of the Supreme Court:

> This may express the great, perhaps almost literally unbearable, tension that exists between the (mythic) view of the Court as truly "above politics," faithful only to the apolitical commands of the Constitution, and the (more accurate) portrait of the Court as invariably part of the political process, with its membership reflecting the particular play of political interests dominant at given moments of appointment and confirmation. (p. 282)

Though the Supreme Court and appellate courts have their difficulties, as human beings the Justices are incapable of being completely unbiased, and public perception is turned off more by inconsistency than anything else. Because the issues that the high courts deal with are usually heavily controversial, the U.S. public has an idea of how things will turn out based on the ideological balance on the court. In fact, when justices vote in a way opposite to what was expected, there is more outcry over the decision. This type of decision-making swings the ideological perception of the court unpredictably, which alters how cases will escalate to the Supreme Court and beyond. Though ideology is not acceptable in the court, it may be the best way to ensure that decisions are made appropriately, and at a higher rate (McCloskey, 2010).

McCloskey (2010) discussed the Supreme Court and its intertwining with politics. He contended that the two are not causally linked, but are necessary for each other:

> But the notion that the Court could legitimately co-operate with the political branches in dealing with such an issue was almost equally self-destructive, for the

> Court's claim to public regard rested heavily on the belief that its work was distinguishable from "politics." (p. 63)

The Supreme Court and other high courts are an unbiased branch in the sense of politics, but it is not untouched by politics in the form of ideologies; when lawmakers and justices themselves veer from the undeniable truth to which they are linked, the high courts will fail the U.S. people. McCloskey alluded to this through juxtaposition, but high court justices are best served when following their ideological beliefs, though not when publicly divulging their ideologies. It is also in the best interests of the government to sponsor this relationship between the high courts and politics since it is impossible to separate the two; this type of honesty improves the outcome of the important decisions by the high courts every year.

Ruger et al. (2004) researched the predictability of Supreme Court cases, and found that reasonable success could be found in probabilistic factors surrounding the ideology of each justice. "The model's success here suggests that there is some value to assessing the Court's behavior in accordance with factors of intermediate generality, more general than particularized doctrine, text, or facts, and more specific than simple ideological assumptions" (p. 1194). According to the history of the Supreme Court as well as this study, obvious outliers (i.e., cases in which the Supreme Court votes outside the probabilistic norm) are those in which justices take different approaches than their own ideologies. Supreme Court decisions, per Ruger et al., should be predictable, but predictability would require Supreme Court justices to follow their convictions, as their convictions would be aligned with U.S. citizens' expectations. Justices are on the

Supreme Court to make decisions for America; though they should not merely be puppets, their authority is so absolute that merely sticking with their expected votes will result in the most efficient and best votes for the U.S. public (Ruger et al.).

Relevant and Current Research

Yin (2014) described in an explanation of qualitative case studies why it is essential to define the "unit of analysis" to substantively label the case being studied. Yin asked, "Understanding that each subject illustrates a different unit of analysis and involves the selection of different cases to be studied, do you think that the more concrete units might be easier to define than the less concrete ones?" (p. 35). Yin made a critical point that is necessary for this study: Defining the "concrete" (p. 35) case to be studied is essential to avoid confusion. For the purposes of this study, the ACA was the concrete case used for the case study, and served as the answer of the relationship of the ACA to the Founders and liberty.

This study was qualitative, rather than quantitative, since it drew conclusions from the text of laws and rulings rather than from a data collection set made from the same source; however, some quantitative studies are still helpful in understanding this study. A similar study that invoked a legislative hypothesis was Kovats's (2009) study on the timing of European legislation and the impact of election seasons. Kovats's quantitative study used a regression model for the data collection to be counted more accurately and more acceptably for future experimentation. A similar study was conducted by Bassanini, Nunziata, and Venn (2008), who used quantitative study to utilize a difference-in-differences approach to job protection legislation for the Organization for Economic Cooperation and Development (OECD). Bassanini et al.'s

approach was very simplistic in measuring legislation over a 20-year period to determine high and low levels of productivity. In both studies, there were many units of analysis, which required a more empirical method, and varied greatly from this qualitative study's few units of analysis and explanative synthesis of those units.

Recent case studies that have used the same approach as this study include those of Sanders (2016), Lyons (2016), and Seaman (2013). These studies analyzed legislation over a specific case study, and used concrete units of analyses as defined by Yin (2014). The concrete units of analysis established clear boundaries for the case study to identify the main purposes of each law or ruling. In my study, the ACA was studied through three distinct areas: (1) legislation, bureaucratic reports, and court rulings; (2) declarationism and socialism; and (3) founding documents, political ideologies, and other historical and cultural background information.

Sanders (2016) wrote a similar study that utilized a case study for the purposes of studying legislation, but based the study on a narrative that there was little compromise on the PATRIOT Act. Sanders' case study is analogous to the present study, as it considers how the legislation was passed through the language of the legislation, and all other issues surrounding the legislation. An example of its correlation to this study is found here: "Data for this study were acquired through publicly available documents and artifacts including transcripts of Congressional hearings, legal documents, and briefing statements from the US Department of Justice and the American Civil Liberties Union." (Sanders, 2016, p. 3). In researching laws and rulings, the units of analysis for the case

study included not only the bill itself, but the manner of its passage and other crucial elements behind the making of the legislation.

Sanders' (2016) case study was most similar in approach and design to this study, as well as Lyons (2016) and Seaman (2013) in that all were recent, qualitative case studies for research, though Sanders was closest. Sanders' devotion, however, to the case study of the PATRIOT Act, mainly uncovered the lack of compromise at the federal level just as this study does, demonstrating public policy ramifications aligned with the legislative process of one law. My study used codified law to determine how legislation was passed rather than studying the issue of health care ills in society in relation to liberty.

To express the logical flow of a study's research, Briding (2014), a study with a content analysis and a case study design, used a diagram to better grasp the implications of disaster preparedness policy. The diagram is a logic model, and, like Briding, I will use it as a reference to show how I will analyze codes used in the study. Figure 1, like Briding's diagram, is a cause and effect chart that illustrates the presence of declarationism and socialism in the ACA. It displays interventions that might have produced a less hindered legislative process.

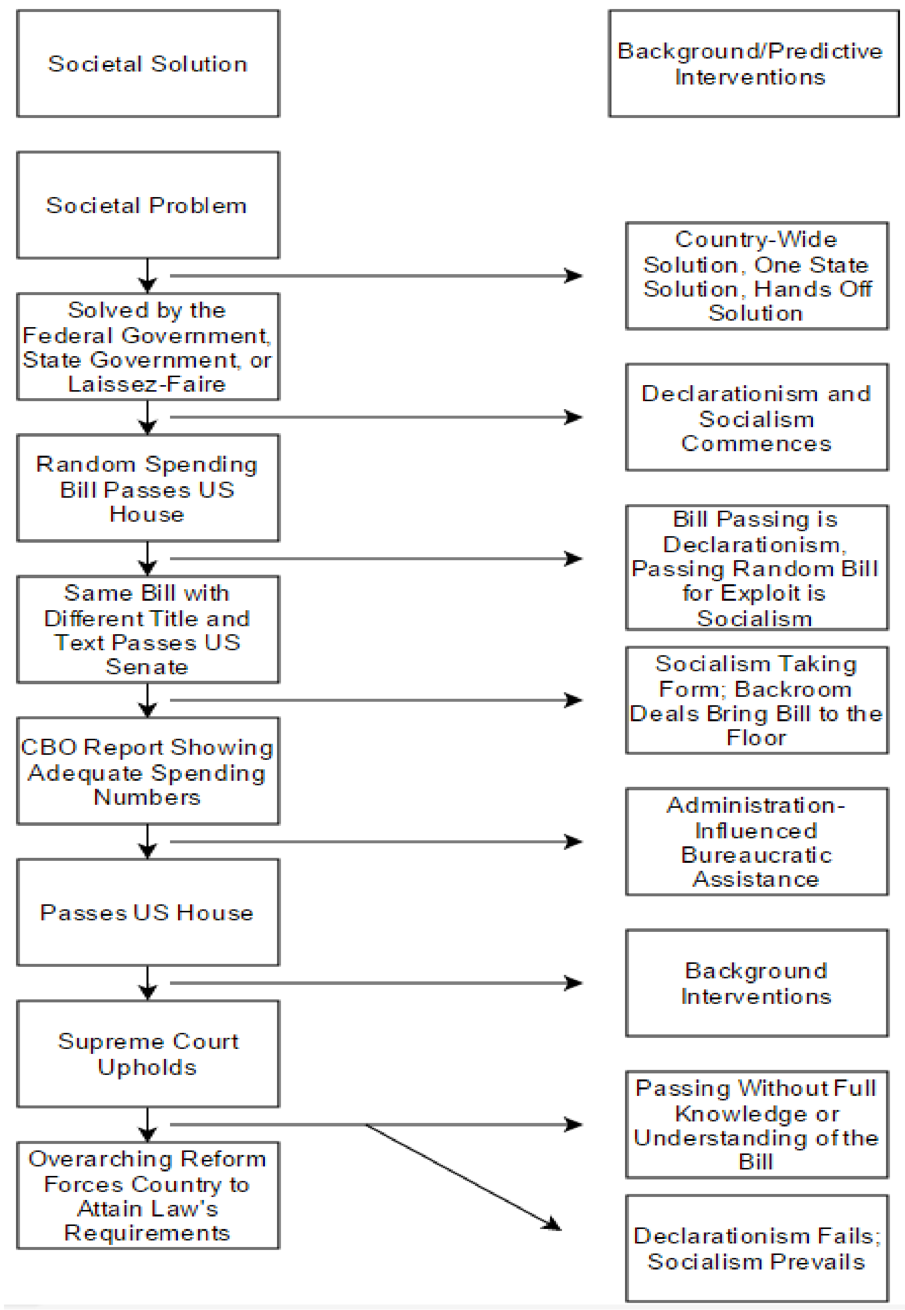

Figure 1. Logic model of cause and effect relationships in the U.S. legislative process. This model includes background, or predictive, interventions that occur when a societal problem is addresses through legislative, bureaucratic, and judicial means.

Figure 1 illustrates how societal solutions and background and predictive interventions work together to create outcomes that place more power with the federal government over the citizen. This figure explicitly shows how a problem within society is turned into both a benefit for the federal government's power-grab and a diminution of the citizen's liberty. The cause and effects of solutions and interventions of influencing lawmaking and principles demonstrate the condemning of individual liberty and the shift towards socialism. Specifically, this figure demonstrates the steps of how a bill becomes law and the intention behind each of those steps to achieve an overarching law that takes power from the citizen and gives it to the federal government.

Figure 1 demonstrates the factors working together in a socialistic government's solution to societal problems; in my study, the societal problem is the health care system in the United States, which is being solved by universal health care. The way to reach this federal government solution is through legislative, bureaucratic, and judicial channels; specifically, legislators utilize the vehicle bill mechanism, side ideologically with bureaucracies, and use the judicial branch to ensure the bill's enactment. Figure 1 walks step-by-step through the vehicle bill process, which often employs socialism's ideals in using the vehicle process for a major piece of legislation, and uses backroom deals to ensure swift, under-the-radar passage. The diagram also illustrates how the courts play into the enactment of the law as they are able to project and distort Congress' intentions and further escalate confusion surrounding the law. In Figure 1, declarationism fails because of the lack of transparency that accompanies a bill of the ACA's magnitude; the law forces citizens to buy health insurance and disregards their individual liberties.

For the purposes of this research, a case study worked well in the qualitative study because of the tools' objectivity; this case study also provided a foundational base that allowed the research to provide proper analysis with the help of social theories. Figure 1 demonstrated how the information collected from the coding scheme created in the results phase. I have used a qualitative case study, as Yin (2014) described, on the ACA to analyze to the legislative process, the bureaucratic influences, and the court decisions that would impact the law.

Summary

Liberty, per the Founders, is a right that is at the forefront of all principles, and is a principle that they wished would endure forever. Scholars have substantiated this claim through research studies that explained how legislators and justices have dealt with the Founders' standards. These ideas were demonstrated in this chapter by showing liberty as seen by the Founders, the Founders' characteristics, how they influenced legislation and court cases in U.S. history, the differences between the times of the Founders and the present, and trends based on lawmakers' activity. The results of this literature review have demonstrated that liberty has mostly stood the test of time, but recently has not shown promising results due to ineffective or corrupt legislation and judicial activism regarding health care reform.

The next chapter will discuss this study's methodology, which included a case study method. The case study of the ACA used liberty through the lens of the Founders and Marx's *Manifesto*, specifically through their governmental documents, to test the natural right of liberty. This study examined the work of government resources in a case

study in the public policy field; that work served as the foundation of explanation of the methodologies representing the basis for the analysis in the following chapter.

Chapter 3: Research Method

Introduction

In this chapter, I described the methodology I used to examine the presence of declarationist and socialist perspectives in the passage of the ACA. In conducting my investigation, I analyzed the procedure outlined in Jefferson's *Manual,* administrative implementation by the CBO, and subsequent held court decisions. Declarationism is a theory that supports the United States' precedent-based legal system and the laws of the Founders by frequently citing them and referring to them as the standards for the depiction of liberty (Kersch, 2011). This theory was contrasted with socialism, a theory which is opposite to the individual liberty spectrum and which seeks to implement larger, government-based programs to redistribute individual liberties. The IRB approval number for this research is: 05-24-16-0315723.

Research Design and Rationale

The evaluation of U.S. law surrounding the ACA was derived from a case study, based on Yin's (2014) work, also demonstrated by Gomm et al. (2000), which determined whether the ACA used proper procedure as outlined by declarationism, or if it stemmed from socialistic principles. In developing the ACA through a case study, I could determine the course taken by studying the path of the ACA from the time it originated through to its passage. A case study was developed through data documents of and surrounding the ACA and its high or low proclivity towards liberty and the Founders.

The research questions for the study on liberty and the ACA were

RQ1) Have U.S. lawmakers followed the intentions of the Founders in passing the ACA, as demonstrated in the legislation, related bureaucratic reports, and court cases?

RQ2) Did the United States correctly follow the procedures listed by Jefferson's Manual in passing the ACA?

RQ3) Did Congress maintain proper oversight on cost estimate report provided by the CBO on the ACA?

RQ4) Did the majority opinion in NFIB and Sissel appropriately and correctly analyze the procedure and the language of the ACA?

The study assumed that the Founders' basic desire for liberty was essential for the success of the United States. Under liberty, the main issue examined in a search through U.S. law was the ACA in the form of a case study. Determining whether the ACA illustrates the Founders' conception of the natural right of liberty required that a thorough case study be completed of the legislation. This design was also necessary because of my use of public records. Unlike some other studies, a case study deciphered the data collection in a way that extracted information beyond numbers (Yin, 2014). Based on my research on the ACA, I developed codes to determine if the bill was correctly passed using proper procedure.

As Yin (2014) suggested, a case study often infers information from the data collection, which is how this study collected data collection and then drew conclusions.

> In essence, the twofold definition—covering the scope and features of a case study—shows how case study research compromises an all-encompassing

> method—covering the logic of design, data collection techniques, and specific approaches to data analysis. … In this sense, case study research is not limited to being a data collection tactic alone or even a design feature alone. (Yin, p. 17)

Yin described case studies to establish a grander purpose, one that is partly a direct vision for the study and for the scholarly community. The legality of the passage of the ACA is definable (Cannan, 2013) and lays the framework for scholarly inference and judgment. The study was extensive enough to provide an analysis of whether the United States' federal actions toward liberty resemble those prescribed by the Founders.

Case Study Design

Eckstein (1992) wrote that a case study tends to give the study more stature, as it provides a representation of the research being conducted. The nature of a case study, with its importance on limitations, is that it takes few liberties in analysis. A more scientific approach would be necessary in my expansive study; to make the study strong in its foundation, a case study gives more assurance to the direction and scope of analysis. Eckstein (1992) contended that:

> Case studies run the gamut from the most microcosmic to the most macrocosmic levels of political phenomena. On the micro level, we have many studies of conspicuous political personalities (political leaders such as Lincoln, Stalin, Gandhi), and of particular leadership positions and small leadership groups. (p. 119)

A clearer analysis is established when using a case study, since it is considered more basic than other methodologies. Eckstein (1992) contended that a case study is straightforward with creative elements: "Case studies, I will argue, are valuable at that

stage of theory-building process, but most valuable at that stage of theory-building where least value is generally attached to them: the stage at which candidate theories are 'tested'" (p. 119). Eckstein (1992) further explained the case study's ability to test boundaries: "Moreover, the argument for case studies as a means for building theories seems strongest regarding precisely those phenomena with which the subfield of 'comparative' politics is most associated: units of political study of considerable magnitude or complexity" (p. 119).

A case study is sturdy because it maintains reality objectively wrote Yin (2014), who asserted that case study claims are best made when there is consistent referral to such objectivity. Yin noted that it is better to know reality than to make attempts at knowing it; likewise, when researching key pieces of the ACA's passage, there was an underlying ideology that could be sifted out from the research and stood out regardless of era or time. Such a trend analysis covered the study's attempt to decipher whether America is following the Founders' intentions through objectivity and practicality, as an effective case study should demonstrate (Gomm et al., 2000).

> Closely related is the question of objectivity. Is the aim to produce an account of each case from an external or research point of view, one that may contradict the views of the people involved? Or is it solely to portray the character of each case 'in its own terms'? This contrast is most obvious where the cases are people, so that the aim may be to 'give voice' to them rather than to use them as respondents or even as informants. (Gomm et al., p. 3)

What the Founders put forth as lawmaking measures in their founding documents is clear, and therefore the ACA's passage was obvious.

The case study, with its straightforward approach and instant feedback, focused on the passage of the ACA, CBO reports, and judicial rulings and represented the treatment of the natural right of liberty. "It is sometimes argued that the aim of case study research should be to capture cases in their uniqueness . . ." (Gomm et al., 2000, p. 3). In presenting the data collection for analysis, the case study approach shows precisions by illustrating what happened in an exact measure, and thereby preventing premature conclusions.

In a sense, the case study's ability to answer, with precision, the main subquestions regarding the ACA's passage, CBO reporting, and court decisions allows for sweeping, bold analyses required of the study; as the case study was focused on one aspect: the ACA.

> In some case study work the aim is to draw, or to provide a basis for drawing, conclusions about some general type of phenomenon or about members of a wider population of cases. A question arises here, though, as to how this is possible. Some argue that what is involved is a kind of inference or generalization that it quite different in character from statistical analysis, being 'logical', 'theoretical' or 'analytical' in character. Others suggest that there are ways in which case studies can be used to make what are in effect the same kind of generalizations as those which survey researchers produce. (Gomm et al., 2000, p.5)

As a law with an expansive legislative process, the ACA required an analysis without violating trustworthiness and dependability. Essentially, the case study gave an analysis of U.S. law with respect to liberty and to the thoughts of the Founders. The ability of the case study design to extend analysis beyond made the case study that much more important, as it provided a strong foundation of examination and an overarching assessment.

A main component of the case study was to analyze the pieces of the ACA that were selected for analysis into noticeable violations, beginning with those that defied Jefferson's *Manual*, CBO oversight, and court decisions. This analysis included different points of the ACA, highlighting the intent of the law, to demonstrate its legality and whether it is something of which the Founders would have approved. The case study design was responsible for showing the facts of the ACA for this study, and took those facts, put them together, and made a final analysis concerning this study's question.

The intent of the ACA was deciphered through a coding scheme created to highlight the missteps in the implementation of the ACA. This coding scheme gathered incidents of missteps in Congress, the CBO, and the Supreme Court, and determined the applicability of a social theory, in this case, declarationism or socialism. The data collection was then analyzed to demonstrate that liberty was bypassed in the entire implementation of a law that is controversial because it overturned liberty by forcing U.S. citizens to buy health insurance.

Yin (2016) pointed out a subtly when coding and defining units of analysis:

> On final point pertains to the role of the available research literature and needs to be made about defining the case and the unit of analysis. Most researchers will want to compare their finding with previous research. For this reason, the key definitions used in your study should not be idiosyncratic. Rather, each case study and unit of analysis either should be similar to those previously studied by others or should innovate in clear, operationally defined ways. In this manner, the previous literature also can become a guide for defining the case and unit of analysis. (p. 34)

These specific steps gathered, coded, and analyzed the ACA's implementation as a law and its inability to correctly follow the natural right of liberty as the premiere principle in the United States.

Once the case study made an analysis it did not go any further, as the methodology remained objective and refrained from overstepping its limits. As Yin (2014) mentioned, the case study is best when it remains objective. Gomm et al. (2000) discussed the case study dilemma with social sciences:

> Most social scientists have come to accept both that social purposes and social phenomena are too complex for social science to provide definitive answers to practical problems and that a priori assumptions or paradigms inevitable influence the conclusions of empirical research. Social scientists, however, have not always thought through the implications of these ideas. From the perspective of history, conceptual shifts in academic disciplines and fields may look like revolutions

> (Kuhn, 1971); a close-up look at paradigm shifts normally reveals a far more incremental and evolutionary process (Carloye, 1985). (p. 52)

The present study considered the points of law in the ACA and the Supreme Court case, which had already been deemed important in America's view. For example, in the controversial issue of universal health care reform, the ACA is widely considered a landmark, including the Supreme Court's decision. The importance of this case is not made by a case study, but by the country's opinion. Case studies string large pieces of law together based on this importance. Universal health care reform is considered a liberty issue by U.S. citizens, and the case study approach makes a copy of the laws, sometimes through many years, and stops there, while the case study is required to analyze what the laws mean.

Not only can a case study dig deeply into data collection, it can take on massive projects, including U.S. law, in the legislative form of the ACA. The task of searching and analyzing legislation is less daunting when there is a measure that can manage the expectations that accompany such a task, including length and breadth, and maintain a discourse that will ensure valid results from the corresponding data collection. Eckstein (1992) referred to such ability of a case study:

> In crucial case study, the advantages of traditional scholarship, as displayed in configurative-idiographic studies, can thus be combined with those of modern technique and rigor. And it is also more possible to apply in crucial case study certain techniques developed in social science for overcoming the imperfections … we are far more likely to develop theories logically and imaginatively, rather

> than relying on mechanical processing to reveal them …these surely establish a heavy credit. (p. 162-163)

The case study design analyzed liberty, socialism, and procedure; through the passage of the ACA as presented in the research, and produced the most accurate description of the procedures used to pass the bill in Congress. The U.S. law data collection, with the assistance of the case study, tied past and present beliefs of liberty together with the ACA and provided insight into the passage of such a law.

A case study has allowed the ACA to be researched because of its flexibility for researching records and producing an analysis that can find patterns within the data collection. Gomm et al. (2000) alluded to the type of work the case study can do, in bringing records and analysis together:

> Some case study researchers argue that they can identify casual relations through comparative analysis … Sometimes, comparative method is seen as analogous to statistical analysis; but often, a sharp distinction is drawn between 'logics' involved in 'statistical' and 'case study' work … Nevertheless, questions have been raised about whether there is any such difference in logic … as a means of producing theory via case study. (p. 6)

The ACA has a highly scrutinized legislative and judicial history, one which started with the Service Members' Home Ownership Tax Act of 2009, introduced in the House, and most significantly ended with a Supreme Court case in 2012 that upheld most of the health care law's functions. Deciphering the law, possible through a case study design,

consisted of taking a definition or idea from the past and concluding whether it had been incorporated into the present via the wording or intent of the ACA.

Role of the Researcher

When referencing public records, the study has a sturdy foundation, and the threat of bias from extraneous sources was removed from the research. Creswell (2009) explained that when the researcher uses sources that are more foundational, reliability increases and threats are diminished.

> Triangulate different data sources of information by examining evidence from the sources and using it to build a coherent justification for themes. If themes are established based on converging several sources of data or perspectives from participants, then this process can be claimed as adding to the validity of the study. (p. 191)

In studying the passage of the ACA, Jefferson's Manual was used as a reliable source to provide honest and predictable results, ranging from inception to legislative maneuvering. Other sources that were used to triangulate the research were floor speeches, bureaucratic reports, and court opinions; more sources included to round out the research such as legislative history, scholarly write-ups surrounding the legislative process, and appeals to court decisions. This research remained reliable throughout the study due to its foundational and disciplined approach towards public documents.

The dependability of this study was reinforced by use of the primary sources from Congress and the Supreme Court in the examination. Creswell (2013) spoke of the often referred to dependability as it relates to qualitative studies:

> Lincoln and Guba (1985) have used alternative terms that, they contended, adhered more to naturalistic research. To establish the "trustworthiness" of a study, Lincoln and Guba (1985) used unique terms, such as "credibility," "authenticity," "transferability," "dependability," and "confirmability," as "the naturalist's equivalents" for "internal validation," "external validation," "reliability," and "objectivity" (p. 300). (p. 202)

Such dependability removed uncertainty from data collection and allowed me to transmit research from official sources to the study.

Issues of Trustworthiness

For the purposes of this qualitative study, there was no requirement to repeat the results, but trustworthiness and dependability were still necessary (Creswell, 2013). The intent of this study was to understand certain aspects of the passage of laws, particularly the ACA and judicial decisions stemming from it. This research consisted of taking the legislative and judicial histories of the ACA and piecing together the ACA's main thrusts through comparing and contrasting the vision of the Founders as to liberty, demonstrated in the Constitution and in Jefferson's *Manual.* I used a coding scheme to draw the study's conclusions through available public resources to signify a deeper understanding.

This study's trustworthiness relied upon on the case study and its handling of bias against the threat of a subjective stance toward the ACA's passage. Creswell (2009) stated that trustworthiness, associated most with qualitative studies, is equivalent to validity, which can make the qualitative study more solid:

> Validity, on the other hand, is one of the strengths of qualitative research, and it is based on determining whether the findings are accurate from the standpoint of the

> researcher, the participant, or the readers of an account (Creswell & Miller, 2000). Terms abound in the qualitative literature that speak to this idea, such as trustworthiness, authenticity, and credibility (Creswell & Miller, 2000), and it is a much discussed topic (Lincoln & Guba, 2000). (p. 191)

Since the ACA was so controversial, both sides made arguments that were less objective and more biased toward a stance. Creswell outlined measures that can ensure accuracy in delivering findings; the best way to ensure that bias is appropriately dealt with in this study is by using proper methods, which is the reason a case study was used in this study.

Methodology

The data collected for this study began with the logic model as presented in the literature review. This model, shown in Figure 1, was the basis for which the data collection began and created from governmental measures discovered through the precoding of the ACA. These predictable governmental measures required the research of public records, public reports, legislation, court rulings, and legislative proceedings. The data collection was drawn from:

- U.S. Constitution;
- Jefferson's *Manual*;
- Congressional Budget Act
- *Communist Manifesto*;

Once the data collection was selected, the information was stored in a spreadsheet, since there was not an overwhelming amount of data. The data were handled through a coding process that Yin (2014) described as necessary for examining social

texts. The coding was based upon how the steps in the ACA's passage and implementation were out of the ordinary compared to other bills, even those of the same magnitude as the ACA.

Triangulation and reflection, per Yin (2014), are also a vital part of the data collection handling process to reduce researcher bias, incorporating many sources and allowing deeper understanding of the data collection presented. In my study, triangulation backed up the data collection to give the clearest picture of the data collection gathered while reducing research bias. Reflexivity allowed the researcher to examine the data collected and synthesize the findings, to better understand the ramifications of the ACA and how liberty is viewed today.

Another use of coding concerned declarationism and socialism, as theories were applied to the passage of the ACA. In the ACA, *taxes* are to be levied against the U.S. public who did not have health insurance. Additionally, *universal* health care was implemented, which is directly in line with socialistic principles. The Origination Clause was invoked in the passage of the ACA as an example of procedural violation, since the bill that was sent over from the House to the Senate was a revenue-raising bill that was completely replaced and sent back to the House for final approval.

Summary

The purpose of this study was to take a deeper consideration into the ACA and the process of its passage, and to discern from that process whether the United States has been following the Founders' concept of liberty that was set forth in the founding documents which established Congressional procedure. The outcome of the research

pointed out problems deciphered through the legislation, administrative reports, and court cases surrounding the ACA.

The research in this study used a case study which could handle research studies with many different facets and synthesize such information. The case study design served the research well when major theoretical obstacles became apparent. There were challenges to overcome in a study such as this. Liberty could not be wholly defined through one law, and liberty could not wholly define the founding documents and *Manifesto*. The challenges of defining liberty through one law are difficult, but they neither precluded legitimate research nor had a profound effect on the research because of the expectations going into it. A case study assisted in the process because it incorporated the limitations of the research.

The insight into what is happening to liberty in the United States may be helpful in better understanding the findings through comparison and contrast of the past and present. Such insights into the present will assist in understanding the past, as they have in other key moments of history when U.S. leaders looked forward in the hope of forming a nation like the Founders had intended; this study serves as an example of a key moment in history, and examines the possible paths to shed light on the understanding of a nation formed by liberty. The results and analysis illuminate the potential problems of liberty and determine whether the United States is following the Founders' directions.

Chapter 4: Results

Introduction

The purpose of this study is to discover whether lawmakers dismissed liberty for the socialization of health care with the passage of the ACA. I completed my analysis of the ACA by synthesizing U.S. legislative, bureaucratic, and judicial histories. I did so to determine whether lawmakers' attitudes differed from those of U.S. Founders. In using founding documents, the procedures that are followed by the U.S. government, and the *Manifesto*¸ the main source of inspiration for socialism, certain misuses of procedures were found when researching.

The main question of this case study was

RQ1) have U.S. lawmakers followed the intentions of the Founders in passing the ACA, as demonstrated in the legislation, related bureaucratic reports, and court cases?

The subquestions that stem from the main question of the study were

RQ2) Did the United States correctly follow the procedures listed by Jefferson's Manual in passing the ACA?

RQ3) Did Congress maintain proper oversight on cost estimate report provided by the CBO on the ACA?

RQ4) Did the majority opinion in NFIB and Sissel appropriately and correctly analyze the procedure and the language of the ACA?

To answer these questions, research of government databases that provided public records on lawmaking produced the data collection for the study. A careful examination of these databases allowed me to clarify the hindrances to liberty, if any, in lawmaking

surrounding the ACA. The specific language from public records took the form of statements or phrases found in codified law and indicated whether they were contradicting each other. The Founders set out specific guidelines for how liberty must be abided (McConnell & Berger, 1987). Such guidelines for the purposes of my study are mainly found in the founding documents. In this chapter, I will pre-code, code, collect data from official government documents and present the results from the research.

Data Collection

My study required a great amount of coding and data collection. I analyzed more than 1000 pages of the ACA statute, including text under the ACA header and approximately 100 pages included in the ACA's Reconciliation, the final, passed version of the ACA measure. There were six founding documents, reports, or precedents that were examined and officially recorded. The importance of those six key examinations was vital to the overall ramifications of the study and necessary in the drawing out of the societal implications. These societal implications relate the social change of the study, but my study's size may be limited as only a few legislative examinations in number may bear only a few discrepancies in the law. Though the coding and data collection is thinner for a study of this size (Gomm et al., 2000), it compensated with the errors that may have been made in the lawmaking process.

Yin (2014) and Gomm et al. (2000) both described the two aspects that were best descriptive of how this study was researched. Using Yin as a resource allowed me to take a very broad approach in analyzing study data and demonstrating the full picture of liberty at large. Taking a broad approach allowed for the broad spectrum of history on liberty to be attributed to this study, along with the current injustices towards it, through

the ACA. The case study as a design was at times used in my study with a hermeneutical approach (i.e., examining the Bible to determine true meaning). Studying the Bible requires researching the history of civilization, which may be likened to the legislative attention to liberty in the United States (Yin, 2014).

Yin (2014) took a strategic approach to case study design by categorically breaking down the research. In my study, legislation, court rulings, and administrative procedure; theories of declarationism and socialism; and founding documents, political ideologies, and other historical and cultural background information. This breakdown gives a vivid understanding of the method that was used for this research. Yin's units of analysis improved my qualitative trustworthiness and dependability and offset my broad use of a principle, liberty, and its application to a current law and its implications.

The ACA was a readily available case of a present-day policy that affects liberty as the Founders had described. Because the ACA was quickly passed through Congress, signed into law, and enabled through bureaucracy and a decisive court ruling, the procedure of lawmaking was brought into question. Additionally, the type of law was not aligned with liberty in terms of principle, because the ACA forces U.S. citizens to buy health insurance. Gomm et al. (2000) described case study as a design that objectifies principles by pinpointing the overarching understanding of said principles in relation to the case.

Figure 1 illustrated how the data collection began, with a logic model which predicted the movements of government to solve a societal problem. On the initial, left side of the model, the societal solution was created from the societal problem presented

and the measures taken were a result of the principle of liberty put into practice. The right side of the model provided an insight to the background interventions of a socialistic mindset. The principle of liberty, with logical steps to find societal solutions, are stunted by background interventions which were predictable in its hindrance of the process.

For the purposes of this case study of the ACA, health care needed a solution but was stunted by background interventions that resulted in the enactment of a state-controlled, universal health care solution. From this model, government measures become apparent as the means to provide the solutions to the societal problem. As a cause and effect, the model showed what and how measures were manipulated toward a socialistic ideology. As a result, the ACA's enacting bills, reports, and cases were a case study of how the logic model is demonstrated in reality. The next few sections demonstrated how the data collection of the societal problem of health care through the ACA was made.

Precoding

Precoding began with a comprehensive research of legislative records, CBO reports, judicial rulings, and official government records. Select records from this comprehensive research were the official sources of research for this case study, listed in the sections below.

Legislative Measures

The legislative histories, congressional records, and committee hearings that were used in this study:

- H.R. 3780, the Service Members Home Ownership Tax Act of 2009, or House SMHOTA

- S. 1728, the Service Members Home Ownership Tax Act of 2009, or Senate SMHOTA
- H.R. 3590, the Patient Protection and Affordable Care Act, or ACA.

CBO Reports

The CBO Reports that were that were used in this study:

- CBO Report: Analysis of the Community Living Assistance Services and Supports (CLASS) Act
- CBO Report: H.R. 4872, Reconciliation Act of 2010 (Final Health Care Legislation)
- CBO Report: Estimates for the Insurance Coverage Provisions of the Affordable Care Act Updated for the Recent Supreme Court Decision

Judicial Rulings

The Judicial Rulings that were that were used in this study:

- *National Federation of Independent Businesses v. Sebelius* (2012)
- *Sissel v. United States Department of Health & Human Services* (2013, 2014)

Coding

The coding process will follow the logic, predictive model that was created for the study's framework. From that model, the main codes of the study were as follows, in order: the Origination Clause, the Commerce & Taxing Clauses, the Congressional Budget Office, the Supreme Court ruling, the appellate courts' rulings, and the *Manifesto*, Section II, Measure 7. From these codes, a specific government document, report, or ruling a representation of the adherence to either of the study's theories, declarationism or socialism, was identified. In researching the identified representations, further identifying

whether these representations adhered to either declarationism or socialism was left for the interpretation of findings.

Origination Clause Coding

The Origination Clause coding was found in the House SMHOTA, Senate SMHOTA bill, ACA, *NFIB*, and *Sissel*. The Origination Clause was found five times in coding, throughout the entire process from its conjuring in legislative procedure and its scrutiny in the courts. The logic model suggested that the ACA's beginning as House SMHOTA would set into motion the socialistic principles surrounding the bill.

The Origination Clause's language on revenue-raising is the only time that raising revenue is mentioned in the Constitution. The Origination Clause, in Article I, Section 7, Clause 1 of the Constitution reads: "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." Data collection began with H.R. 3780, House SMHOTA, a bill stripped of its original language to be replaced by the ACA's language. In using the Congressional Record, data were retrieved that showed the overview of the bill and, more notably, its related bills and how the original bill was converted into the ACA. House SMHOTA was introduced in October of 2009, but there was no indication that this bill was introduced for the sole purpose of being overhauled to become the ACA. House SMHOTA was passed and sent to the Senate for their approval, after which it would become the ACA and be sent back to the House for final passage. Though there was no indication the House SMHOTA measure purposely began in the House, but it would eventually cover a constitutional challenge to the ACA regarding the Origination Clause later.

The Congressional Record stated the date for House SMHOTA's origination as October 7th, 2009 and read:

> [T]o modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes. The Clerk read the title of the bill. The text of the bill is as follows: H.R. 3590 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE. This Act may be cited as the ''Service Members Home Ownership Tax Act of 2009.' (Cong. Rec. 155, 2009, p. 10550)

From this passage, the Congressional Record indicated that the bill number for H.R. 3780 was converted to H.R. 3590, the ACA's final bill number, with no mention of H.R. 3780. This conversion was important to denote and consider the differentiation that must have been made later to the bill numbers. H.R. 3590 was the bill number that was passed into law in the same legislative history, thus S. 1728, Senate SMHOTA, has the same effect to the Congressional Record. Since the Congressional Record makes this substitution with these bills, it effectively puts all three bills in the same legislative history, which conjures the Origination Clause in a retroactive review.

It should also be mentioned that on the same day that House SMHOTA was introduced, Representative Joe Baca, as one of a few representatives, submitted to the Congressional Record a statement about health care reform: "In short, what health insurance reform means for millions of Americans who are insured today is more security and stability. Americans should not have to wait longer for this reform. Congress must

act this year" (Cong. Rec. 155, 2009, p. 10523). There was no positive reason that Representative Baca had any indication that House SMHOTA would be the bill that would be reformed into the ACA as many proponents had been touting health care reform extensively during that Congress. However, in data collection this became mentionable because of the incidental nature surrounding both SMHOTA and a statement made about health care reform.

The Origination Clause was of certain constitutional concern since the passing of House SMHOTA was created with revenue-raising function. The constitutional challenge pertained to the first part of the Origination Clause, which demonstrates how a House revenue-raising bill was passed and sent to the Senate. Data collected demonstrated that House SMHOTA may be considered a revenue-raising bill, which is important as proponents and opponents later disagreed on whether it was such a bill.

With respect to revenue-raising language, the Origination Clause was the only data collection source; therefore, any legislation passed with a slight revenue-raising function was linked directly to the Origination Clause. There were two revenue-raising functions included in the ACA's proceedings: House SMHOTA, a tax-credit for service members, and the ACA, when eventually substituted in the Senate and mandated Americans to buy health insurance and imposed a penalty, or tax as later identified in *NFIB*, if they did not. The dissenting opinion of *NFIB* illustrated as much: "[T]he Constitution requires tax increases to originate in the House of Representatives" (567 U.S. __, 2012, p. 24)

The language most connected to revenue-raising in Section 2 of House SMHOTA read as follows: “Extension of first-time homebuyer credit for individuals on qualified official extended duty” (Cong. Rec. 155, 2009, p. 10550). This language did show that a tax-credit may qualify the measure as revenue-raising. Though the House measure could be considered revenue-raising, the Senate may have picked the bill for another reason such as it was a less important bill that did not need imminent passage.

Vehicle Bill Coding

Vehicle bill coding was primarily found in House SMHOTA, Senate SMHOTA, and *Sissel*. The vehicle bill was found three times in coding, beginning with House SMHOTA where the ACA may have been conceived as vehicle bill, Senate SMHOTA where the vehicle bill was used, and in *Sissel* where the vehicle bill was questioned as procedurally sound. The logic model suggested that the vehicle bill was used to exploit the process of the ACA to be passed.

Senate SMHOTA read from the Congressional Record that the bill was introduced on November 30th, 2009 in the Senate and stated that it: “[Amended] the Internal Revenue Code of 1986 to modify the first-time homebuyer credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes” (Cong. Rec. 155, 2009, p. 11985). When Senate SMHOTA was introduced, it had the same language that was originally created in the House. Majority Leader of the Senate Harry Reid announced:

> Mr. REID. Mr. President, today is the beginning of one of the most important debates in the history of our country. Today is the beginning of one of the most historic times in the Senate. Our two chairmen, Senators BAUCUS and DODD,

> have spent months of their lives working on the legislation that allows us to be where we are today. We now have before us a bill that saves money, saves lives, and saves Medicare. It is a bill, if you add in Medicare recipients, that will insure 98 percent of the people in America. (Cong. Rec. 155, 2009, p. 11985)

Senator Reid's statement was indicative of how important proponents made health care from the ACA's inception. The statement also mentioned how senators had been working on legislation in the Senate for many months.

The Senate had to use a bill to replace the ACA and Senate SMHOTA was the vehicle it used. A vehicle, or shell bill as it is sometimes called, takes a previously created bill and completely strikes its language to allow for replacement language. Jefferson's *Manual* (1801) stated in Section XLV:

> When either House, e.g., the House of Commons, send a bill to the other, the other may pass it with amendments. … In the case of a money bill, the Lord's proposed amendments become, by delay, confessedly necessary. The Commons, however, refused them as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments; and urged that it was an expedient warranted by precedent, and not unparliamentarily in a case become impracticable, and irremediable in any other way. (p. 82)

The *Manual* outlined what vehicle bills are supposed to be utilized for, and which bills should be passed with amendments, but not amended to be a complete replacement. The

second part of the preceding citation related the idea of how amendments should be germane, or applicable, to the whole of the bill and not unrelated.

The data collection from this study found that the Senate version of SMHOTA was completely replaced by the language of the ACA, as shown in the Congressional Record and spoken from Senator Harry Reid:

> Mr. President, one of the major goals of the Patient Protection and Affordable Care Act is to lower Federal health care costs and reduce the deficit. Our bill does that. According to the nonpartisan Congressional Budget Office, this legislation would not add a penny to the Federal deficit. In fact, it will reduce the deficit over both the short term and the long term, over the long term by as much as $650 billion. (Cong. Rec. 155, 2009, p. 11985)

Senate SMHOTA was a vehicle bill that would have none of its original contents continue through the legislative process. Jefferson's *Manual* was showed to be opposed to this type of legislative procedure since it was a complete overhaul of the original bill. As echoed by the *Manual* (1801):

> Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, '… nothing tended more to throw power into the hands of administration and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding …' So far the maxim is certainly true, and is founded in good sense, … the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding … (p. 13)

The sentiment, as construed by Jefferson's *Manual*, was that amendments germane to the bill would be acceptable, but not to completely replace the bill. Senate SMHOTA was the last remnant of anything to do with aiding servicemen through tax credits on their homes; the next bill to have a relationship to SMHOTA would be H.R. 3590, and all of its contents would be ACA-related language.

Congressional Budget Act Coding

The CBA was primarily found in CLASS Act CBO Report, ACA CBO Report, and Post-*NFIB* CBO Report. The CBA was found three times in coding, beginning with CLASS Act CBO Report that condemned the CLASS Act, ACA CBO Report that met the $1 trillion goal with the inclusion of the CLASS Act, and in the Post-*NFIB* CBO Report that showed dramatic increases in cost of the ACA. The logic model suggested that a bureaucratic assistance would influence the ACA and the CBA would fulfill that role.

The last piece of coding was through the CBA which determined that the CBO, an outside bureaucratic body, was responsible for cost estimates and on demand from Congress. The CBA, per the logic model, is the outside entity that could drive the rhetoric and momentum behind a bill within the confines of its own capabilities. This code came up when the ACA was at its most vulnerable stage which was at its final vote. The cost estimate would be sent out during this time to assure the American public of the ACA's cost efficiency and drive up the vote tally. The logic model also showed that a last CBO report would come out a few years after the ACA was passed, and when the heated debate had been forgotten, and perhaps because of better understanding would show different projections of the ACA's cost.

The CBO does not have an official enumeration in the Constitution, but there are allusions to bureaucracy rules that are given explicitly to the President. Specifically, the President may appoint heads of bureaucracies and require bureaucracies to report when asked. As found in Article 2, Section 2, Clause 1 & 2 of the Constitution: "The President shall … require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices … shall appoint other public ministers and consuls ….” Through these powers listed in the Constitution, a great deal of power could be utilized by the President when necessary. If the President needed something in writing from an executive department on a major piece of legislation, a timely and detailed response could be requested at any time.

Gathering reports submitted by the CBO would relay how much the ACA would cost from the first through tenth years of implementation. The CBO was created in 1974, after inconsistency in cost estimation, through the CBA which outlined the CBO’s duties and specifically: “During that session of Congress such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates.” (Riddick, 1992, p. 510)

In the Senate, Majority Leader Harry Reid presented facts on the CBO and included information about the CLASS Act. The CLASS Act was a previously failed health care plan because of its high expense that was inserted to the ACA. The CBO indicated that the CLASS Act “would add to future federal budget deficits in a large and growing fashion beginning a few years beyond the 10-year budget window” (CBO

CLASS Act, 2009, p. 3). The problem with the CLASS Act is that it showed low cost projections in the beginning of its implementation, but would add debt after just a few years. The CBO statement was made in July of 2009 and a few months later Senator Reid proclaimed:

> Likewise, about $70 billion in revenues over the first 10 years of this bill flows from premiums paid into the new long-term care insurance program known as the CLASS Act. I think it is important that as the Senate considers changing the legislation, we maintain our commitment to protecting Social Security and CLASS surpluses. (Cong. Rec. 155, 2009, p. 11985)

Per the CBO, the CLASS Act was an unredeemable measure, however, Senator Reid may have ignored this warning in touting the CLASS Act. The CLASS Act was likely only inserted into the ACA to game, or incline, the CBO and ensure low cost projections at the beginning of the ACA's implementation to produce a false cost estimate.

The CLASS Act was an integral part of the passing of the ACA with its purported savings under the initial CBO cost estimate. Prior to the ACA being passed in the House for a final time, the CBO's report was required to have a targeted amount of expenditures agreed upon by all sides. Great emphasis was placed on how much the ACA would cost, especially considering the deficit that existed during that time. At the time of the ACA's passing in 2010, the deficit had been in the many trillions of dollars. Concern was that the ACA would be over $1 trillion and media, members of Congress, and constituents had agreed that $1 trillion should be the spending limit (Cannan, 2013). Two days before the

ACA's final passing, the initial CBO report was released on March 20, 2010, CBO Report: H.R. 4872, Reconciliation Act of 2010, the Final Health Care Legislation.

The Pre-ACA CBO Report denoted the six- and 10-year projection amount that the ACA would cost. Both the six- and 10-year projection was under $1 trillion and helped proponents of the ACA gain public favor of the bill, avoiding an over-expenditure of taxpayer funds. The outcome of the last week in March of 2010, which included the CBO Report and the passage of one of the biggest pieces of legislation in U.S. history, would later be decided by another CBO report that would reevaluate whether the original action was correct. The Post-Supreme Court Decision CBO report in 2012 updated the cost estimation of the ACA at six- and 10-year levels and shined light on 2010's cost estimate.

The Post-*NFIB* CBO report revealed that the previously released six-year projected $1 trillion mark was consistent with the first projection of $1 trillion. The 10-year cost projection cost for the Pre-ACA CBO Report was around $1.1 trillion dollars which was not much above the $1 mark. Two years removed from the 10-year cost estimate proved to cost much more than previously scored as the Post-*NFIB* figure for was almost $1 trillion more at $1.856 trillion. The almost $1 trillion extra cost was a considerable jump and showed that the proponents' publicly acclaimed number of $1 trillion, which heavily influenced the country's perception of the cost of the ACA, was not met. The Post-Supreme Court Decision CBO report proved an elevated cost of the ACA. Data collection of the six-year cost projection was found to have just eclipsed the

original and the 10-year cost projection was found to be significantly greater than anticipated; both of which were crucial in the passage of the ACA in 2010.

Commerce Clause Coding

The Commerce Clause was primarily found in the ACA, *NFIB*, and *Sissel*. The Commerce Clause was found three times in coding, beginning with the ACA attempting to regulate commerce, *NFIB* overturning the Commerce Clause, and *Sissel* challenging *NFIB* and ultimately upholding *NFIB*. The logic model suggested that passing the ACA and its Commerce Clause without full knowledge or understanding the bill would enter into the predictive interventions of the ACA's process.

The Commerce Clause was most prevalent in the initial stages of the ACA where floor speeches defended the ACA. The ACA did not contain any language regarding the Commerce Clause, but did conjure the clause because of its relationship to regulating commerce among the states. Through the logic model, this clause was the center of the government's attention because it is what made the ACA legal. However, in *NFIB*, the court would decide on the ACA's legality through the Commerce Clause, or if applicable, another constitutional clause. The Commerce Clause would have to be heavily mentioned in the appellate decisions of *Sissel* to complete the full challenge to the ACA and its constitutionality.

The Commerce Clause was the clause in which proponents publicly cited when advocating the ACA's legality since they believed the individual mandate triggered a penalty and not a tax. There were two reasons why the Commerce Clause was cited most often: (1) proponents did not want the stigma of a tax to be colloquially attached to the bill, which appeared to be unlawful to the public at large, and (2) the penalty, rather than

a tax, was not only better with public perception, it passed the legality-test as proponents believed it would fall under the Commerce Clause. Article 1, Section 8 enumerates two important clauses, Clause 1, Taxing Clause, and Clause 3, the Commerce Clause: “(Clause 1) The Congress shall have power to lay and collect taxes … (Clause 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The Statutes at Large recorded March 23rd, 2010 as the date of the passing of the ACA. Senator Carl Levin, a proponent of the ACA, stated in the Congressional Record when the bill was passed to the Senate for final revisions:

> Although the legislative record supports the constitutionality of the individual mandate … It is hard to imagine an issue more fundamental to the general welfare of all Americans than their health. In particular article I, section 8, sets forth several of the core powers of Congress, including the ‘general welfare clause,’ the ‘commerce clause’ and the ‘necessary and proper clause.’” (Cong. Rec. 156, 2010, p. 2013)

The portion to highlight in Senator Levin’s statement was his listing of the clauses conjured by the ACA. The Taxing Clause was left out which is critical component researched in the latter parts of the data collection with regards to the Supreme Court.

The Commerce Clause in the Constitution sets the guidelines for how Congress commercially interacts with states. In the construing of the Commerce Clause, precedent has long determined that to conjure the Commerce Clause, there would need to be “activity” or the engagement of two or more sides. The phrasing of *activity* is not

included in the Commerce Clause itself as it is laid out in previous congressional and court precedent. Precedent had determined that the ability of Congress to regulate through the Commerce Clause is based on the prerequisite of whether activity is present.

Determining the application of activity was critical to analyzing the ACA's intentions. The best example of activity found in the ACA is the individual mandate which is found in the Statutes at Large:

> '(1) IN GENERAL- If an applicable individual fails to meet the requirement of subsection (a) for 1 or more months during any calendar year beginning after 2013, then, except as provided in subsection (d), there is hereby imposed a penalty with respect to the individual in the amount determined under subsection (c)." Such notice shall include the amount of the penalty fee assessed by the Secretary and the due date for payment of such fee to the Secretary of the Treasury (as described in subparagraph (C)). '(4) COLLECTION OF PENALTY FEE- '(A) IN GENERAL- The Secretary of the Treasury, acting through the Financial Management Service, shall administer the collection of penalty fees from health plans that have been identified by the Secretary in the penalty fee report provided under paragraph (3). (Pub. L. No. 111-148, 2010, 124 Stat. 152)

The ACA's purchase mandate may have been overreaching with the power of the Commerce Clause through the activity requirement and there was also a possibility that the penalty was truly a tax.

Taxing Clause Coding

The Taxing Clause was primarily found in the ACA, *NFIB,* and *Sissel*. The Taxing Clause was found three times in coding, beginning with the ACA upon a

retroactive review, *NFIB* which overturned the Commerce Clause for the Taxing Clause, and *Sissel* challenging *NFIB* and ultimately upholding *NFIB*. The logic model suggested that overturning the ACA's original intentioned Commerce Clause into judicial tax-writing with the Taxing Claus; this aligned with the socialism prevailing in the predictive intervention column.

The Taxing Clause was created to grant the federal government the power to tax, which conjures the ACA because of the individual mandate. In pre-coding, the ACA was not regarded as a tax by its supporters. The ACA was touted by President Obama as including a penalty rather than a tax: "[Y]ou've got to take responsibility to get health insurance [and such a purchase] is absolutely not a tax increase" (Good, 2012). The main coding for the Taxing Clause would come from a Supreme Court challenge: *NFIB*. *NFIB* needed to determine whether the ACA, through the individual mandate, was legal and what clause it conjured the most. For this reason, the coding of the Taxing Clause showed to be most prevalent in *NFIB*. The subsequent appellate cases would argue against the Taxing Clause, but not based on *NFIB*, but on the basis that the ACA in bill form was never mentioned or read as a tax and rather a penalty.

Data were then collected on *NFIB,* the Supreme Court case that yielded the results of the challenge to the constitutionality of the ACA. The *NFIB* majority agreed with the legality of the ACA in upholding the Origination Clause, though never addressing it, and the Commerce Clause, which were found to not have been damaged by the passing of the new health care law. Oral arguments from *NFIB* from the majority and minority opinion were collected to demonstrate the arguments for and against the ACA. Arguments were

divided into four issue areas that were heard separately by the court; however, because of the most relevancy to my study, the issue area of the individual mandate was the data collection. The plaintiffs against the ACA argued that: “The Commerce Clause gives Congress the power to regulate existing commerce. It does not give Congress the far greater power to compel people to enter commerce to create commerce essentially in the first place” (U.S. 11-398, 2012, p. 55). The arguments made by the plaintiffs sought to dismantle the ACA on the basis that the government is not allowed to force commerce on individuals, which is what Congress was doing by trying to create activity through the individual mandate.

Defendants for the ACA were content labelling the health care insurance industry as an existing commercial activity and, therefore, could be regulated: “Under the Commerce Clause, what Congress has done is to enact reforms of the insurance market, directed at the individual insurance market” (U.S. 11-398, 2012, p. 4). The defendants’ argument was further escalated as they explicitly laid out the counter to the plaintiffs’ argument: “Here Congress is regulating existing commerce, economic activity that is already going on, people’s participation in the health care market, and is regulating to deal with existing effects of existing commerce” (U.S. 11-398, 2012, p. 17). The defendants claim was made on the basis that Congress was within constitutionality to pass a law that regulated commerce, regardless of whether the commerce would now force individuals into such commerce whom were not previously participating.

In the majority opinion, Chief Justice Roberts wrote that Congress’ placing of the individual mandate under the Commerce Clause was unconstitutional:

> The individual mandate, however, does not regulate existing commercial activity. It instead compels individuals to become active in commerce by purchasing a 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 are doing nothing would open a new and potentially vast domain to congressional authority. (567 U.S. __, 2012, p. 20)

Roberts did not agree with the defendants, nor Congress' reasoning behind use of the Commerce Clause since the mandating individuals to buy health care insurance was not an already existing commercial activity.

Per the majority opinion of the court, the penalty was a tax even though Congress did not label it as such and reversed the official distinction of the ACA's individual mandate.

> (b) Such an analysis suggests that the shared responsibility payment may for constitutional purposes be considered a tax. The payment is not so high that there is really no choice but to buy health insurance; the payment is not limited to willful violations, as penalties for unlawful acts often are; and the payment is collected solely by the IRS through the normal means of taxation. Cf. Bailey v. Drexel Furniture Co., 259 U. S. 20, 36–37. None of this is to say that payment is not intended to induce the purchase of health insurance. But the mandate need not be read to declare that failing to do so is unlawful. Neither the Affordable Care Act nor any other law attaches negative legal consequences to not buying health insurance, beyond requiring a payment to the IRS. And Congress's choice of

> language— stating that individuals “shall” obtain insurance or pay a “penalty”— does not require reading §5000A as punishing unlawful conduct. It may also be read as imposing a tax on those who go without insurance. See New York v. United States, 505 U. S. 144, 169–174. Pp. 35–40. (567 U.S. __, 2012, p. 4)

Chief Justice Roberts believed that the individual mandate was not only improperly framed under the Commerce Clause, but they also believed it was a tax and should have be passed through the Taxing Clause:

> 4. CHIEF JUSTICE ROBERTS delivered the opinion of the Court with respect to Part III–C, concluding that the individual mandate may be upheld as within Congress’s power under the Taxing Clause. Pp. 33–44. (567 U.S. __, 2012, p. 4)

This new tax distinction demonstrated a tectonic shift in the policy and public perception of the individual mandate which signaled a change in the law’s implementation.

The majority opinion also insisted that there was no problem with the Supreme Court changing the penalty to a tax. The majority opinion believed that there was no case of judicial legislating and there were no major consequences because of the change:

> The joint dissenters argue that we cannot uphold §5000A as a tax because Congress did not “frame” it as such. Post, at 17. In effect, they contend that even if the Constitution permits Congress to do exactly what we interpret this statute to do, the law must be struck down because Congress used the wrong labels. An example may help illustrate why labels should not control here. Suppose Congress enacted a statute providing that every taxpayer who owns a house without energy efficient windows must pay $50 to the IRS. The amount due is adjusted based on

> factors such as taxable income and joint filing status, and is paid along with the taxpayer's income tax return. Those whose income is below the filing threshold need not pay. The required payment is not called a "tax," a "penalty," or anything else. No one would doubt that this law imposed a tax, and was within Congress's power to tax. That conclusion should not change simply because Congress used the word "penalty" to describe the payment. Interpreting such a law to be a tax would hardly "[i]mpos[e] a tax through judicial legislation." Post, at 25. Rather, it would give practical effect to the Legislature's enactment. (567 U.S. __, 2012, p. 39)

The majority opinion, in responding to the dissent, sought to validate a new reading of the law to avoid the appearance of judicial legislating. The dissenting opinion would believe that the majority had, in fact, crossed a line by writing a new tax not previously passed by Congress.

The dissenting opinion of Justice Scalia, Justice Kennedy, Justice Thomas, and Justice Alito believed that judicial tax-writing was occurring through the majority's opinion and brought attention to the discordant history of taxes within the U.S. Justice Antonin Scalia referred to Chief Justice Roberts' Taxing Clause stance on the ACA:

> We cannot rewrite the statute to be what it is not . . . [O]ur cases establish a clear line between a tax and a penalty: [A] tax is an enforced contribution to provide for the support of government; a penalty . . . is an exaction imposed by statute as punishment for an unlawful act. (567 U.S. __, 2012, p. 18)

The dissenting opinion discussed the penalty-turned-tax and how it fits into its technical legislative passing:

> For all these reasons, to say that the Individual Mandate merely imposes a tax is not to interpret the statute but to rewrite it. Judicial tax-writing is particularly troubling. Taxes have never been popular, see, e.g., Stamp Act of 1765, and in part for that reason, the Constitution requires tax increases to originate in the House of Representatives. See Art. I, §7, cl. 1. That is to say, they must originate in the legislative body most accountable to the people, where legislators must weigh the need for the tax against the terrible price they might pay at their next election, which is never more than two years off. The Federalist No. 58 "defend[ed] the decision to give the origination power to the House on the ground that the Chamber that is more accountable to the people should have the primary role in raising revenue." United States v. Munoz-Flores, 495 U. S. 385, 395 (1990). We have no doubt that Congress knew precisely what it was doing when it rejected an earlier version of this legislation that imposed a tax instead of a requirement-with-penalty. (567 U.S. __, 2012, p. 24)

The ACA, the dissent suggests, would have not have been passed had the bill been tax, somewhat in part to the controversial history of taxes. The dissent disagreed with the majority in seemingly creating a tax out of the individual mandate and alluded to the fact that the bill was not passed as a tax in initial attempts to legislate universal health care. The dissenting opinion may have also implied that the Origination Clause was damaged in this quote as they hinted that the Senate passed the ACA rather than the House.

Not only did the dissenting opinion argue that the legislative branch was misrepresented in re-writing the law as a tax and hinting that the Origination Clause was violated, they also believed the individual mandate was unlawful.

> Quite separately, the fact that Congress (in its own words) "imposed . . . a penalty," 26 U. S. C. (b)(1), for failure to buy insurance is alone sufficient to render that failure unlawful. It is one of the canons of interpretation that a statute that penalizes an act makes it unlawful …. Eighteen times in §5000A itself and else-where throughout the Act, Congress called the exaction in §5000A(b) a "penalty." (p. 20) … Against the mountain of evidence that the minimum coverage requirement is what the statute calls it—a requirement—and that the penalty for its violation is what the statute calls it—a penalty—the Government brings forward the flimsiest of indications to the contrary. (567 U.S. __, 2012, p. 22)

The dissenting opinion declared that the individual mandate, or §5000A, unconstitutional in forcing Americans to buy health insurance. The dissent felt that the Supreme Court had now displaced the burden of accountability for writing taxes from the legislative branch to the judicial branch which was unconstitutional and not adequately representative of the American public.

The data collected showed the biggest changes in the application of the Commerce Clause and the penalty-tax requirement. Congress passed the ACA under the Commerce Clause since they believed the law regulated existing activity; however, the majority opinion believed that the law promoted activity, and therefore should have been

considered under the Taxing Clause. Roberts was the deciding vote in the 5-4 decision, and stated:

> If an individual does not maintain health insurance, the only consequence is that he must make an additional payment to the IRS when he pays his taxes . . . [T]he mandate is not a legal command to buy insurance. Rather, it makes going without insurance just another thing the government taxes, like buying gasoline or earning an income. (567 U.S. __, 2012, p. 32)

Chief Justice Roberts and the majority believed that a violation of the individual mandate resulted in a tax, not a penalty as Congress wrote the law, since the payment was not very high and collected by the IRS. The dissent held that the ACA was not legal through the Commerce Clause or through any clause, since they believed forcing citizens to purchase a product is unconstitutional. The dissent believed the Origination Clause was violated through the Senate passed ACA; they also disagreed with the majority opinion in writing a tax through the judicial branch rather than through the more citizen-accountable legislative branch.

One year after *NFIB*, another, perhaps final, suit challenging the Origination Clause and the Commerce Clause was brought against the federal government. *Sissel* was separated by two court cases, the U.S. District Court for D.C. decision in 2013 and the U.S. Court of Appeals for D.C. Circuit in 2014, both of which denied the plaintiffs' argument against the ACA.

The first constitutional challenge to the ACA in the D.C. District Court regarded the Origination Clause and claimed that the ACA revenue-raising bill started in the

Senate, rather than the House as Justice Scalia claimed in his *NFIB* dissent. The D.C. District Court opinion stated on the Origination Clause:

> Although the plaintiff's argument may be superficially appealing, it cannot withstand even a cursory review of previous interpretations of the Origination Clause. (p. 12) … There is no dispute that the individual mandate will raise revenues through the "shared responsibility payments" required under § 5000A. There is also no dispute that those revenues are "paid into the Treasury by taxpayers when they file their tax returns." See NFIB, 132 S. Ct. at 2594 (internal quotation marks omitted) (citing 26 U.S.C. § 5000A(b)). (p. 13) … It is unavoidable, in light of this clear congressional purpose, that any revenue created by the individual mandate is merely incidental. (p. 14) … Hence, under the Supreme Court's precedents, the individual mandate challenged in this case is not a "Bill[] for raising Revenue" within the meaning of the Origination Clause and therefore it need not have "originate[d] in the House of Representatives." (10-1263, 2013, pp. 12-15)

The D.C. District Court decided that the Origination Clause had not been violated since the individual mandate incidentally raises revenue, but is not a revenue-raising bill. The court cited precedent alluding to their reasoning and in their own argument admitted to the individual mandate raising revenue that goes to the government to use although incidental.

The D.C. District Court did not stop at the revenue-raising reasoning, also adding that even if the ACA was a revenue-raising bill, it would be exempt since the bill had

originated in the House. Though the court acknowledged that the Senate bill had completely stricken the text of the House bill, the court pointed to the proclivity of the Senate to amend revenue-bills without a *germaneness*, or amendment language privy to the bill at hand, limit.

> Rather, the Supreme Court concluded that it is sufficient to comport with the Origination Clause when a Senate amendment to a House revenue bill is “germane to the subject-matter of the bill” and is not otherwise “beyond the power of the Senate to propose.” See Flint, 220 U.S. at 143. (p. 19) … Even if germaneness were a limit on the Senate’s Origination Clause amendment power, the Supreme Court’s statement that “it is not for this court to determine whether the amendment was or was not outside the purposes of the original bill,” Rainey, 232 U.S. at 317, strongly suggests that it is for Congress, not the courts, to decide whether an amendment is properly germane in any given case. (p. 19) … [H]aving courts scrutinize parliamentary procedure relating to the required relevance of a legislative amendment would “express[] lack of the respect due coordinate branches of government.” (p. 21) … The Court concludes for the foregoing reasons that, even assuming the individual mandate was a “Bill[] for raising Revenue,” that bill “originate[d] in the House of Representatives” as H.R. 3590 and was later duly amended by the Senate in a manner consistent with the Origination Clause. (10-1263, 2013, p. 22)

The court ultimately concluded that the Origination Clause was not violated since the individual mandate was not a revenue-raising bill and it was also within the Senate’s right

to amend the ACA as it wished. The D.C. District Court also argued that it is not the court's place to determine whether legislative procedure was properly followed.

The second constitutional challenge in *Sissel* from the D.C. District Court arose regarding the Commerce Clause, of which the plaintiffs believed separate violations occurred: a requirement to purchase insurance, and a tax for not buying health insurance. The D.C. District Court argued that *NFIB* had already answered this challenge by stating that the individual mandate was only one provision to be considered under the Taxing Clause. The D.C. District Court explained that the plaintiffs had misread the outcome of *NFIB*, but for the purposes of this data collection, the D.C. District Court offered no insight as to why the individual mandate was constitutional under the Taxing Clause. "Thus, *NFIB* compels the conclusion that § 5000A is constitutional, regardless of whether it exceeded Congress's power under the Commerce Clause, because it is a constitutional exercise of the taxing power" (10-1263, 2013, p. 22). The D.C. District Court did illuminate the fact that the individual mandate was unconstitutional under the Commerce Clause; which was a far from what Congress had sold it as in its passing:

Sissel then took the case to the D.C. Court of Appeals, which issued similar opinions to the D.C. District Court in its upholding of the previous court's decision. Regarding the Origination Clause, the D.C. Court of Appeals addressed the two directives within the clause:

> Among other things, the panel's narrow course avoided more categorical and less historically rooted holdings that the dissent's approach would require: (1) that all bills containing tax provisions that do not designate the funds raised for use by a

> specified government program implicate the Origination Clause, and (2) that the Senate may amend House-originated revenue bills without limit. (13-5202, 2013, p. 1)

It is critical to note the approach of the D.C. Court of Appeals which was most straightforward in its explanation regarding the Origination Clause, where the D.C. Circuit Court dismissed the clause and the Supreme Court did not mention it at all. The progression of more bold response is only noted to demonstrate the nature of the court system as the ACA has moved on from court-to-court. With this understanding, the data collection has discovered a court case not only dismissing the Origination Clause, but almost rendering the clause as obsolete.

The D.C. Court of Appeals also ruled that the individual mandate was intended to encourage the growth of the health care-insured, and that any revenue gained was not for aiding the government. The D.C. Court of Appeals on the revenue-raising provisions:

> The Court recognized in *National Federation of Independent Business* (NFIB) v. *Sebelius*, 132 S. Ct. 2566, 2596 (2012), that, "[a]lthough the [section 5000A] payment will raise considerable revenue [if people do not 'sign up'], it is plainly designed to expand health insurance coverage," acknowledging that the purpose of the Affordable Care Act ("ACA") and its tax penalty was to spur conduct, not to raise revenue for the general operations of government. (13-5202, 2014, p. 1)

The opinion of the D.C. Court of Appeals had argued that any tax was going to create revenue for the government, and had stated that there were two types of revenue: direct and indirect. This was almost a replica of the D.C. Circuit Court's decision, but the D.C.

Court of Appeals took a step further in suggesting that, as a tax, the individual mandate encourages commercial conduct.

The Commerce Clause was not addressed specifically by the D.C. Court of Appeals as the 63-page decision was a thorough examination of the Origination Clause. In fact, the exhaustive examination was an inverse of how the courts had handled the explanation of the clause as *NFIB* did not address it at all. The D.C. Court of Appeals did mention the Taxing Clause:

> The taxing power was perhaps the most critical. After all, one great failing of the Articles of Confederation was the inability of the national government to tax citizens and fund national priorities such as the military. The delegates at Philadelphia therefore granted Congress a broad power to tax.

The acknowledgement of the history of the Taxing Clause is relative to how the dissent in *NFIB* brought up tax history in the U.S. and how the D.C. District Court mentioned such in its own decision. As with the D.C. District Court, the D.C. Court of Appeals referred to the history of taxes and alluded to *NFIB*'s decision which justified the taxation in the case of the ACA, as the tax is an encouragement to purchase health care more than it is a penalty.

Both the D.C. Circuit Court and the D.C. Court of Appeals in Sissel, had similar arguments in rejecting Sissel's claims on the Origination Clause and the Commerce Clause which stemmed from NFIB's ruling. The D.C. Circuit Court dismissed Sissel because the ACA was not a bill that raised revenue and even if it had, claimed the bill originated in the House, and sidestepped the claim of violation of the Commerce Clause

stating that the individual mandate is considered under the Taxing Clause. The decision by the D.C. Court of Appeals on the Origination Clause was identical to the D.C. Circuit Court by observing that not all revenue-raising bills conjure the Origination Clause and bills in the Senate can be amended without limit. The Commerce Clause for the Sissel decisions was virtually not approached since NFIB had ruled the individual mandate under the Taxing Clause. The courts backed NFIB saying that the ACA spurred on the purchase of health insurance and the Commerce Clause was not addressed; the question of the individual mandate was an example of regulated activity was primarily addressed through NFIB.

Communist Manifesto, **Section II, Measure Seven Coding**

The *Communist Manifesto*, Section II, Measure Seven was primarily found in all sources: CLASS Act CBO Report, House SMHOTA, Senate SMHOTA, Initial CBO Report, ACA, *NFIB*, Post-NFIB CBO Report, and *Sissel*. The *Communist Manifesto* was found all six times in coding, beginning with the House SMHOTA, where the universal health care may have been conjured and ending with *Sissel* which was the last upholding of the ACA. The entirety of the predictive interventions in the logic model consisted of the Communist Manifesto intervening in the ACA's process.

The data collection of the Manifesto found one measure to be most applicable to the ACA and the universal health care mandate. Measure Seven declared: "7. Extension of factories and instruments of production owned by the state; the bringing into cultivation of waste lands, and the improvement of the soil generally in accordance with a common plan." This declaration states the underlying mantra behind socialist drive and direction. In driving to make all services ran by the government, Measure Seven declared

that production should be owned by the state, which is a correlation to the ACA's universal health care as a product delivered by the U.S. government. The production mechanism that socialism touts in Measure Seven may draw comparison to the production of health care because of the absolute involvement of the product by the state.

In data collection, approximately forty-four committee hearings regarding the ACA which were led by a majority that were advocates of the bill. None of these hearings were primarily held on the constitutionality of the ACA. Michael Cannon, Director of Health Policy Studies at the Cato Institute, was the sole witness in one of those forty-four hearings that discussed the constitutionality of the bill. Representative Dennis Kucinich, an advocate of the bill, responded to Cannon:

> There's some that believe that is an expansive grant of power that would, say, give Congress the power, the constitutional authority to enact, say, a single-payer system or make health insurance compulsory for all Americans. I think that the perspective of CATO's constitutional scholars is that if that were true, if the—if the Framers of the Constitution meant for the general welfare clause to be such a sweeping, broad, comprehensive grant of power from the States to the Federal Government, then the rest of the Constitution would be superfluous. They wouldn't have had to enumerate all the other powers in the Constitution, because the general welfare clause would have taken care of everything. So the very structure of the Constitution itself, I think, argues against a broad or the sort of expansive interpretation of the general welfare clause that you suggest. Mr. KUCINICH. One of the things that I've always been impressed with is the

> Preamble which CATO provides to the declaration and the Constitution. And one of the things they say in there, my colleague, is that it's not—it's not political will, but moral reasoning which is the foundation of the political system. And some of the issues that are being brought to us about conditions relating to health care in America are laden with moral consequences and moral overtones, and it's like an underlying reality of whether health care—if health care's a privilege based on ability to pay, or is health care a fundamental right in a democratic society. (Bureaucracy of Private Health Insurance, 2009, p. 140)

In this exchange, Representative Kucinich countered Cannon by citing that universal health care is a fundamental right in a democratic society. Debate was made over the General Welfare Clause, but from Cannon's perspective of the Constitution this clause would be considered too broad should universal health care be constitutional.

The amount of speech on the floor was prominent regarding the constitutionality of the ACA with most of the speeches coming from opponents on the unconstitutionality of the ACA. Three important statements by Members of Congress demonstrated a microcosm of the floor speeches which outlined the socialist ideology that may have infiltrated the process of the ACA's passage. In order, opponents of the bill describe the bill as unconstitutional, opponents claiming lack of transparency, and advocates stating that the bill must be passed in an expedient fashion. Opponents described the ACA as an unconstitutional bill that would violate the Constitution. Opponent Senator John Ensign declared:

> I wish to make a couple points very briefly in one area where I think, on the individual mandate, this bill violates the U.S. Constitution. Nowhere, at no time, has this government, this Federal Government, ever passed a law that requires people who do nothing to engage in economic activity. In other words, if this bill passes and then you choose not to buy health insurance, this bill requires you to purchase health insurance. If you do not do that, it charges you up to 2 percent of your income. So this bill is telling you, just because you exist as a citizen of the United States, you must do something. The United States has never, in its history, ever passed something such as this. This will dramatically expand the powers of the Federal Government, if this bill is passed, and if, God forbid, the Supreme Court upholds this piece of legislation. I have read a lot of articles—and I submitted several of them yesterday— by constitutional scholars, who believe this bill is unconstitutional. (Cong. Rec. 155, 2009, p. 11152)

Opponents of the bill described the lack of transparency regarding the ACA in its creation through unofficial means:

> Mr. KINGSTON. I thank the gentleman for yielding. I have to ask my friends who have spoken before me: If the bill is as good as you say it is, why are any of these bribes in the bill to begin with? The President said, January 25, ''It is an ugly process, and it looks like there are a bunch of backroom deals.'' ... Mr. KINGSTON. I thank the gentleman. And I know my friends on this side of the aisle feel just the same way. Not one of those things comes out in the reconciliation process. My question is, if the bill is so good, where has the

> transparency been? Why all the backroom deals? Why this week alone has the President had 64 calls and visits to the White House to twist arms? Why the sweeteners? You know the bill is not as good as advertised. Vote ''no.'' Let's work for a bipartisan bill. (Cong. Rec. 156, 2010, p. 1832)

Representative Kingston's words have procedural backing from *Joint Rules of the Two Houses* (1867), which reads:

> That in every case of an amendment of a bill agreed to in one House, and dissented to in the other, if either House shall request a conference, and appoint a committee for that purpose, and the other House shall also appoint a committee to confer, such committees shall, at a convenient hour, to be agreed on by their Chairman, meet in the Conference Chamber, and state to each other, verbally, or in writing, as either shall choose, the reasons of their respective Houses for and against the amendment, and confer freely thereon. (Joint Rules of the Two Houses, p. 25)

Advocates of the bill declared that Congress should pass the bill as soon as possible which may have been without regard to the proper, constitutional passage of the bill:

> "In short, what health insurance reform means for millions of Americans who are insured today is more security and stability. Americans should not have to wait longer for this reform. Congress must act this year" (Cong. Rec. 155, 2009, p. 10523).

Of these statements, the demonstration behind them is the collective tendency towards a socialist process.

The language of the ACA had a few instances that conjured Measure Seven of the Manifesto. Such language would indicate an ideology pursued in the making of universal health care through the ACA. These two sections illuminate the similarity to the socialist ideology as they highlight a national strategy, Section 3011, and granting a barrage of governmental figures with significant input, Section 3012:

PART II--NATIONAL STRATEGY TO IMPROVE HEALTH CARE QUALITY

SEC. 3011. NATIONAL STRATEGY.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

``PART S--HEALTH CARE QUALITY PROGRAMS

``Subpart I--National Strategy for Quality Improvement in Health Care

``SEC. 399HH. NOTE: 42 USC 280 NATIONAL STRATEGY FOR QUALITY IMPROVEMENT IN HEALTH CARE.

``(a) Establishment of National Strategy and Priorities.--
``(1) National strategy.--The Secretary, through a transparent collaborative process, shall establish a national strategy to improve the delivery of health care services, patient health outcomes, and population health.
``(2) Identification of priorities.--
``(A) In general.--The Secretary shall identify national priorities for improvement in developing the strategy under paragraph (1).
``(B) Requirements.--The Secretary shall ensure that priorities identified under subparagraph (A) will--
``(ix) address other areas as determined appropriate by the Secretary.

SEC. 3012. NOTE: 42 USC 280 INTERAGENCY WORKING GROUP ON HEALTH CARE QUALITY.

(a) NOTE: President. Establishment. In General.--The President shall convene a working group to be known as the Interagency Working Group on Health Care Quality (referred to in this section as the

``Working Group'').

(b) Goals.--The goals of the Working Group shall be to achieve the following:

(1) Collaboration, cooperation, and consultation between Federal departments and agencies with respect to developing and disseminating strategies, goals, models, and timetables that are consistent with the national priorities identified under section 399HH(a)(2) of the Public Health Service Act (as added by section 3011).

(2) Avoidance of inefficient duplication of quality improvement efforts and resources, where practicable, and a streamlined process for quality reporting and compliance requirements.

(3) Assess alignment of quality efforts in the public sector with private sector initiatives.

(c) Composition.--

(1) In general.--The Working Group shall be composed of senior level representatives of--

(A) the Department of Health and Human Services;
(B) the Centers for Medicare & Medicaid Services;
(C) the National Institutes of Health;
(D) the Centers for Disease Control and Prevention;
(E) the Food and Drug Administration;
(F) the Health Resources and Services Administration;
(G) the Agency for Healthcare Research and Quality;
(H) the Office of the National Coordinator for Health Information Technology;
(I) the Substance Abuse and Mental Health Services Administration;
(J) the Administration for Children and Families;
(K) the Department of Commerce;
(L) the Office of Management and Budget;
(M) the United States Coast Guard;
(N) the Federal Bureau of Prisons;
(O) the National Highway Traffic Safety Administration;
(P) the Federal Trade Commission;
(Q) the Social Security Administration;
(R) the Department of Labor;
(S) the United States Office of Personnel Management;

> (T) the Department of Defense;
> (U) the Department of Education;
> (V) the Department of Veterans Affairs;
> (W) the Veterans Health Administration; and
> (X) any other Federal agencies and departments with activities relating to improving health care quality and safety, as determined by the President. (Pub. L. No. 111-148, 2010, 124 Stat. 378-381)

Section 3011 outlined the ACA's directives to have the Secretary of Health and Human Services lead the implementation of universal health care. While doing so, the Secretary is following through with a national strategy that would become the new health care system deployed by the government. Section 3012 described the gathering of the heads of approximately 25 or more government agencies to convene and review the ACA's progress and future goals. This type of gathering would indicate an increase in bureaucracy and power to the federal government in the implementation of the ACA.

Codification and Summary of Codification

Table 1 explained the breakdown of the codified government measures that were examined and the specific parts of the ACA that were examined. This study's straightforward approach in collecting documents to be analyzed was intended to illuminate the findings and allow for discussion to be an equal part of the analysis.

Table 1

Government Codification and ACA Examination

Government measure	Possible ACA violation
Origination Clause, U.S. Constitution	House SMHOTA, Senate SMHOTA, ACA, *NFIB*, and *Sissel*
Vehicle Bill, Jefferson's *Manual,* Section XLV	House SMHOTA, Senate SMHOTA, and *Sissel*
Congressional Budget Act	CLASS Act CBO Report, ACA CBO Report, and Post-NFIB CBO Report
Commerce Clause, U.S. Constitution	ACA, *NFIB*, and *Sissel*
Taxing Clause, U.S. Constitution	ACA, *NFIB,* and *Sissel*
Communist Manifesto, Section II, Measure 7	House SMHOTA, Senate SMHOTA, CBA, ACA, *NFIB*, and *Sissel*.

This type of case study, as explained by Yin (2014), is quintessential in breaking down the results though the results may be few in quantity. The discrepancies that may be found in the legislative examination may be egregious when taking into consideration law and the burden that the United States places on itself. These results, though few, were sufficient to break down in this analysis chapter and into the conclusion of this study.

Table 2

Summary of Codes Used in the Study

	Bill/ Report/ Case	CLASS Act CBO Report	House SMH OTA	Senate SMH OTA	Initial CBO Report	ACA	*NFIB*	Post-NFIB CBO Report	*Sissel*
Enumerated Citation									
Origination Clause, U.S. Constitution			x	x		x	x		x
Vehicle Bill, Jefferson's Manual, Section XLV			x	x					x
Congressional Budget Act		x			x			x	
Commerce Clause, U.S. Constitution						x	x		x
Taxing Clause, U.S. Constitution						x	x		x
Communist Manifesto, Section II, Measure 7		x	x	x	x	x	x	x	x

Results

Main Research Question

- Main Research Question: Has the United States followed the intentions of the Founders through the ACA in its legislative passing, related bureaucratic reports, and court cases?

Thomas Jefferson's *Manual* is the primary source of legislative procedure in Congress, and the ACA went outside of procedural norms when the legislation was passed. The Founders intended that the federal government play a small part in implementing laws that were not too overarching, letting states decide most issues unless an issue *had* to be ruled on federally (e.g., slavery or war). In 1973, when the Supreme Court mandated abortion to be legal in a landmark decision, it marked a critical time in U.S. history as the Court interjected itself in a manner that disallowed states from ruling on a mostly states' rights issue. At that time, the issue of abortion did not come to a nationwide breaking point, but rather was pushed through the court system to satisfy the desires of those on one side of an argument. The same type of government control happened again in 2010, when the ACA was passed by Congress; one side of the government had political control, and certain measures could be passed as a result. Like the legalization of abortion in 1973, the ACA was made law because of one side pushing an agenda as laid out in the *Manifesto*, rather than consulting the founding documents which had outlined how laws should be properly passed through liberty of the Founders.

Universal health care, and its individual mandate, have had an adverse effect on the liberty of the United States, and have partially steered the country in a direction that the Founders would not have wanted. The process of getting the ACA passed was not

without controversy due to the backroom deal-making that left many legislators and the public out of the loop, and which contributed to the agreement with CBO report scoring. The dissenters in *NFIB* believed that the ACA was more of a penalty than a tax because it forces Americans to buy health insurance; nowhere in the Constitution exists the granting of taxation through a choice to purchase a product. The dissenters made a valid argument, and through this case study I have found that American liberties were taken away with the Constitution as the cited source.

The type of country that the Founders envisioned was one that believed in the phrase “Life, Liberty, and the pursuit of Happiness”, and that phrase alone solved major issues when they surfaced, but they also envisioned a country that did not make overreaching federal laws that would oppress the public. The ACA, through its forced passage, gamed CBO report scoring, and the subsequent ruling by the Supreme Court, upheld a policy forcing Americans to buy health insurance, or if they did not comply, to pay a tax. When researched, violations of Jefferson’s *Manual* and the Constitution illuminated these injustices to American liberty and the institutions that protect it.

Subquestion 1: The Legislative Process

- Did the United States correctly follow the procedures listed by Jefferson’s *Manual* in passing the ACA?

Extremely misleading meetings were held at a time when the American public had barely come to know that SMHOTA, most likely tapped as the vehicle bill during these meetings, would be replaced by the ACA. From the data collection, it appears much was relatively unknown about the ACA leading up to the time of its passage; a bill that had implications to shape the history of health care in the United States had received little

to no attention to its path from past to future. This section furnished the results of the research as a synthesis of the data collection compiled.

Both the manner and procedure in which the ACA was passed was different from traditional standards. The manner was less open as the ACA was passed without traditionally proper means, moving the process behind closed doors. The research showed that the ACA was a bill that was built and debated behind closed doors inside and outside of Congress. The debating of the ACA was conducted without the consent of a large part of Congress and, by association, the American public. The data collection manifested the statement of a Representative John Kingston in which he exclaimed, hours before the bill was eventually passed that the bill was built behind closed doors and had been given preferential treatment. The Joint Rules of the Two Houses' description is particularly illustrative of the verbal commitments that legislators hold to one another which were mostly bypassed during the ACA's passage. The way the ACA was passed was highlighted by a shift in the legislative meeting and debate process.

The procedure of the ACA was also called into question as SMHOTA, the origination bill in the ACA's history, had nothing to do with universal health care. Because of its non-controversial nature, SMHOTA was used as a vehicle bill despite the fact there was no germaneness to the ACA that replaced it. Majority Leader Harry Reid spoke to the merging of the bills as Cannan (2013) marked the difference between full disclosure of law creation and the path of least resistance to the American public:

> "[B]asically, we needed a non-controversial House revenue measure to proceed to, so that is why we used the Service Members Home Ownership Tax Act. It

> wasn't more complicated than that." The importance of H.R. 3590's status as a revenue measure is due to the constitutional requirement that such bills originate in the House. It has also been suggested that the choice may have been made to create a façade through which Democrats would appear to be voting for something more popular than health care, i.e., veterans benefits. (p. 153)

After months of senators amending the bill behind closed doors to decide on certain provisions (e.g., new policy measures for abortion and Medicare), the bill received its new title: The Patient Protection and Affordable Care Act; the bill, however, had been operating under the SMHOTA title during the most crucial parts of its passage in the Senate.

Jefferson's *Manual* explicitly mentioned that no bill should have amendments that are completely ungermane to the original measure; germaneness is not required on the amending of bills in the Senate, unlike the House where there are more structured rules; Jefferson echoed the nature of amendments in Section XLV of his *Manual* (1801)
The intended principle applied: bills *may* be amended, but the *Manual* did not say anything about completely substituting a bill.

Revenue-raising bills must originate in the House before being sent to and passed by the Senate and eventually becoming law; SMHOTA was a bill that had passed the House before going to the Senate, and it was a revenue-raising bill that was subsequently passed by the House once again. At the point that the bill was sent from the Senate back to the House, the House could have sent the bill back to the Senate, attaching a *blue slip*, a procedure that challenges a bill's lack of obedience to the Origination Clause. The blue

slip tactic was not used by the House at that time, an omission that parliamentary historians questioned in later years. Had House opposition to the bill used the blue slip, it might have made a difference; the House's failure to use this device was evidence of the whirlwind that had hit opposing lawmakers and public, who were still trying to understand the bill's components and on whipping votes to defeat the bill.

Thomas Jefferson believed that the House should originate revenue-raising bills since the House members' legislative cycle was shorter and they were more in touch with what the American people desired. For the bill to be passed, bill proponents determined that the Senate had to pass a non-controversial bill that had already been passed by the House, because of the close vote that would inevitably happen in the House. Once the bill was passed in the Senate, it would have enough momentum to get through the House; though the language used in the bill was completely different than when it originated in the House, it could still be interpreted by most to be a revenue-raising bill.

Not only was the parliamentary procedure of SMHOTA extremely questionable, the measure was also considered a revenue-raising bill at its inception in the House, a requirement to satisfy the Origination Clause according to proponents. The SMHOTA covered the ACA's passing in the case that parliamentarians had called out lawmakers on passing a revenue-raising bill that illegally originated in the Senate. SMHOTA as a tax credit for servicemen and women, however, has been questioned as a revenue-raising bill as well. The current case study of the ACA has raised the issue of what the revenue-raising function in the Commerce Clause truly means; SMHOTA is no different than the ACA in that it could also be considered under the Taxing Clause. The true challenge

raised was the question of what clause the ACA and SMHOTA conjure; both could implicate the Commerce Clause or the Taxing Clause. This brought about many challenges to what was represented in both measures. Most importantly, there was no consistent answer by proponents as to what both measures held from inception to end in the courts.

Had the bill been marked as the ACA originating in the House from inception, the intentions of the bill would have been clearer to Congress and the public at large. As it stood, universal health care reform came from the seemingly innocuous SMHOTA and was muddled in the Senate because of questionable procedure and lack of obedience to constitutional clauses. Bills represent the natural right of liberty in that they affirm liberty; fairness and debate contribute to liberty as a practice rather than merely a right. Bill amendments, per Jefferson's *Manual* procedures, were never intended to completely replace a bill since that would undermine the liberty that the bill represented and go against written procedure. SMHOTA, however, was wholly substituted by the ACA, against written procedure. Additionally, universal health care reform, as one of the most controversial policy measures, was passed through Congress in the most questionable manners: challenging procedure, the Constitution, lawmakers, and the public; all were required to catch up to a measure that was already well on its way to becoming law. Liberty was completely thwarted to pass a law that raised significant questions about liberty by creating a new precedent in mandating the public to buy health care insurance.

Subquestion 2: Congressional Budget Office (CBO)

- Did Congress maintain proper oversight on the cost estimate report provided by the CBO on the ACA?

The CBO played a major role in the data collection during the ACA's passage as the estimates delivered from the CBO in 2010 greatly varied from the report in 2012, post-*NFIB*. The CBO reported a $1 trillion difference between the two reports' 10-year projected costs of the ACA; these estimates were separated by only two years. Considering the cost estimates were only two years apart, this was a great increase in cost in a very short amount of time. The data collection of this study illustrated the account of how the CBO was created, what it was purposed to do, and how lawmakers game the CBO system to achieve their political agendas.

The CBO was gamed by ACA proponent lawmakers to allow a provision into the ACA with the sole purpose of saving expenses, but the provision was never intended for inclusion in the eventual implementation of the law. That provision was the CLASS Act and was placed in the ACA and accounted for $72 billion in savings per the CBO. The CLASS Act's inclusion allowed the ACA to fulfill the commitment to remain under $1 trillion as proponents publicly proclaimed it would be. The CLASS Act was removed 19 months after the ACA was signed into law. The CBO underscored the public perception of the ACA and was a case in point on how the policymaking process with the CBO had been manipulated.

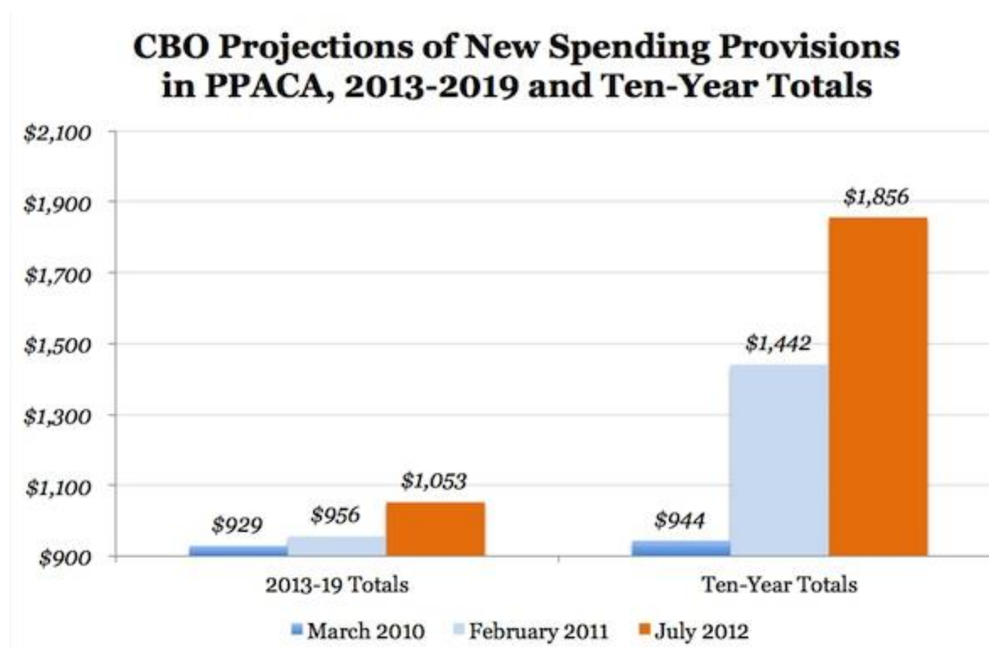

Figure 1. Revenue-raising chart. This chart demonstrates 10-year revenue-raising provisions released at the time of the passing of the ACA and the two subsequent years after its passing (Avik, 2012).

The ACA, before final passage in the House, was given cost projection totals by the CBO, six years and up to 10 years in the future. Per a chart by Avik (2012), shown in Figure 1, the CBO projected that the ACA would cost less than $1 trillion, which was the figure that bill proponents had desired. However, per estimates in years after the initial projections, the numbers grew exponentially to nearly $2 trillion for 10-year totals in the July 2012 estimate. Many reports that refuted the initial $1 trillion estimate stated that the projection came in low because the ACA's actual start dates and the dates in the estimate were inconsistent, as the actual start dates were delayed.

The cost estimate from the CBO was required two days before the legislation went forward to a vote and eventual passage. Bill drafters had hoped that the estimate given by the CBO would be under $1 trillion to ensure that bill opponents and the public

would not begin actively and vehemently asking for the bill's defeat. Since the cost would come under the $1 trillion mark with the help of the CLASS Act, the consensus from lawmakers who had been undecided finally did support the bill up to and through the voting process.

Many bill opponents argued that this dollar estimate from the CBO resulted from the delayed start date in the CBO's calculation of years. Opponents also believed the delayed start was due to proponents of the bill working in conjunction with the CBO on projected reports that were soon to be released. There may be some correlation to the delayed start and the totals when looking at Figure 1, specifically the 10-year totals only one year later, in February 2011, which projected $1.442 trillion. This projection was approximately $.5 trillion more than the targeted $1 trillion mark coveted by proponents to the give the appearance that costs could be maintained. When yet another projection was made in July 2012, the 10-year estimate rose to $1.856 trillion, nearly a trillion dollars more than originally believed, and, consequently, the American budget was incurring more expenses which were adding to the deficit. The data collected in this study proved that challenges prompt questions to the process between the CBO and the ACA. Though the ACA's landmark legislation was passed and eventually signed into law, there were big hurdles from opposition that this law had to overcome before taking effect, which were discussed in the form of the Supreme Court's decision in *NFIB*.

Subquestion 3: Judicial Review

- Did the majority opinion in *NFIB* and *Sissel* appropriately and correctly analyze the procedure and the language of the ACA?

The Supreme Court was sure to be a part of the ACA process in the end, and the Supreme Court Justices, particularly Chief Justice Roberts who wrote the majority opinion in *NFIB*, deliberated and decided on the procedural constitutionality of the ACA and, most specifically, the individual mandate that forced all American citizens without health insurance to buy it. The decision handed down from the majority, which affirmed the individual mandate, seemed to have skipped over scrutinizing the proper procedure laid out in Jefferson's *Manual.* The procedural questions surrounding the ACA were not addressed to any measurable extent in the majority opinion.

I realized during data collection that a minimal amount of time had been spent by the Supreme Court's majority opinion on how the ACA was passed; they failed to mention the Origination Clause which disregarded the intense scrutiny that the Constitution required. There were no points in the Constitution or *Manual* that allowed for a bill to completely replace another bill. This applies specially to bills that involve revenue; for those bills, must begin in the House, as revenue measures are viewed as more critical in the handling of procedure. At the least, legitimate challenges to how the ACA was passed was failed to be met by the majority opinion which left questions unanswered. The majority opinion avoided the Origination Clause and did not apply proper constitutional scrutiny because of the legitimate questions raised about SMHOTA and ACA being two completely different bills. The dissent alluded to the origins of the ACA as the SMHOTA, a bill providing tax credits that was passed by the House, then rewritten to become the ACA; that process would be qualifying enough to be a proper revenue-raising bill beginning in the House for the dissent.

Chief Justice Roberts was more focused on the individual mandate, as it was the critical element in the ACA's implementation that lawmakers and the public alike were eager to scrutinize. When the Supreme Court addressed the constitutionality of the ACA, it minimized the effect of the ACA's procedural passage and analyzed the individual mandate's challenge, which was decided to be simply a tax on the American public. Opponents' main problem with this line of reasoning on the individual mandate is that neither the law nor proponents of the law stated that the ACA was a tax. The revenue aspect of the measure was a major question raised as the law conjured both the Origination Clause and the Commerce Clause. A great difference in rhetoric from the legislative to the judicial branch created a challenge as to what type of law the ACA was.

A case for the individual mandate, the most critical aspect of the ACA, when tracked through the legislative branch at best shows inconsistency. The legality of the individual mandate was mislabeled under different clauses brought forth in the Constitution, most notably the Commerce Clause and the Taxing Clause. Proponents passed the ACA under the Commerce Clause, and even Chief Justice Roberts himself had believed the ACA was passed as such, but the individual mandate's penalty or tax, depending on how one viewed it, was a measure fit for the Taxing Clause. Roberts re-labeled the penalty a tax, avoiding the issue of activity or inactivity, which also depended upon one's view. When creating the bill, lawmakers in the opposition had even considered the law to conjure the Taxing Clause, and had placed it as a tax, which makes the outcome of *NFIB* even worse regarding liberty.

Justice Scalia referred to what Jefferson had said in his arguments for liberty. There must be a complete adherence to the natural right of liberty which allows citizens to live without unnecessary government intervention. The Supreme Court's decision further escalated the already controversial passage of the ACA with a lack of proper constitutional scrutiny by giving new meaning to the law and its language.

The Supreme Court was the last stand as far as enacting the ACA, and there was little that could be done following the Court's decision. *Sissel* was brought forth as an appeal to *NFIB*, and the main challenge *Sissel* presented was to the Court's decision regarding the Origination Clause. The plaintiffs claimed that since the ACA was crafted in the Senate, it should not have been considered to have originated in the House. The District Court that originally heard *Sissel* made an argument that was counter to the common understanding of how the bill was created. In short, the D.C. District Court stated that the ACA was not a bill that raised revenue, but that ran contrary to the reason a vehicle bill was used; if the ACA was not a revenue-raising bill, it could have simply been created on its own in the Senate. In the D.C. Court of Appeals, *Sissel* most notably made a last plea in challenging the Commerce Clause by stating that it was implicated, because regardless of whether the tax or penalty was imposed, the government was still raising revenue. The D.C. Court of Appeals shunned this argument and decided that the tax was only intended to encourage citizens to purchase health care rather than to directly raise revenue for the government.

The courts' opinions, from *NFIB* to *Sissel*, decided the application of the Origination Clause, the differences between the Commerce Clause and Taxing Clause,

and whether it was legal to force Americans to buy health insurance under those measures. The decisions on these potential violations, as far as this study is concerned, were questionable. Aside from infamously determining the difference between a penalty and a tax, the interpretation by the Supreme Court, drafted partially by Chief Justice Roberts, had veered from the original language of the law and taken away the power of the Constitution without applying proper scrutiny. Most importantly, the individual mandate to require Americans to buy health insurance goes against the natural right of liberty as the Founders believed. Andrews (2005) described Jefferson's beliefs in liberty as something beyond what historical liberty meant:

> Indeed, one could argue that Jefferson's concept of liberty, for example, was itself embedded in and derived from the traditions of Anglo-American political culture. What distinguished his understanding of liberty, and what marked his defense of it as a characteristic expression of Enlightenment thought, was that Jefferson did not specifically locate the source of liberty in either history or tradition, but instead placed its origins in nature. (p. 17)

The individual mandate was necessary for the main part of the ACA to survive as the rest of the law had aspects that were suspect per the Court. Though the ACA survived, this study has challenges taken from the data collection that prove such suspicion.

Summary

Through a case study of the ACA using Jefferson's *Manual,* the procedures used in the passage of the ACA have been demonstrated. Jefferson's *Manual* never intended for a bill to be completely replaced by another bill, thereby making the former a vehicle bill. The *Manual* also showed that there must be debate on the Floor and in committee

rooms, rather than talks in backrooms and secret meetings that otherwise drown out the democratic process.

The ACA also presented problems when the CBO, coincidentally or not, projected the cost of the ACA in a manner which pleased proponents of the bill to pass a targeted cost. The $1 trillion initial 10-year projected cost would eventually rise to nearly $2 trillion when projected again two years after the initial estimate; this cost-differential is indicative of the way Jefferson's *Manual* was not followed in passing a law that was not fully understood by lawmakers at the time of its passage.

The Supreme Court's decision two years after the passage of the ACA upheld the law as a tax rather than as a penalty for Americans not buying health insurance. The terms related the main problem in forcing Americans to buy health insurance: It goes against the type of liberty for which the *Manual* stands. For the decision to come down to differentiating between terms, when the weight of liberty hangs in the balance, shows the lack of fairness displayed by the Supreme Court on behalf of the American people. If the Supreme Court was more honest with itself, merely stating differences in the law's passing may have been a more pertinent response when handing down a decision that would mean so much to the history of the United States and the respect for the Founders.

Considering that Congress should be doing everything it can to follow Thomas Jefferson and his *Manual* given the stature and tenure of the procedures, the lawmakers have only slightly regarded the Founders' influence. When looking back through legislation and the Supreme Court decision that shaped the ACA and universal health care, there was little inclusion and transparency. To begin, the issue of mandating

insurance for all Americans has been, by far, the most influential part of the most far-reaching health care bill in the United States since Medicare was enacted in 1965. Shortly after being elected, President Barack Obama spearheaded a charge to fix the health care system, and subsequently those living without health insurance were forced to buy it. This lawmaking may have been the result of lawmakers' inability to look at what the Founders wanted.

The way the ACA has been continually argued and challenged is a microcosm of how lawmaking has been handled in modern times. There are many reasons why proponents wanted it that way; for example, regarding universal health care reform, America has been radically changed because now the federal government may rule on issues that may affect Americans negatively. The Founders, with all their principles and logic, more likely would have sidestepped in favor of restoring the old system, or even left the issue for the states to decide. There is no firm way of knowing, and that is why this study is important, because it allows scholars and lawmakers to think more about how the Founders are still influencing the biggest issues that America faces.

The Founders have been recognized as the inceptors of the United States and are accredited as men that stood on principle. Their legacies would live on through new generations if those generations decided to make laws as the Founders would have wanted. Certain rulings on government-run health care have proven to be outside what the Founders had intended. In the concluding chapter, an examination is made of how the ACA demonstrated a lack of following the lead of the Founders and, furthermore, puts the course of the United States on a downward path regarding liberty. However, whether

this study indicates an upward or downward path, it will not be the success or failure of the U.S. This study provides a guide to more fully understand the country, and sets out to aid not only in understanding the country and where it has been, but also where it is going with respect to crucial lawmaking.

Chapter 5: Discussion, Conclusions, and Recommendations

In the *Manual,* the document that would serve as a basis for future lawmaking in the United States (Wilson, 2000), Thomas Jefferson set forth principles that, while they took precedence in subsequent democratic governments, were never implemented as laws by a government intended to be run by the people and emphasizing liberty. In this study, I sought to discover whether lawmakers, through legislation, bureaucratic reports, and court cases, have followed Jefferson and the Founders through liberty. A case study of the ACA was done to demonstrate how liberty is or is not a part of laws that have been passed. Most importantly, this study builds on ways the Founders have been represented in a logical and practical way with regards to U.S. laws.

A case study on the ACA, surrounding reports, and the Court's decision in *NFIB*, and a combination of scholarly work defined how the Founders were viewed through the passing of U.S. law. Alongside these methods, records research allowed the study to use a variety of resources to discover the timelines of the various subtopics. Social theories also provided a historical lens through which these records should be viewed. Declarationism and socialism were two theories that were instrumental in analyzing how the ACA illustrated present day outlooks on liberty. These methods were instrumental to the research and provided a framework within which the study could be made.

I drew on Yin (2014) and Gomm et al. (2000) for the case study protocol that I used to collect data outlooks on liberty established by the Founders and illustrated in the recently passed ACA. Gomm et al.'s explanation of case studies allowed me to be more objective in my analysis. These methodological guides were instrumental in providing a

basis for incorporating principle with laws. Most of the limitations of my study were attributed to maintaining a balance of objectivity and subjectivity. Through these methodological guides, impartiality was maintained because of the guides' discussion on how such research could be conducted. Maintaining objectivity provided standing for the research to take place and for the analysis to be meaningful.

Interpretation of Findings

Three major interpretations of the study were discovered through the analysis of the ACA's process demonstrated lawmakers' inability to follow procedure per a variety of founding documents. Throughout the legislative history of the United States, the case could be made that the ACA's far-reaching and extremely impactful legislation was, in those aspects, unlike any other legislation before it. As such, a law with such widespread impact conceivably would have been one characterized by the most exact following of procedure, though this was not the case. The ACA became one of the most important laws in U.S. history and should have been paid more diligence, I conclude, in following the rules, procedures, and into its aftermath in the court system. I found the following aspects to be questionable: (a) the manner and procedure in how the law was passed as shown through the misuse of founding documents, (b) a gamed CBO report in scoring the ACA, and (c) the courts' seemingly capitulating responses to all the congressional proceedings.

The first major interpretation was that the improper way the meeting and debate of the ACA was questionable. The ACA was put together through untraditional meetings which took place behind closed doors and was largely shut off to the opposing political side. This marred the ACA before the bill and its components truly became known to the

public. Considering the gravity of the ACA which was proposed to completely restructure health care, the openness in which it was presented may have been more appropriate. Another questionable aspect of the ACA's passing along with the manner it was built was the procedural passing of the ACA and the use of SMHOTA as a vehicle bill. The vehicle bill was then completely replaced, which was not permissible under Jefferson's *Manual*. The *Manual* does not explicitly state that vehicle bills are not allowed, but nowhere in the *Manual* is there an allowance for an entire bill to replace another, including the whole change of the title. This is exemplified in Jefferson's *Manual* on page 82, which refers to allowing amendments and to not have these amendments replace the entire bill. The ACA originally started in the House, conjuring the Origination Clause, which is what the proponents of the bill needed to cover themselves if a court challenged the procedure. Since the ACA could not be passed in the House as the ACA, a non-controversial bill with a specific, revenue-raising function was passed and replaced with the universal health care measure in the Senate. The reasoning behind using the vehicle bill in this instance was that the bill would be overhauled in a proponent-majority Senate, which would get the necessary votes for the bill.

A second major interpretation was the effect of the CBO's final projections before the bill was passed into law and projections which, at the time of the ACA's passing, was scrutinized for incidentally being the exact costs that proponents of the bill had desired for public approval. The CBO's warning on the inclusion of the CLASS Act, a previously discarded measure deemed to be too costly to be included in any legislation, was ignored. This cost mark was publicly announced by proponents that the ACA would come under

$1 trillion to curb spending. Saldin (2014) explained the manipulation that was used on the CBO: “Exploiting the CBO’s ten-year window and its current-law assumption are just two ways that legislators can change the official scoring of their bills to make them look better than they actually are” (p. 92). The case study findings were illuminated by the July 2012 10-year projection, which showed a nearly $2 trillion estimate total, a 100% increase from the initial $1 trillion estimate projected when the bill was passed in March 2010.

A third and final major interpretation was through major court decisions in the Supreme Court and appellate courts *vis–à–vis NFIB* and *Sissel.* Both cases heard the contest of the ACA which was on its way to implementation in 2013, but still had to be upheld in court for the law to take effect. *Sissel*, the mostly unknown appellate court cases, was heard in the D.C. District Court and the Court of Appeals. The decisions in these cases proved no impact for the opponents of the ACA, but offered explanations that were contrary to the ACA’s legislative process and the majority opinion of *NFIB.* Popularly, the Supreme Court was required to review the most well-known and controversial portion of the bill, the individual mandate, but ultimately did not rule on the misuse of the Constitution’s Origination Clause and, most importantly, ruled on the Commerce Clause. The Supreme Court’s decision did not consider the Origination Clause and, in Chief Justice Roberts’ majority opinion, did not entertain any notion that the ACA was improperly passed in the legislative process. Ultimately, the Commerce Clause was dismissed as a possibility to legally take down the ACA; Roberts believed the ACA conjured the Taxing Clause which showed the questionable nature regarding the

entire process. Opponents of the Supreme Court's decision were strongly opposed to the decision since they felt it was unusual for a court disregard Congress' own interpretation of its passed law.

Discussion of Major Interpretations

The passing of the ACA is an issue that will haunt the United States for its irreverence towards liberty. The reform of health care, one of the largest reform overhauls in the history of the United States, and its passage are more associated with a socialist ideology rather than the liberty that the United States has aspired to since its inception. The ACA was put together through untraditional meetings which took place behind closed doors and was even shut off to the opposing political side. Before the public process of passing the ACA became questionable, the abnormal legislative meetings may have marred the process before it truly became known to the public. Canaan's (2013) helpful demonstration of the ACA's legislative backroom style described as such:

> Democratic congressional leaders and White House officials met in what one article described as a "substitute for a Congressional conference committee" to draft a proposal that could pass both houses. The negotiations were held behind closed doors, which raised transparency concerns and meant that this important stage would leave no record aside from what was reported in the press. Next, a completely different measure by the name of SMHOTA would then be tagged as the bill to take on the health care legislation that was mostly deliberated about behind closed doors. (p. 159)

The ACA's passage consisted of manipulating the legislative system so that landmark legislation could be passed with less regard to open dialogue and traditional legislative processes and measures and more attention to political agendas.

The Origination Clause stated that a revenue-raising bill must originate in the House; thus the question of whether SMHOTA was a revenue-raising bill was critical to determine. It is questionable that SMHOTA was a revenue-raising bill as it was a bill that offered tax credits, and there may be a difference in tax credits and revenue-raising. Revenue-raising in the strict sense of the term meant that a profit would be made and deposited by some means into the government. Revenue-raising may be interpreted differently, to be considered a bill that merely partakes in some sort of monetary transaction, or function. As a bill that would provide tax credits, SMHOTA might have been considered revenue-raising since it involved monetary transactions that most considered as acceptable in the modern Congress. However, the bill could not also be viewed as a revenue-raising bill since tax credits were also seen as a break to a group rather than any profit transacted to the government. The mere consideration of SMHOTA being a revenue-raising bill was enough to raise concern and be questionable while it is also questionable that the ACA might have been derived from a non-revenue-raising bill. The same could be understood for the final version of the ACA which raised revenue in another sense, as in the event of American citizens not purchasing health insurance, the fee went to the government.

The nature of the Origination Clause is to thwart the Senate from creating revenue-raising bills such that the "people's" House is more representative of America's

trustworthiness. This does not diminish the trustworthiness of the Senate, but when dealing with how revenue is raised; a bigger body of representatives would handle revenue more fairly than a smaller group. When the ACA was beginning in the Senate, Senate Majority Leader Harry Reid was the first to present the bill and exclaim that the ACA would be originated in the Senate. If there was a question as to whether the ACA began in the House or the Senate from proponents, Reid had staked the determination of how the legislative process of the bill was to be viewed. The bill was passed as the ACA in the Senate, passed in the House, and sent to the Senate once more; these moves were significant because in later court rulings the final passage of the Senate were argued as satisfying the Origination Clause. The understanding of the bill's origination is questionable mainly because of Reid's declaration and how it could be viewed from opponents' perspective of how the Origination Clause was used and when. From the original ACA being voted down in the House to the decision in *Sissel*, there was never a consensual understanding as to how the Origination Clause applied to the legislative proceedings.

Unlike the House, the Senate had the ability to get votes to pass the ACA to begin the bill's momentum back over to the House. Using SMHOTA, it allowed House and Senate advocates to use an abnormal vehicle bill to ensure the bill would go through a round-about process, but a workable one. Not only did Jefferson's Manual find this vehicle as a violation, but a prohibition was also found in the Joint Rules of the Two Houses, which stated that a bill should not completely replace another bill. In proponents' minds, the procedure of the law could be questioned in a court of law, but could not be

overturned since the law abided by the Origination Clause and the Senate allows for the complete restructuring of bills. Such maneuvers harken back to oppressive, socialistic governments of the past and present; analogously because of the ACA's socialistic disposition, these lawmaking procedures used that are considered vague and under-the-radar were used to ensure that a socialistic measure was passed. The obvious maneuvering of a bill of such great magnitude into law is against what the Founders and Jefferson's *Manual* had intended.

Applying constitutional scrutiny was part of what made the Founders' version of liberty what it was, and when the Origination Clause had legitimate challenges to its misuse in the legislative process along with the vehicle bill use, the Constitution should be bolstered rather than dismissed. Exploring SMHOTA showed how a bill providing housing tax credits for servicemen became a questionable plan. Questionable is the crucial term that brings discussion because it denotes lawmaking that could be interpreted differently; lawmaking could be marked questionable because the legislative procedure would not be upheld under strict constitutional scrutiny and liberty. To plan to make the ACA out of SMHOTA perhaps before or after SMHOTA's passing in the House to gut the bill for passage in the Senate was questionable.

During the final stages of the bill, after the maneuvering was done to get the ACA to the House floor for a final vote passage, the CBO's cost estimate score was released. The importance of the score for the ACA became apparent when proponents touted that the law would not only be smaller in expense, but would reduce the country's deficit in the long term. The CBO has historically been considered a more controversial

government agency because of its ability to sway public and lawmaker opinion, both of whom are looking to the final number on the CBO score. The power of the CBO lies in how the agency may score a bill as a certain expense which on its face may appear to be objective, but since the reports include projections there will never be absolute accuracy.

The cost estimate responsibility may be a blessing and a curse for the CBO since there must be an entity that provides cost projections and bears the country's scrutinized blowback. Saldin (2014) further illuminated the weight of responsibility on the CBO in how the previously discarded CLASS Act was slipped into the ACA:

> Though there are great benefits that come from having reliable, nonpartisan estimates for the fiscal implications of legislative proposals, the CBO process for judging legislation can be manipulated, and the agency's crucial role in the legislative process makes such a manipulation very appealing and regarding. This manipulation of a policy's appearance can allow unworkable policies to become law, and there is no better example of the politics of policymaking than the history of long-term care legislation and the rise of the CLASS Act. (p. 84)

As the ACA continued through the legislative process crucial votes had begun to be switched to vote for the bill now that it had met the designated cost. Even the CBO, the primarily responsible violator, knew the CLASS Act was the main reason for the goal cost being met. The CBO report's scoring highlighted the discrepancy between the bill's original estimates before the bill was created and the CBO before-passage report score. As a government agency of major size and impact, the CBO had a great responsibility to release its reports in prudence and proper government action. At the time of the CBO

report and the passing of the ACA, much of the public and its opponents' consternation that arose from the ACA's passage was due to the string of socialistic tendencies, and the accompaniment of CBO scoring at the crucial parts of the legislative and bureaucratic processes caused further opposition.

Perhaps the most important challenge of the ACA was the question of obedience to the Commerce Clause. The Commerce Clause gave Congress the power to regulate commerce among the states while the Taxing Clause lays and collects taxes, which are both directly related to the ACA's legislative process. As Cannan (2013) aptly stated regarding the court's eventual intervention into the ACA's process: "The ACA, though, was destined to have one more phase, judicial review. Vehement opposition to the law ensured immediate challenge to its provisions on constitutional grounds. Disparate federal trial and appellate opinions made a decision by the U.S. Supreme Court almost inevitable" (p. 169). In *NFIB*, determining the constitutionality of the individual mandate was paramount for opponents who wanted to strike down the bill for forcing Americans to buy health insurance. Enforcing the purchase of health care was an issue of liberty as it was against personal freedom to be required to purchase a product potentially outside a person's will. *NFIB* used the Taxing Clause to explain its decision regarding the constitutionality of the individual mandate and, ultimately, the ACA. The majority opinion in *NFIB* argued on the activity of commercial regulation involved, which was commonly considered the determining factor in breaking down the Commerce Clause and Taxing Clause.

Activity, as agreed upon in prior court precedent, is often considered the lynchpin that holds the Commerce Clause together as it is what determines if a regulation qualifies as commerce. In the case of the ACA, Chief Justice John Roberts ruled that the law did not regulate an “existing” activity, and that it encouraged new activity which cleared the Commerce Clause of application. The term “existing” denotes the passive, or impassive, nature of the affected population, which is critical in determining how the Commerce Clause has always been portrayed by court precedent. The Commerce Clause, due to court precedent, has been applicable to regulating commerce that was active and had a commercial utility that was commonly understood. The discussion that proceeded in *NFIB* revolved around the necessity of activity in the Commerce Clause’s use and how such activity is created by the ACA.

Throughout the history of the U.S., most notably beginning with the Founders’ enumeration of the Commerce Clause, commerce that has been regulated by Congress has been active. This came about through Supreme Court cases that ruled activity to be the common denominator among Commerce Clause cases; since activity was not explicitly mentioned in the Constitution, there was not a strict requirement to consider activity as a necessary function of the clause. Chief Justice John Roberts concluded in the ACA arguments that the Commerce Clause was not necessarily required used and that since the individual mandate required a tax, the Taxing Clause was required. Thus, *NFIB* is a case that sets new precedent as to the Commerce Clause, applied to perhaps the most important piece of legislation in U.S. history.

The legislative process of the ACA has been proven through this study to set new standards, which is why it is critical to mention if *NFIB* wrote a new precedent. Cannan (2013) remarked on the outcome in *NFIB*: "Although legislative history was not referred to in the majority opinion, in sustaining the law, the Court ensured that its history would remain relevant" (p. 169). Future legislative processes will look to *NFIB* to create and maneuver laws to promote commerce in a variety of ways. Since *NFIB* decided that the ACA should be interpreted under the Taxing Clause, the ramification is that the ACA may tax an individual based on no precedent other than a basic need of health care reform for the country. This type of process may go beyond setting precedent and allow the government to rule as it wishes to satisfy a socialist agenda by use of power. Health insurance had not been considered a taxing utility prior to the ACA becoming law.

The Taxing Clause gives Congress the power to lay and collect taxes, but has never allowed them to enforce a tax when insurance is not bought as a negative externality. Dissenters in *NFIB* argued that the law demonstrated the active limiting of liberty of Americans as the health care tax was imposed on all Americans, including those who did not want it. When the ACA was first discussed, opponents believed the potential of a penalty-like tax was preposterous as it ran contrary to liberty in the United States. Opponents at that time requested that President Obama explain the reasoning behind negative-tax enforcement as a part of the law, and he responded that it was a penalty and not a tax. This further complicated the far-reaching implications of the ACA as the Supreme Court's majority opinion in *NFIB* ruled that the negative enforcement was a tax and not a penalty.

The majority of the Supreme Court opined that the ACA was a tax, but different than other taxes that were ruled on in previous court precedents since the ACA compelled individuals into activity if they were not already part of that existing commercial activity (i.e. health care insurance). The Supreme Court believed that the ACA was separate from the Commerce Clause and that a tax was not oppressive, but rather an encouragement to individuals to purchase. The admittance of activity that would presumably arise from purchasing health care insurance would eliminate the public outcry over a tax burden. As previously mentioned, the mandating of the purchase of health insurance was considered in *NFIB* to be novel to the Commerce Clause, Taxing Clause, and to the interpretation in their respective futures.

The opponents of the ACA were not completely silenced until both the D.C. District Court and D.C. Court of Appeals dismissed the challenge to *NFIB* and upheld the law. Plaintiffs in *Sissel* argued that the Origination Clause was violated because the ACA originated in the Senate, where it was overhauled from SMHOTA. The D.C. District Court struck this argument down, citing the fact that the final ACA bill was not a revenue-raising bill, per se, though the bill did incidentally raise revenue through the individual mandate. The D.C. District Court also pushed back on the chamber of origin, stating that the bill had begun in the House, referring to SMHOTA, though the court did not directly reference the bill. The D.C. District Court then stated that the Senate can amend bills without limit which would thereby not implicate a violation in the Origination Clause, or incidentally, the use of a vehicle bill. And lastly, the D.C. District

Court believed that it was not up to the court to decide on past legislative procedure, as it was not in the court's jurisdiction.

This illuminates how the Origination Clause, as previously mentioned, without strict constitutional scrutiny can be interpreted in a slightly different way. Since the lack of clarity on the use of the Origination Clause was so apparent, it should have been incumbent on the Supreme Court to make a stand for constitutional scrutiny. As the main arbiter of law in the United States, it is up to the Supreme Court to either rule for or against universal health care. The Supreme Court is not perfect and can rule on universal health care as it has ruled outside of its constitutional jurisdiction before, but it is ultimately required to uphold constitutional scrutiny and in this case, the Origination Clause. This would be especially critical for a more modern, better-informed Court regarding perhaps the biggest piece of legislation to have ever been passed in the history of U.S. legislation. With these considerations about the modern Supreme Court, the Origination Clause explicitly states that revenue-raising bills must begin in the House, and neither of the revenue-raising or originating condition was upheld by the Supreme Court as there were legitimate questions as to whether either of the conditions were completely satisfied.

Sissel's plaintiffs also challenged the D.C. District Court on the ACA and *NFIB*, alleging that the Commerce Clause was violated through the requirement to purchase insurance, unprecedented in the regulation of commerce. *Sissel'*s reasoning was primarily a result of *NFIB*'s individual mandate's legality through the Taxing Clause; *NFIB* claimed that the individual mandate was sustained through the Taxing Clause in the

Constitution, but Congress had never intended the bill to be a tax, but instead a penalty. More critically, the forcing of Americans to buy health insurance, was unprecedented under any clause. The D.C. court believed that the plaintiffs' argument failed because of the lack of understanding of *NFIB*, which stated that the individual mandate's tax was an encouragement, but did not offer any substantive clarification as to why the mandate was constitutional. This brought *Sissel* to the D.C. Court of Appeals for further explanation, in hopes of striking down the ACA.

The D.C. Court of Appeals opinion, like the D.C. District Court's opinion, immediately struck down the ACA's association with the Origination Clause, stating that not all bills with tax provisions implicate the clause. Again, like the D.C. District Court, the D.C. Court of Appeals believed that when passed by Congress, the ACA was not intended to be a tax; it was redefined later as a tax as labelled by Chief Justice Roberts in *NFIB*. *Sissel'*s plaintiffs also made the claim that the Senate strike-and-replace was not germane to the original text of the bill, but the D.C. Court of Appeals ruled that the Senate may completely amend House bills by striking all original text and replacing it. This is critical, as Jefferson's *Manual* says otherwise, stating that amendments must be germane to the legislative process; but the D.C. Court of Appeals was averse to this claim.

As *Sissel* was failing to make headway through the courts, the decisions were favored heavily towards *NFIB,* as was the opinion on the Commerce Clause. The D.C. Court of Appeals recognized *NFIB* regarding the ACA as being designed to encourage the purchase of health care and precluded a relationship to the Commerce Clause due to

the new designation under the Taxing Clause. However, after *NFIB* in the D.C. District Court's majority opinion that challenged NFIB's decision, it was stated that the ACA was a tax, but not a revenue-raising bill.

This concluded *Sissel's* court challenges, as they were denied a writ of certiorari with the Supreme Court; however, the plaintiffs were closely aligned with the objective questions that this study has asked. For the plaintiffs in *Sissel,* the questions being asked were stifled by the landmark Supreme Court decision in *NFIB,* which had some of the same questioning, especially regarding the Commerce Clause, that was ultimately rejected as well. This study has made the case that the questions that were asked during passage of one of the most critical pieces of legislation in U.S. history were largely overlooked. As a whole, the courts made their cases on the ACA with new precedents and surface-level explanations of old clauses, and the decisions handed down did not uphold the law as much as they upheld the ACA. This is not to say that the courts were biased in *NFIB* and *Sissel*, but had the law been as revered and respected for the ACA, the opinions in those courts would have opposed any misrepresentation of the law.

At the very least, as with the legislative procedure used by Congress, the ignoring of the CBO, and legitimate challenges to decisions by the court system are apparent. Saldin (2014) echoed the responsibility that was incumbent upon lawmakers regarding the ACA: "The nation desperately needs to confront its long-term-care challenge and the implications it carries for all Americans, but the current policymaking process discourages such a discussion by pushing policymakers to craft policies that purportedly offer all of the gain with none of the pain" (p. 93). The implications of this type of bill

being enacted is wide-ranging and should have raised enough legitimate questions to be stopped by Congress before becoming law or, if enacted, to be overturned by the Supreme Court. The liberty that the government abides in is held through the Constitution, a document that stands against questionable actions that represent injustices upon citizens; however, for all of its representation of liberty, the Constitution was not properly respected in the ACA's passage in Congress, the CBO's gamed score report, and the majority opinions of the courts upholding the law.

Social Implications

A social implication derived from the analysis of this study is the need to deeply inspect the legislative process before a major bill is passed. Such an inspection may begin as early as the announcement of a policy agenda that would signify a push through Congress. This may begin with the President publicly acknowledging a new policy that will be presented in Congress through addressing the nation on just the particular issue. It may be that the President will explicitly lay out what the White House would like to have passed in a bill that would eventually receive a presidential signature into law. These agendas are often released through the press by the White House, and this study has shown that the next step is most crucial: how the Congress introduces the bill supporting the intended policy change. Regarding the ACA, the process began in the House, failed, and then a vehicle bill was passed so it could then be completed converted to a new ACA in the Senate.

Had the public been more aware of the inner workings of Congressional procedure, there might have been a whistle blown on one of the most important bills in legislative history. Since universal health care has been shut down many times in the

legislative process before, it was unlikely that the ACA would have eventually become law. When the ACA gained momentum, the impetus grew to stop the bill with votes rather than to question how it started with concern to procedure, questions which might have led to the votes required to vote it down. As mentioned previously, the House could have filed a blue slip to question the Senate's vehicle bill procedure on the grounds of the Origination Clause, but there was no blue slip filed. Perhaps in the future, more actions should be taken to counteract the ACA's misuse of procedure, but much of the focus after the ACA's passage was reliance on the court to overturn the law.

The social implication of the findings to this study is also found in the major themes of liberty versus socialism. The negative connotation associated with socialism is often well-deserved because of the societies that have been decimated by its policies and outcomes. An entire bill's process from a policy agenda to its upholding in the Supreme Court demonstrated how liberty was placed as the pinnacle principle that would either be respected or ignored in favor of an agenda that achieved goals aligned with a socialistic benefit. This study, as shown through the evidence of trustworthiness presented earlier, was an objective view of how the ACA's process represented at least questionable tactics and was symbolic of a greater shift in adherence to principles. The ACA demonstrated a more socialistic mindset through procedure and eventually, though this study did not focus on it, through policy. This outcome must be emphasized: the objective view of this process presented a questionable view of how the U.S. government is shifting away from placing liberty as the primary priority in passing laws.

Limitations of the Study

As noted earlier in the study, the main limitations arose from the themes and the singular case study representing the themes. The themes, or principles, of liberty and socialism are difficult to study and determine if a law is satisfying the themes' aims and goals. For liberty, the enumerated powers of the Constitution show what rules a government is expected to follow. It is more difficult to determine the application of socialism since it is not addressed in the founding documents, but socialism is often mentioned in surrounding writings as a principle to be avoided in passing U.S. laws. The ramifications of following a socialistic law, the Founders believed, would result in a society much like the one they left in search of a different outcome, an outcome that they demanded had to be driven by liberty.

Liberty, and socialism to a certain extent, can be traced through the documents as general themes to be followed, but they cannot be tracked as manners of laws being passed. This presents a natural limitation to the study since the results stemming from the themes being tested do not have a concrete answer. The most obvious perception of the ACA is that it is landmark legislation, but even though it is major legislation, a fuller picture of other laws, perhaps more landmark in nature, would be needed to compare and contrast the ACA's process with respect to liberty and socialism. Reviewing more laws and studying their respective processes would give a fuller picture of the trending landscape with regards to how the Founders' intentions are being followed.

The lack of laws accompanying the ACA in this study does prove to be a limitation as they would not give the fullest picture of whether liberty and socialism are being followed, but demonstrates how close or far away the ACA is to those themes. As

other laws would offer a better perspective of the ACA's relationship to themes, the ACA's legislative process would be better explained step-by-step. It must again be noted however, that the ACA's landmark nature and the legislative process it took was unparalleled and was thus incomparable to similar laws. Depending upon landmark legislation in the future, perhaps a future study might explore the uniqueness of the ACA, but thus far the ACA is close to incomparable in lawmaking history.

Recommendations for Action

The recommendations for action are like the social implications mentioned earlier since the legislative process needs better oversight. This oversight could come in the form of both official and unofficial measures; one official measure could encourage more transparency. For example, the government could create an arm of the Congressional Research Service (CRS), which already tracks legislation for Congressional members and staff, as a service to the public by illustrating and reviewing legislative processes. However, this may assume the job of what the Congressional database is supposed to do. The mission of such an arm of CRS would require a staunch application of liberty and its standards as portrayed through the Constitution. This is a recommended action, but may be hard to enforce considering the outcome of this study determined that the government is trending away from accordance to liberty as enumerated in the Constitution.

Opponents of the ACA, after the bill was passed in Congress, brought forth legislation to require bills to have a citation, or marking, declaring the authority of the constitution derived from the bill. This type of bill would increase transparency and ensure that the courts would not be able to manipulate based on their own views of the bill's constitutionality. The social implications are related to the recommendations for

action as there is reason to look more closely into legislative procedure, even from a public perspective. The implementation of the ACA prompted a divided country, with half in support and the other half with an outcry regarding the lack of transparency and the mandatory purchase of health care. Informally releasing information to constituents on the legislative procedure during larger legislative initiatives may be helpful for the public at large and encourage them to discern the process and raise enough questions. Realistically, this may be a difficult type of information release due to the sensitive nature of congressional deal-making, but is reasonable since constituents usually hear the outcome only after the process is well on its way to or after completion.

Informing the public is an important aspect of the legislative process since the process itself is extremely complicated, even for Congressional members and staff. CRS, a branch of the Library of Congress, already illustrates the when, how, where, and why of the utilization of the Constitution through the legislative measures being introduced. This study has already illustrated how more bureaucracy is the last action that should be taken; therefore, a more robust version of what already exists within CRS is the preferred recommendation. This action could bring Congress and the public together like never before and, given the approval rating of Congresses before and after the ACA, an informative tool provided by CRS would give the public a better understanding of how liberty is being pursued.

Recommendations for Further Study

Recommendations for further study would be taken from a macro and micro expansion of my study. The macro expansion would take a variety of laws that require the interpretation of the legislative, bureaucratic, and court processes. Thematically,

declarationism and socialism are the two themes that must be studied, but they could be viewed in the context of a few major bills that were passed into law and then upheld or overturned in the court system. Macro expansion may be difficult to find considering the abstract nature of ACA and its aftermath, which is one of the major ways this study proved the unique lawmaking process of the ACA; however, in accordance with the themes of this study, issues such as abortion and the death penalty would both be potential topics for study. The death penalty has seen a few precedents in the Supreme Court, as has abortion, which has a more comprehensive legislative precedent. *Roe v. Wade* (1973) is perhaps the most obvious example of precedent because it implemented the rule of law on the entire country, where it was previously reserved to the states to rule according to their preferences.

Using a macro view of the study would be largely beneficial because it would measure the uniqueness and even the legality of the ACA. Studying how *Roe v. Wade* (1973) could have been an improper abuse of federal power may be the closest example of an ACA-like procedure and may further prove a trend in the United States' view of liberty. The Founders had envisioned a country with less intrusive laws, and finding those laws that are overarching, where a seemingly workable solution could have been achieved, would be one preferred way a macro version of this study could be done. A micro version of this study might use more laws like the ACA, but primarily focus on the legislative procedure, bureaucratic function, and court decisions in a more technical and in-depth sense.

This study did not set out to be the most technically driven study that would comb the *Manual* as exhaustively as a parliamentarian would. The study was done from a level of broader understanding without necessarily relying on technicality since laws that are being passed according to the Founders is not a complicated measure. In this sense, this study was a success since the legitimate questions that arose from the challenges made to the lawmaking process were found, and allowed for an in-depth understanding of the broader implications. A more scrupulous critique of legislative initiatives being passed and how the *Manual* may interpret them further would have bigger social implications, as it would demonstrate how the legislative process should be followed.

Researcher's Reflection

I have found through the major findings of this study many questionable occurrences during the passing of the ACA. The chief reflection, however, is not just that there were questionable actions, but that the law itself should not have been passed without wide approval and consent. Granted, the Congress and the Presidency were elected to implement the ideals and agenda of the majority party, though during the passage of the ACA the support was mixed. The narrative of the ACA was that it was passed narrowly, which reflected the public opinion at the time for a law that would have a mass effect on the country. The one aspect that the public and Congress did agree on was that the law was going to be a massive change.

In essence, the massive change amounted to an overhaul to the health care system. The health care system overhaul took the country into reform at a time when the country was very vulnerable from the economic bailout and stimulus package that were passed to save the nation's financial well-being. Opponents of the law pointed to this vulnerability

first, stating that the country was not in a position implement such a reform. On top of the country's vulnerability economically, the Constitution, a bastion of liberty that had been the foremost foundation of any legislative process, was questionably utilized during this time. Most critically, once the law was passed, every American citizen was required to buy health insurance, which seemed counterintuitive to the country's current disposition.

The ACA was passed, it was helped along bureaucratically, upheld through the Supreme Court and even in other appellate decisions, to the dismay of opponents. Most of its opponents continued to be obsessively focused on repealing and replacing the ACA, not admitting or accepting defeat regardless of the law's legal stronghold. The purchase requirement, however, goes against what this study concluded about the Founders, as it does not ring true with the Founders' belief system. Bias with a study such as this, that researches one of the most controversial passages of law in U.S. history, was never an issue as objectivity was maintained throughout. This objectivity was important because the controversial nature of the ACA has not ceased, and the questions that were found in this study will remain as long opponents are intently focused on repealing the law.

Similar Research

Of the studies with similar research to the present study, Green (1997) and McCutcheon (2010) follow U.S. law with a focus on select issues. In Green's study, the examination of the rule of law was followed throughout the 19th century, within the United States and the *Christian nation* maxim. His research concluded that the Christian law had been completely replaced by secular law at the turn of the 20th century. Green followed laws through the 19th century to determine the outcome of his study, but focused on a specific issue over specific years. Green's study used content analysis by

analyzing what had already been given through law, and thus answered a controversial question.

Another similar work was completed by McCutcheon (2010), who wrote a content analysis and researched a certain issue and its legislation. McCutcheon researched sex and drug law legislation, and studied how current policies are trending up or down regarding the cruel and unusual punishment standard. He compared and contrasted sex and drug offense laws in the analysis portion and used pattern-matching to determine how similar or dissimilar the two types of laws were (McCutcheon). At the end of his research, McCutcheon offered reasons why sex offender legislation had lagged, though his research did find that drug legislation, through systematic pattern-matching within legislation, is comparatively much more advanced. Like McCutcheon's study, the present study was a qualitative analysis that looked through different pieces of U.S. law to determine conclusions through content analysis.

The studies by Green (1997) and McCutcheon (2010) are like the present study in that they dissected federal law to determine a broader picture of an issue. For the purposes of this study, the difficult part of research was determining the difference between perception and reality in the lawmaking process, with behind-the-scenes meetings and public records not matching up. The beliefs behind those laws were also difficult to determine through the different theories discussed in the literature review, which assisted this study in determining how the ACA was drafted the way it was.
As mentioned earlier in the study, Sanders (2016) researched legislative influences around the PATRIOT Act. Sanders used the Congressional hearings and legal documents

surrounding the PATRIOT Act's legislative process to uncover whether there was substantive compromise from both political parties. Sanders' study was a case study, and he researched legislation with a qualitatively which proved the usefulness of such a research design in public policy research. Much of the similarity between Sanders' study and my study was found in its legislative case study as well as how policy was shifted throughout the course of government intervention.

Lyons' (2016) qualitative case study researched an Ohioan state law known as Claire's law, utilizing an unknown theory about a known problem. Lyons went on to determine the strength of the misrepresentation of Claire's law, and through a case study discovered a public policy solution. One difference between Lyons' study and the present study is my research of the federal rather than the state level government. This can make a lot of difference mostly because of the magnitude of issue as well as the many sources the federal government may draw upon to accomplish a goal. These studies are comparable in that policy is being researched to determine perception versus reality in the respective policy arenas.

Seaman's (2013) study, a qualitative case study, researched immigration legislation that has been difficult to pass due to political obstacles at the Arizona state level. Seaman's study is much like the present study because of its qualitative case study, although it is very different in its data collection of interviews. The similarity, however, would lie in the type of law that was passed; immigration, like health care, has been anything but easy to pass in government and state and federal actors are often similar in the reasons for preventing major policies from being passed. Most major bills are more

conventional in their approach, and lawmakers are more privy to bill information and are better able to handle the ramifications of passing the law. The ACA has a great number of similarities to immigration policies in Seaman' study in that it presents phenomena which *appears* to have been passed incorrectly.

Is America following the Founders? This question is asked because of America's desire to be as the Founders had intended as the country has grown through liberty. Liberty has declined dramatically as a result of the ACA; the Founders sought a higher calling to truly have a country that detests government control towards its citizens. Through the ACA, it can be said that the United States is showing the harmful characteristics of oppression that would make the country less than what the Founders would have wanted.

When the Founders and the Americans who desire to be like them are juxtaposed, it shows that oppression must be curtailed. The ACA forced Americans to buy health care which deeply hindered a right that the individual is supposed to claim. The American electorate is deeply divided over the controversial issue of universal health care, and the Founders would have sought a way to appease both sides rather than implementing a blanket federal law. The aspiration to be like the Founders falls short on this issue and demonstrates the growth that needs to take place in America, even in the 21st century. When looking at the right of liberty, there is a disconnect between the Constitution, Jefferson's *Manual,* and what lawmakers are following for their lawmaking which may be more socialistic such as the *Manifesto*.

Conclusion

To illustrate the Founders' intended direction of the US and its manifestation into written and acted form Roche (1961) wrote:

> Over the last century and a half, the work of the Constitutional Conventional and the motives of the Founders have been analyzed under a number of different ideological auspices. To one generation of historians, the hand of God was moving in the assembly; under a later dispensation, the dialectic (at various levels of philosophical sophistication) replace the Deity: "relationships of production" moved into the niche previously reserved for Love of Country. Thus in counterpoint to the Zeitgeist, the Framers have undergone miraculous metamorphoses: at one time acclaimed as liberals and bold social engineers, today they appear in the guide of sound Burkean conservatives, men who in our time would subscribe to *Fortune,* look to Walter Lippmann for political theory, and chuckle patronizingly at the antics of Barry Goldwater." (p. 799)

In many respects, Roche described exactly how the Founders have been viewed ever since their groundbreaking inception: as founders. Roche would finish his writing by explaining the Founders' incredible democratic abilities, but this underscored Roche's opinion as a scholar; to the ordinary citizen, the Founders may be something else entirely. Regardless of whether it is being followed, what *is* conclusive is how liberty is a great part of what the United States has been and is in the 21st century. The results of this study, however, were negatively affirmative that the United States, through the ACA, is not following liberty as the Founders would have wished, according to the case study research.

This case study did its best to determine if the Founders' belief in the natural right of liberty was being followed in the United States through the ACA; it was a worthy question to ask because of liberty's great importance. This study was intended to be a stepping-stone for scholars and lawmakers to draw and expound upon, to get a clearer picture of how liberty is being treated in the United States. This study also should be an encouragement, regardless of its negative affirmation, as this research highlighted liberty considering its oppression through the ACA. The ACA should be a concern for Americans who deeply believe in the Founders, their moral and political aptitude, and liberty.

As previously alluded to in this study, the great divide in politics comes not from wrong agendas, but from the resiliency to ensure that liberty will reign. The Founders' desire to have a nation that believed in itself more than the laws that represented it was also the notion behind this study's main phrase: "Life, Liberty, and the pursuit of Happiness." The inheritance given by the Founders, to strive to have the best nation in the history of the world, does not need oppressive laws to make it succeed; to the contrary, it needs the belief that the country succeeds in liberty, with or without them.

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