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Background on Lawsuit

Date: Monday, Jan. 6, 2014

Plaintiffs: Sen. Ron Johnson and Legislative Counsel Brooke Ericson

Defendants: U.S. Office of Personnel Management (OPM) and Katherine Archuleta, in her official capacity as director of OPM

District: U.S. District Court for the Eastern District of Wisconsin

Attorneys:

Rick Esenberg, counsel of record on complaint. Rick is the founder and current president and general counsel of the Wisconsin Institute for Law & Liberty. He also is an adjunct professor of law at Marquette University Law School. Rick is a frequent columnist in the Milwaukee Journal Sentinel and commentator in both the local and national media. He writes the Culture Con column for WI Magazine and publishes a political blog, "Shark and Shepherd," which is featured on the Journal Sentinel's "Purple Wisconsin" page. His scholarship has appeared in such publications as the Harvard Law Review, Harvard Journal of Law & Public Policy, Wake Forest Law Review, and William & Mary Bill of Rights Journal. Rick holds a J.D., magna cum laude, from Harvard Law School, where he was an editor of the Harvard Law Review, and a B.A., summa cum laude, in political science from the University of Wisconsin-Milwaukee.

Paul D. Clement, retained to consult on possible appellate issues. Paul is a partner at Bancroft PLLC. He served as the 43rd solicitor general of the United States from June 2005 until June 2008. Before his confirmation as solicitor general, he served as acting solicitor general for nearly a year and as Principal Deputy solicitor general for more than three years. He has argued more than 70 cases before the United States Supreme Court, including *McConnell* v. *FEC*, *Tennessee* v. *Lane*, *Rumsfeld* v. *Padilla*, *Credit Suisse* v. *Billing*, *MGM* v. *Grokster*, *McDonald* v. *Chicago*, and *NFIB* v. *Sebelius*. He has argued before the Supreme Court 16 times in just the last two terms, an unprecedented number for a lawyer in private practice. Paul's practice focuses on appellate matters, constitutional litigation, and strategic counseling. He represents a broad array of clients in the Supreme Court and in federal and state appellate courts. Paul is a native of Cedarburg, Wis. He received his bachelor's degree summa cum laude from the Georgetown University School of Foreign Service and a master's degree in economics from Cambridge University. He graduated magna cum laude from Harvard Law School, where he was the Supreme Court editor of the Harvard Law Review. Following graduation, Paul clerked for Judge Laurence H. Silberman of the U.S. Court of Appeals for the D.C. Circuit and for Associate Justice Antonin Scalia of the U.S. Supreme Court. After his clerkships, Paul went on to serve as chief counsel of the U.S. Senate Subcommittee on the Constitution, Federalism and Property Rights.

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Timeline for Congressional Exemption from Obamacare

July 14, 2009 **Senate HELP Committee:** (Health, Education, Labor, & Pensions)

Coburn Amendment #226: Adopted 12-11 Required Members and staff to enroll in one of the new health insurance programs created by the bill.

September 17, 2009 **Senate HELP Committee:**

Affordable Health Choices Act S. 1679 (Coburn Amendment language included)

September 29, 2009 **Senate Finance Committee:**

Grassley Amendment #328: Adopted without objection (unanimously). Required members and staff to use employer contribution to purchase insurance though state-based exchanges

October 19, 2009 **Senate Finance Committee:**

America's Healthy Future Act of 2009 S. 1796 (Grassley Amendment language included)

****November 18, 2009*** **Senate Floor:**

"Patient Protection and Affordable Care Act" (PPACA) – Included language similar to Coburn Amendment without making provision for an employer contribution.

****December 11, 2009*** **Senate Floor:**

Grassley Amendment #3178: Similar language to Grassley's Senate Finance Amendment #328, but added president, vice president, political appointees to members of Congress and staff, and allowed an employer contribution that could be used only to purchase insurance through state-based exchanges. This never received a vote.

December 24, 2009 **Senate Floor:**

Final Passage of PPACA – HR 3590 (60-39): 60 Democrat senators voted YES, 39 Republican senators voted NO

March 21, 2010 **House Floor:**

Final Passage of PPACA – HR 3590 (219-212): 219 Democrats YES, 34 Democrats voted NO, 178 Republicans voted NO.

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March 21, 2010 **House Floor:**

Health Care and Education Reconciliation Act – HR 4872 (220-211): 220 Democrats voted YES, 33 Democrats voted NO, 178 Republicans voted NO.

****March 24, 2010*** **Senate Floor:**

Grassley Amendment #3564 to Health Care and Education Reconciliation Act – HR 4872: Identical language to Grassley's Amendment #3128, allowing an employer contribution that could be used only to purchase insurance through state-based exchanges (failed 43-56): 40 Republicans voted YES, 3 Democrats voted YES, 56 Democrats voted NO.

March 25, 2010 **Senate Floor:**

Final passage of Health Care and Education Reconciliation Act – HR 4872 (56-43): 56 Democrat senators voted YES, 3 Democrat senators voted NO, 40 Republican senators voted NO.

March 25, 2010 House Floor:

Final passage Senate amendments to Health Care and Education Reconciliation Act – HR 4872 (220-207): 220 Democrats voted YES, 32 Democrats voted NO, 175 Republicans voted NO.

Note: The final bill contains no provision for an employer contribution to be made to help members and their staffs pay for health insurance plans purchased through an exchange or other plan created by PPACA.

***The full Senate had these three opportunities to include Senator Grassley's language allowing an employer contribution. On each occasion, senators failed to include it.**

1) **November 18, 2009 –** Senator Reid's Manager's Amendment to HR 3590
2) **December 11, 2009 –** Grassley Amendment #3178
3) **March 24, 2010 –** Grassley Amendment #3564

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Detailed Timeline for Congressional Exemption from Obamacare

July 14, 2009 **Senate HELP Committee:** (Health, Education, Labor, & Pensions)

Coburn Amendment #226: Adopted 12-11 Required Members and staff to enroll in one of the new health insurance programs created by the bill.

September 17, 2009 **Senate HELP Committee:**

Affordable Health Choices Act S. 1679 (Coburn Amendment language included)

SEC. 143. FREEDOM NOT TO PARTICIPATE IN FEDERAL HEALTH INSURANCE PROGRAMS.
(a) Requirement- Notwithstanding any other provision of law, on the date of enactment of this Act, all Members of Congress and congressional staff shall enroll in a Federal health insurance program--
(1) created under this Act (or an amendment made by this Act); or
(2) offered through a Gateway established under this Act (or an amendment made by this Act).
(b) Definitions- In this section:
(1) MEMBER OF CONGRESS- The term `Member of Congress' means any member of the House of Representatives or the Senate.
(2) CONGRESSIONAL STAFF- The term `congressional staff' means all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

September 29, 2009 **Senate Finance Committee:**

Grassley Amendment #328: Adopted without objection (unanimously). Required members and staff to use employer contribution to purchase insurance though state-based exchanges

October 19, 2009 **Senate Finance Committee:**

America's Healthy Future Act of 2009 S. 1796 (Grassley Amendment language included)

(3) MEMBERS OF CONGRESS AND CONGRESSIONAL STAFF REQUIRED TO PARTICIPATE IN EXCHANGE.—
(A) IN GENERAL.—Notwithstanding chapter 89 of title 5, United States Code, or any provision of this title
(i) each Member of Congress and Congressional employee shall be treated as a qualified individual entitled to the right under this paragraph to enroll in a qualified health benefits plan in the individual market offered through an exchange in the State in which the Member or employee resides; and
(ii) any employer contribution under such chapter on behalf of the Member or employee may be paid only to the offeror of a qualified health benefits plan in which the Member or employee enrolled in through such exchange and not to the offeror of a plan offered through the Federal employees health benefit program under such chapter.

(B) PAYMENTS BY FEDERAL GOVERNMENT.—The Secretary, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which—
(i) the employer contributions on behalf of a Member or Congressional employee are actuarially adjusted for age; and
(ii) the employer contributions may be made directly to an exchange for payment to an offeror.

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(C) CONGRESSIONAL EMPLOYEE.—In this paragraph, the term "Congressional employee" means an employee whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

Note: Neither the *Affordable Health Choices Act (S. 1679)* or *America's Healthy Future Act of 2009 (S. 1796)* were ever brought to the Senate Floor. Instead, Reid used HR 3590 as a vehicle for his manager's amendment titled the *"Patient Protection and Affordable Care Act" (PPACA).*

***November 18, 2009* Senate Floor:**

"Patient Protection and Affordable Care Act" (PPACA) – Included language similar to Coburn Amendment without making provision for an employer contribution.

(D) MEMBERS OF CONGRESS IN THE EXCHANGE.—
(i) REQUIREMENT.—Notwithstanding any other provision of law, after the effective date of this subtitle, the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—
(I) created under this Act (or an amendment made by this Act); or
(II) offered through an Exchange established under this Act (or an amendment made by this Act).
(ii) DEFINITIONS.—In this section:
(I) MEMBER OF CONGRESS.— The term "Member of Congress" means any member of the House of Representatives or the Senate.
(II) CONGRESSIONAL STAFF.— The term "congressional staff" means all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

***December 11, 2009* Senate Floor:**

Grassley Amendment #3178: Similar language to Grassley's Senate Finance Amendment #328, but added president, vice president, and political appointees to members of Congress and staff, and allowed an employer contribution that could be used only to purchase insurance through state-based exchanges. This never received a vote.

(D) PRESIDENT, VICE PRESIDENT, MEMBERS OF CONGRESS, POLITICAL APPOINTEES, AND CONGRESSIONAL STAFF IN THE EXCHANGE.--
(i) IN GENERAL.--Notwithstanding chapter 89 of title 5, United States Code, or any provision of this title--
(I) the President, Vice President, each Member of Congress, each political appointee, and each Congressional employee shall be treated as a qualified individual entitled to the right under this paragraph to enroll in a qualified health plan in the individual market offered through an Exchange in the State in which the individual resides; and
(II) any employer contribution under such chapter on behalf of the President, Vice President, any Member of Congress, any political appointee, and any Congressional employee may be paid only to the issuer of a qualified health plan in which the individual enrolled in through such Exchange and not to the issuer of a plan offered through the Federal employees health benefit program under such chapter.
(ii) PAYMENTS BY FEDERAL GOVERNMENT.--The Secretary, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which--
(I) the employer contributions under such chapter on behalf of the President, Vice President, and each political appointee are determined and actuarially adjusted for age; and
(II) the employer contributions may be made directly to an Exchange for payment to an issuer.

(iii) POLITICAL APPOINTEE.--In this subparagraph, the term ``political appointee'' means any individual who—
(I) is employed in a position described under sections 5312 through 5316 of title 5, United States Code, (relating to the Executive Schedule);
(II) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5, United States Code; or
(III) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.
(iv) CONGRESSIONAL EMPLOYEE.--In this subparagraph, the term ``Congressional employee'' means an employee whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

December 24, 2009 **Senate Floor:**

Final Passage of PPACA – HR 3590 (60-39): 60 Democrat senators voted YES, 39 Republican senators voted NO.

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FINAL LANGUAGE in PPACA regarding Members of Congress and their staffs:

(D) MEMBERS OF CONGRESS IN THE EXCHANGE.—
(i) REQUIREMENT.—Notwithstanding any other provision of law, after the effective date of this subtitle, the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—
(I) created under this Act (or an amendment made by this Act); or
(II) offered through an Exchange established under this Act (or an amendment made by this Act).
(ii) DEFINITIONS.—In this section:

1) MEMBER OF CONGRESS.— The term "Member of Congress" means any member of the House of Representatives or the Senate.
2) CONGRESSIONAL STAFF.— The term "congressional staff" means all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

Note: The final bill contains no provision for an employer contribution to be made to help members and their staffs pay for health insurance plans purchased through an exchange or other plan created by PPACA.

***The full Senate had these three opportunities to include Senator Grassley's language allowing an employer contribution. On each occasion, senators failed to include it.**

3) **November 18, 2009 –** Senator Reid's Manager's Amendment to HR 3590
4) **December 11, 2009 –** Grassley Amendment #3178
5) **March 24, 2010 –** Grassley Amendment #3564

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Obama's Unilateral Actions Changing Obamacare

1. *Congressional exemption*: The administration made a decision to provide employer contributions to members of Congress and their staffs when they purchase insurance on the exchanges created by the PPACA, a subsidy the law doesn't provide. (Sept. 30, 2013)

2. *Employer-mandate delay*: Contrary to statutory language in Obamacare, the reporting requirements for employers were delayed by one year. (July 2, 2013)

3. *Self-attestation of income qualification for subsidies*: The administration decided it would allow "self-attestation" of income by applicants for health insurance in the exchanges. This was later partially retracted after congressional outcry over the likelihood of fraud. (July 15, 2013)

4. *Delaying the individual mandate*: The administration extended by six weeks the period people can enroll for coverage to avoid the individual mandate tax penalty. (Oct. 23, 2013)

5. *Small businesses on hold*: The administration delayed until 2015 the provision of the Small-Employer Health Option Program (SHOP) that requires the exchanges to offer a choice of qualified health plans. (March 11, 2013)

6. *Closing the high-risk pool*: The administration stopped enrollment, blocking an estimated 40,000 new applicants, citing a lack of funds. The administration could have used funds under Secretary Sibelius's control to extend the pools, but instead used the money to pay for advertising for Obamacare enrollment. (Feb. 15, 2013)

7. *Medicare Advantage patch*: The administration ordered an advance on funds for a Medicare bonus program in order to provide extra payments to Medicare Advantage plans, in an effort to temporarily forestall cuts in benefits and therefore delay exodus of MA plans from the program. (April 19, 2011)

8. *Employee reporting*: Contrary to the Obamacare legislation, the administration delayed the requirement that employers must report to their employees on their W-2 forms the full cost of their employer-provided health insurance. (Jan. 1, 2012)


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9. ***Doubling allowed deductibles*****:** The administration allowed separate cost-sharing limits to services on group health plans, essentially doubling the amount that individuals would have had to pay under the law. (Feb. 20, 2013)

10. ***Delaying a low-income plan*****:** The administration delayed implementation of the Basic Health Program until 2015. (March 22, 2013)

11. ***Insurance companies may offer canceled plans:*** The administration announced that insurance companies may reoffer plans that Obamacare regulations forced them to cancel. (Nov. 14, 2013)

12. ***Extending Preexisting Condition Insurance Plan*****:** The administration extended the federal high risk pool until Jan. 31, 2014. (Dec. 12, 2013)

13. ***Expanding catastrophic hardship waiver to those with canceled plans*****:** The administration expanded the hardship waiver, which allowed some people to purchase catastrophic health insurance, to people who have had their plans canceled because of Obamacare regulations. The plans will again be illegal in 2015. (Dec. 19, 2013)

Source: Galen Institute, "At least 27 significant changes already have been made to ObamaCare," Nov. 14, 2013, *available at:* http://www.galen.org/topics/at-least-27-significant-changes-already-have-been-made-to-obamacare/.

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Obama's Detailed Unilateral Actions Changing Obamacare

1. *Congressional exemption*: The administration made a decision to provide employer contributions to members of Congress and their staffs when they purchase insurance on the exchanges created by the PPACA, a subsidy the law doesn't provide. (Sept. 30, 2013)

SEC 1312(d)(3)(D) of the PPACA
(D) MEMBER OF CONGRESS IN THE EXCHANGE
(i) REQUIREMENT – Notwithstanding any other provision of law, after the effective date of this subtitle, the only health plans that the Federal Government may make available to Members of Congress and their congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are –
(I) created under this Act (or an amendment made by this Act); or
(II) offered through an Exchange established under this Act (or an amendment made by this Act.

2. *Employer-mandate delay*: Contrary to statutory language in Obamacare, the reporting requirements for employers were delayed by one year. (July 2, 2013)

SEC. 1513. SHARED RESPONSIBILITY FOR EMPLOYERS.
(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 is amended by adding at the end the following:
''SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE.
''(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.—
If—
''(1) any applicable large employer fails to offer to its fulltime employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer sponsored plan (as defined in section 5000A(f)(2)) for any month, and
''(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,
then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.
…
(d) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2013.

3. ***Self-attestation of income qualification for subsidies*****:** The administration decided it would allow "self-attestation" of income by applicants for health insurance in the exchanges. This was later partially retracted after congressional outcry over the likelihood of fraud. (July 15, 2013)

Sec. 1401 (a)/36B IRC
36B (b)(3):
''(3) OTHER TERMS AND RULES RELATING TO PREMIUM ASSISTANCE AMOUNTS.—For purposes of paragraph (2)—
''(A) APPLICABLE PERCENTAGE.—
''(i) IN GENERAL.—o*As revised by section 1001(a)(1)(A) of HCERA*. Except as provided in clause (ii), the applicable percentage for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:
(note: (ii) applies to indexing for years after 2014)
AND
36B (c)(1)(A)
''(c) DEFINITION AND RULES RELATING TO APPLICABLE TAXPAYERS, COVERAGE MONTHS, AND QUALIFIED HEALTH PLAN.—For purposes of this section—
''(1) APPLICABLE TAXPAYER.—
''(A) IN GENERAL.—o*As revised by section 10105(b)*. The term 'applicable taxpayer' means, with respect to any taxable year, a taxpayer whose household income for the taxable year equals or exceeds 100 percent but does not exceed 400 percent of an amount equal to the poverty line fora family of the size involved.

4. ***Delaying the individual mandate*****:** The administration extended by six weeks the period people can enroll for coverage to avoid the individual mandate tax penalty. (Oct. 23, 2013)

Sec. 1501(b) of the PPACA
(b) IN GENERAL.—Subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:
''CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE
Sec. 1501\5000A IRC
''Sec. 5000A. Requirement to maintain minimum essential coverage.
''SEC. 5000A. REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.
''(a) REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.—An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.

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5. ***Small businesses on hold*****:** The administration delayed until 2015 the provision of the Small-Employer Health Option Program (SHOP) that requires the exchanges to offer a choice of qualified health plans. (March 11, 2013)

(b) AMERICAN HEALTH BENEFIT EXCHANGES.—
(1) IN GENERAL.—Each State shall, not later than January 1, 2014, establish an American Health Benefit Exchange (referred to in this title as an ''Exchange'') for the State that—
(A) facilitates the purchase of qualified health plans;
(B) provides for the establishment of a Small Business Health Options Program (in this title referred to as a ''SHOP Exchange'') that is designed to assist qualified employers in the State who are small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market in the State; and
(C) meets the requirements of subsection (d).
(2) MERGER OF INDIVIDUAL AND SHOP EXCHANGES.—A State may elect to provide only one Exchange in the State for providing both Exchange and SHOP Exchange services to both qualified individuals and qualified small employers, but only if the Exchange has adequate resources to assist such individuals and employers.

6. ***Closing the high-risk pool*****:** The administration blocked coverage for an estimated 40,000 new applicants, citing a lack of funds. The administration had money from a fund under Secretary Sebelius' control to extend the pools but instead used the money to pay for advertising for Obamacare enrollment. (Feb. 15, 2013)

Sec. 1101 (c)(1)
(1) IN GENERAL.—Amounts made available under this section shall be used to establish a qualified high risk pool that meets the requirements of paragraph (2). AND
Sec. 1101(g)
(g) FUNDING; TERMINATION OF AUTHORITY.—
(1) IN GENERAL.—There is appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, $5,000,000,000 to pay claims against (and the administrative costs of) the high risk pool under this section that are in excess of the amount of premiums collected from eligible individuals enrolled in the high risk pool. Such funds shall be available without fiscal year limitation.
(2) INSUFFICIENT FUNDS.—If the Secretary estimates for any fiscal year that the aggregate amounts available for the payment of the expenses of the high risk pool will be less than the actual amount of such expenses, the Secretary shall make such adjustments as are necessary to eliminate such deficit.

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7. *Medicare Advantage patch*: The administration ordered an advance on funds for a Medicare bonus program in order to provide extra payments to Medicare Advantage plans, in an effort to temporarily forestall cuts in benefits and therefore delay exodus of MA plans from the program. (April 19, 2011)

Sec. 3201 (as amended by *Sec. 1102(b) of HCERA)*
(o)(2)(A)
''(A) QUALIFYING PLAN.—
''(i) IN GENERAL.—The term 'qualifying plan' means, for a year and subject to paragraph (4), a plan that had a quality rating under paragraph (4) of 4 stars or higher based on the most recent data available for such year.

8. *Employee reporting*: Contrary to the Obamacare legislation, the administration delayed the requirement that employers must report to their employees on their W-2 forms the full cost of their employer-provided health insurance. (Jan. 1, 2012)

Sec. 1514 (a)/Sec. 6056 IRC/Sec. 6056(d)
(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after December 31, 2013.

9. *Doubling allowed deductibles*: The administration allowed separate cost-sharing limits to services on group health plans, essentially doubling the amount that individuals would have had to pay under the law. (Feb. 20, 2013)

Sec. 1302(c)
(c) REQUIREMENTS RELATING TO COST-SHARING.—
(1) ANNUAL LIMITATION ON COST-SHARING.—
(A) 2014.—The cost-sharing incurred under a health plan with respect to self-only coverage or coverage other than self-only coverage for a plan year beginning in 2014 shall not exceed the dollar amounts in effect under section 223(c)(2)(A)(ii) of the Internal Revenue Code of 1986 for self-only and family coverage, respectively, for taxable years beginning in 2014

10. *Delaying a low-income plan*: The administration delayed implementation of the Basic Health Program until 2015. (March 22, 2013)

Sec. 1331 (a) ESTABLISHMENT OF PROGRAM.—
(1) IN GENERAL.—The Secretary shall establish a basic health program meeting the requirements of this section under which a State may enter into contracts to offer 1 or more standard health plans providing at least the essential health benefits described in section 1302(b) to eligible individuals in lieu of offering such individuals coverage through an Exchange.

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Other Examples of Obama/Democrats Ignoring the Rule of Law

Recess Appointments – Obama attempted to fill vacancies in the National Labor Relations Board (NLRB) and the Consumer Financial Protection Bureau (CFPB) during a so-called congressional recess, bypassing Senate approval. A federal appeals court ruled in January that this violated the Constitution.

NLRB Overreach:

Ambush Election Rules for Unionization –NLRB ambush election rules dramatically change the process for union representation elections, shortening election time frames. This limits the amount of time that employees can hear from their employers before making important decisions. Since voters are less educated, the success rate of the union drastically increases.

IRS Overreach:

Targeting Ordinary Americans – IRS Cincinnati employees said directions came from the IRS Washington offices to send in test cases conducting heightened reviews of conservative groups.

OSHA Overreach:

Small Family Farms – Congress has passed laws specifying that farms with fewer than 10 employees are exempt from Occupational Safety and Health Administration (OSHA) regulation, but the agency has issued violations to smaller farms, saying their grain operations are not exempt.

EPA Overreach:

Cap and Trade – After failing to pass a national energy tax, President Obama vowed to continue his attack on coal through regulations from the EPA, such as the "transport rule" and the "toxics rule." These regulations will cost thousands of jobs and force consumers to pay more for electricity.

DOJ Overreach:

AP Scandal – Attorney General Eric Holder testified, "With regard to potential prosecution of the press for the disclosure of material, that is not something that I have ever been involved in, heard of, or would think would be a wise policy." In reality, Holder personally approved a search warrant that labeled Associated Press reporter James Rosen a co-conspirator in a national security leaks case.

Dismissal of the New Black Panther Party case – In July 2013, a federal court held that political appointees appointed by President Obama had interfered with the DOJ's prosecution of the New Black Panther Party. These appointees were conferring about the status and resolution of the case in the days leading up to the DOJ's dismissal of claims in that case.

Fast & Furious: Ignoring Congressional Subpoenas – related to the Department of Justice's Fast & Furious "gun-walking" operation prevented Congress from performing a full investigation.

Senate Democrats Overreach:

Nuclear Option – Harry Reid's "nuclear option" changed the rules of the Senate requiring only a majority vote for all judicial and executive nominations, except for the United States Supreme Court.