The Patient Protection and Affordable Care Act (ACA) was implemented to increase access to health care. The main objectives of the Affordable Care Act are to decrease the cost of health care by expanding the scope of Medicaid and to provide access to affordable health insurance. The implementation of this law has been met with much resistance. One provision of the ACA at issue is the individual mandate. This provision establishes a requirement to maintain minimum essential coverage by purchasing health insurance if not currently provided by another health plan. This requirement has been challenged in the Supreme Court and argued in detail in National Federation of Independent Business v. Sebelius.

In NFIB v. Sebelius, the majority opinion of the Supreme Court, delivered by Chief Justice Roberts, concluded that the individual mandate imposed by the ACA was not a valid exercise of Congress’ Commerce Power. Article I, §8 of the Constitution grants Congress the power to regulate commerce. The Court reasoned the power to regulate commerce presupposes existing commercial activity to be regulated; “[t]he 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 [1].”

After the Supreme Court in NFIB v. Sebelius determined the Commerce power was not a proper exercise of Congress’s power to enforce the individual mandate the Court further analyzed the shared responsibility penalty payment under Congress’ power to “lay and collect Taxes” so to construe every reasonable interpretation of the government’s enactment
of this provision. The Court reasoned that in applying the Taxing Clause, the penalty payment would be enforceable because “such analysis suggests that the shared responsibility may for constitutional purposes be considered a tax [2].”

Congress has the power to raise revenue for the general welfare pursuant to the Taxing and Spending Clause. A tax by the federal government is invalid if it is used to solely punish or regulate the conduct of those subject to the tax. Pursuant to the General Welfare Clause, Congress may enact regulations to modify conduct if the intent of the tax was to raise revenue or the effect of the tax results in revenue being raised. The government describes the payment as a penalty, a form of punishment, to be assessed for not complying with the individual mandate not as a means of raising revenue. As such, this analysis would suggest against classifying the payment as a tax. Notwithstanding the intent, the Court reasoned the effect results in revenue being raised thus supporting the application of the penalty payment by way of the Taxing Clause.

Texas v. U.S., a recent federal district court case, addressed the question of whether the individual mandate as defined by the ACA and argued in NFIB is constitutional? In analyzing this issue this court makes a noteworthy distinction between the individual mandate as described in §5000A(a) of the ACA and the penalty to be applied as a ‘tax’ for noncompliance of the mandate as described in 5000A(b) of the ACA. This court notes that it was the intent of Congress to make a distinction evidenced by the fact...“Congress exempted some individuals from the shared responsibility penalty but not the individual mandate [3].” This court argues the significance in making this distinction is “because Congress had the power to enact the shared responsibility exaction, §5000A(b), under the Tax Power, it was fairly possible to read the individual mandate, §5000A(a), as a functional part of that tax also enacted under Congress’s Tax Power. Therefore, §5000A could be viewed as an
exercise of Congress’ Tax Power [4].”

Furthermore the court states because of a newly enacted law, the shared responsibility penalty payment is now $0 for non-compliance of the individual mandate. This court reasons that because the individual mandate no longer ‘triggers a tax’ the provision no longer can be reinforced under Congress’ Tax Power as argued in NFIB. As a result, this court concludes, “the individual mandate can no longer fairly read as an exercise of Congress’s Taxing Power and is still impermissible under the Commerce Clause-meaning the individual mandate is unconstitutional. Notwithstanding this conclusion by the court, the individual mandate is still a requirement under the ACA. However, application of this newly enacted law eliminates the possibility of incurring a shared responsibility penalty payment for not complying with the individual mandate requirement. Whether the individual mandate as it has been interpreted in Texas v. U.S. is unconstitutional is not binding by the decision of this court, but will ultimately be argued and decided by the Supreme Court.


[2] Id.


[4] Id.