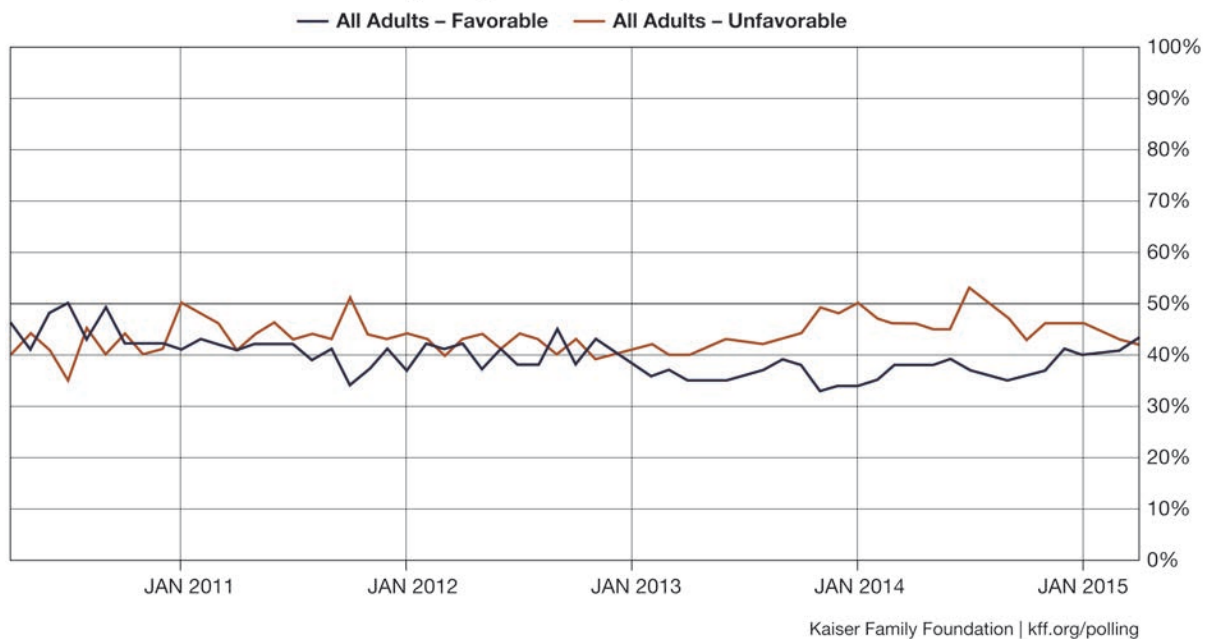


12th Grade Public Policy Inquiry

# Why Is the Affordable Care Act So Controversial?

Kaiser Health Tracking Poll: The Public's Views on the ACA

We asked: "Given what you know about the health reform law, do you have a generally favorable or generally unfavorable opinion of it?"



Kaiser Family Foundation, opinion poll charting public perceptions of the Affordable Care Act, "Kaiser Health Tracking Poll: The Public's Views on the ACA," January 2011–January 2015 (<http://kff.org/interactive/tracking-opinions-aca/#?response=Favorable--Unfavorable&aRange=twoYear>)

## Supporting Questions

1. Who were the uninsured before the ACA?
2. How does the ACA work?
3. Why is the ACA a constitutional controversy?
4. Why is the ACA *still* controversial?

## 12th Grade Affordable Care Act Inquiry

### Why Is the Affordable Care Act so controversial?

<b>New York State Social Studies Framework Key Ideas &amp; Practices</b>	<p><b>12.G5 PUBLIC POLICY:</b> All levels of government—local, state, and federal—are involved in shaping public policy and responding to public policy issues, all of which influence our lives beyond what appears in the Constitution. Engaged citizens understand how to find, monitor, evaluate, and respond to information on public policy issues.</p> <p>✔ <b>Gathering, Using, and Interpreting Evidence</b> ✔ <b>Economics and Economic Systems</b> ✔ <b>Civic Participation</b></p>
<b>Staging the Question</b>	<p>Investigate trends in public opinion polling to understand what groups are in favor and opposed to the Affordable Care Act (ACA) and whether perspectives have changed over time.</p>

Supporting Question 1	Supporting Question 2	Supporting Question 3	Supporting Question 4
Understand		Assess	
Who were the uninsured before the ACA?	How does the ACA work?	Why is the ACA a constitutional controversy?	Why is the ACA <i>still</i> controversial?
<b>Formative Performance Task</b>	<b>Formative Performance Task</b>	<b>Formative Performance Task</b>	<b>Formative Performance Task</b>
Create a graphic depiction of the uninsured before the ACA.	List key components of the ACA and write a paragraph summary of the goals of the ACA and the problems of the ACA.	Perform a reader’s theater of <i>National Federation of Independent Business v. Sebelius</i> and write a paragraph majority opinion on the case or a paragraph dissenting opinion on the case.	Develop a claim about why the ACA is still controversial.
Featured Sources	Featured Sources	Featured Sources	Featured Sources
<b>Source A:</b> Image bank: Graphs depicting facts about the uninsured before the Affordable Care Act	<b>Source A:</b> <i>The YouToons Get Ready for Obamacare</i> <b>Source B:</b> “Improving Quality and Lowering Health Care Costs” <b>Source C:</b> “Success of Kentucky’s Health Plan Comes With New Obstacles,”	<b>Source A:</b> Supreme Court case brief: <i>National Federation of Independent Business v. Sebelius</i> (excerpt) <b>Source B:</b> Court transcript: <i>National Federation of Independent Business v. Sebelius</i> (excerpt) <b>Source C:</b> “Supreme Court on Health Care Law: How They Voted, What They Wrote”	<b>Source A:</b> “How an Adverse Supreme Court Ruling Would Send Obamacare Into a Tailspin” <b>Source B:</b> “Six Charts to Explain Health-Care Polling” <b>Source C:</b> “Following Midterms, Both Democrats and Republicans Expect Washington to Continue to Debate the Affordable Care Act”

<b>Summative Performance Task</b>	<p><b>ARGUMENT</b> Why is the ACA so controversial? Construct an argument (<i>e.g.</i>, detailed outline, poster, or essay) that addresses the compelling question using specific claims and relevant evidence and information from contemporary sources.</p> <p><b>ACT</b> Create a student guide to the ACA that explains why 12th graders should care about this act. Within the guide, include a list of credible resources for learning more about the ACA.</p>
-----------------------------------	--

## Overview

### Inquiry Description

---

This inquiry leads students through an investigation of a public policy debate by studying the Affordable Care Act (ACA). The compelling question—“Why is the Affordable Care Act so controversial?”—calls out the persistent debate around this legislation and asks students to grapple with the roots of disagreement through the examination of the origins, opportunities, shortcomings, and constitutionality of the ACA. Throughout the inquiry, students are working with a variety of data (e.g., polling numbers, graphical representations, and economic costs) and trying to interpret, create, and analyze data as well as considering the reliability and trustworthiness of the sources.

Controversy by its very nature can be polarizing, but learning about multiple perspectives on a debated issue does not mean agreeing with the other side. Rather, it may simply mean agreeing to disagree. Key to this inquiry is having students (1) become accurately informed about public policy, (2) understand that individuals hold different values that inform their characterization of the public policy issue, (3) learn that talking with people who hold diverse viewpoints strengthens rather than diminishes our political system, and (4) understand that finding reliable information on political policies and issues is a responsibility of all citizens living in a democracy.

Because the subject of this inquiry is happening in real time, it offers a useful opportunity to embed Taking Informed Action into the fabric of the formative and summative performance tasks. In Formative Performance Tasks 1, 2, and 3, students work to *understand* the issue by exploring the foundations for and the initial controversies surrounding the Affordable Care Act. In Formative Performance Task 4, students begin *assessing* the current impact of the legislation by examining contemporary news sources as well as economic and political data aimed at grounding their analysis. Finally, students act within the Summative Performance Task. After constructing their arguments in response to the compelling question, students create a student guide to the ACA that answers why 12th graders should care about this controversial policy. In this way, students learn that academic inquiries can lead directly to civic action.

It is important to note that this inquiry cannot cover the all elements of the controversy surrounding the ACA; rather, it is an attempt to introduce students to the constitutional dimension of the controversy. The inquiry could be expanded by examining the controversies surrounding the objections to subsidies, increased taxes (e.g., medical devices), religious objections, concerns of small businesses, and so on. Furthermore, the strength of this inquiry is also its weakness; it is a contemporary issue that the Supreme Court could overturn in 2016. Therefore, the goal of this inquiry is to be a model for teaching about a current public policy issue. Having students examine the nature of a controversy, as opposed to their personal opinions alone, helps them learn how to engage in civil discourse around policy issues.

NOTE: This inquiry is expected to take six to eight 55-minute class periods. The inquiry time frame could expand if teachers think their students need additional instructional experiences (i.e., supporting questions, formative performance tasks, and featured sources). Inquiries are not scripts, so teachers are encouraged to modify and adapt them to meet the needs and interests of their particular students. Resources can also be modified as necessary to meet individualized education programs (IEPs) or Section 504 Plans for students with disabilities.

## Content Background

---

The Patient Protection and Affordable Care Act (ACA) was signed into law March 23, 2010. The law represented one of the most significant overhauls of health care since Medicare and Medicaid. The expressed purpose of the act was to lower the number of uninsured people by making health insurance more affordable and of higher quality. Moreover, the ACA aimed to lower the cost of health care for individuals as well as the costs in health expenditures paid by the government. Since its adoption, 20 million Americans now have insurance coverage under the ACA and the number of uninsured people has decreased. However, controversy surrounds the legislation.

Even before the passing of the legislation, the ACA became a political issue. Although the majority of Democrats supported the ACA, many Republicans were opposed to what was seen as an overreach of government power and began to refer to the ACA as “Obamacare.” Opponents of the law had issues with the individual mandate that required people to purchase health care through the ACA or a private entity. The constitutional validity of the individual mandate came into question as the ACA went before the Supreme Court in the case of *National Federation of Independent Business v. Sebelius*. Although the Supreme Court upheld the individual mandate, the controversy continues.

Since the ruling by the Supreme Court, advocates for the ACA have continually fought challenges from members of Congress, small businesses, states that will not create local exchanges, and lobbyists. The controversy surrounding the ACA was compounded when the Supreme Court agreed to hear another case questioning the validity of the legislation. The new case will argue that the federal exchange created in states without a local exchange is an overreach of federal power.

Throughout the inquiry, students are disaggregating data as well as examining and assessing the validity of media and sources. This choice was intentional and pedagogical. It is important for students to be able to analyze data so that they will be able to answer such questions as “Who were the uninsured before the ACA?” and “What are the goals and potential shortcomings of the ACA?” Examining and assessing the validity of media sources allows students to become aware of the controversies surrounding the ACA and encourages them to think critically about the bias connected to the media and how it can influence the public perception of legislation.

## Content, Practices, and Literacies

---

In addressing the compelling question “Why is the ACA so controversial?” students will need to weigh evidence and counterevidence from a variety of sources. In the first task, students use a collection of graphs to understand who the uninsured were before the passage of the ACA in America. Next, students explore the goals of the ACA in responding to the needs of the insured and uninsured, while also noting potential shortcomings by viewing an informative video. Students then move to understanding the constitutional controversy of the ACA by exploring the Supreme Court brief and transcript from the landmark case, *National Federation of Independent Business v. Sebelius*. Finally, students wrestle with the continuing controversy around the ACA by investigating current economic and polling data about our country’s health care reform.

Throughout the inquiry, students are asked to do increasingly complex tasks that will develop their cognitive capacity to deal with the Summative Performance Task. First, students are asked to use economic data to create a graphic depiction of the uninsured before the ACA (Gathering, Using, and Interpreting Evidence; Economics and Economic Systems). The second task asks students to list the goals of the ACA in addressing the problems of the insured and the uninsured, while noting potential problems or shortcomings (Gathering, Using, and Interpreting Evidence). The third task asks students to perform a reader’s theater and write a majority or dissenting

opinion around the Supreme Court case *National Federation of Independent Business v. Sebelius* (Gathering, Using, and Interpreting Evidence; Civic Participation). The last task requires students to develop a claim about why the ACA is still controversial by using modern economic and polling data (Gathering, Using, and Interpreting Sources; Economics and Economic Systems). Finally, in the Summative Performance Task, students need to pull together varying perspectives and support them with evidence from the range of sources used throughout the inquiry. Students will also create a student guide to the ACA that explains why 12th graders should care about this controversial act (Gathering, Using, and Interpreting Evidence; Economics and Economic Systems; Civic Participation).

The New York State P-12 Common Core Learning Standards for English Language Arts & Literacy offer social studies teachers numerous opportunities to integrate literacy goals and skills into their social studies instruction. The Common Core supports the inquiry process through reading rich informational texts, writing evidence-based arguments, speaking and listening in public venues, and using academic vocabulary to complement the pedagogical directions advocated in the New York State K-12 Social Studies Framework. At the end of this inquiry is an explication of how teachers might integrate literacy skills throughout the content, instruction, and resource decisions they make.



## Staging the Compelling Question

<b>Compelling Question</b>	Why is the Affordable Care Act so controversial?
<b>Featured Sources</b>	<p><b>Source A:</b> “Health Tracking Poll: Exploring the Public’s Views on the Affordable Care Act (ACA)”</p> <p><b>Source B:</b> “Health Reform Quiz”</p>

**THE COMPELLING QUESTION** “Why is the Affordable Care Act so controversial?” asks students to deal with a divisive topic that is currently at the heart of American politics. Throughout the formative performance tasks, students are working with a variety of data (e.g., polling numbers, graphical representations, and economic costs) and trying to interpret, create, and analyze data to more fully understand both the controversy and the issues surrounding the ACA. This staging activity gets to the heart of the controversy—changing public opinion—and allows students from the onset to work with polling data to understand the perceptions of the American people on the new health care law and how those opinions have changed (or not) over time.

To stage this inquiry, teachers may have students examine data from the Kaiser Family Foundation’s “Health Tracking Poll: Exploring the Public’s Views on the Affordable Care Act (ACA).” Students could be prompted to look through the data for such trends as which groups are in favor and which groups are opposed to the ACA according to gender, race/ethnicity, political identification, age, income level, and insurance status. Teachers will also want students to examine the trends in approval and disapproval over time and prompt students with questions, such as “Have certain groups changed their opinions about the ACA at all?” To better record students’ analyses, teachers may want the students to work in groups of 2 or 3 and record their information in the graphic organizer supplied in this inquiry.

As part of this exercise, students should be made aware that there is often misinformation or a lack of accurate information surrounding the ACA. Teachers could have students take the 10-question *Health Reform Quiz* that was put together by the Kaiser Family Foundation. Teachers will want to make sure that this quiz is not used as an assessment of student knowledge but, instead, as a way to examine public understanding of the ACA legislation. Teachers will want to bring to their students’ attention the percentage of people who were able to answer a question about the ACA correctly—information that is embedded within the quiz. At the end of this exercise, teachers may want to ask students how the quiz results might feed into the controversy around the ACA.

It will be important for 12th-grade students to know that children under 18 and young adults aged 18–26 years are some of the groups most heavily affected by the changes brought about by the ACA. Both groups represented some of the highest populations of uninsured Americans before the ACA. Furthermore, the ability for 12th graders to understand public policy, polling data, and public opinion are necessary in order to prepare them for the civic life they are about to enter as adults. Lastly, understanding how news media shapes both the information and misinformation that is provided helps 12th graders to become informed and engaged consumers of news media.

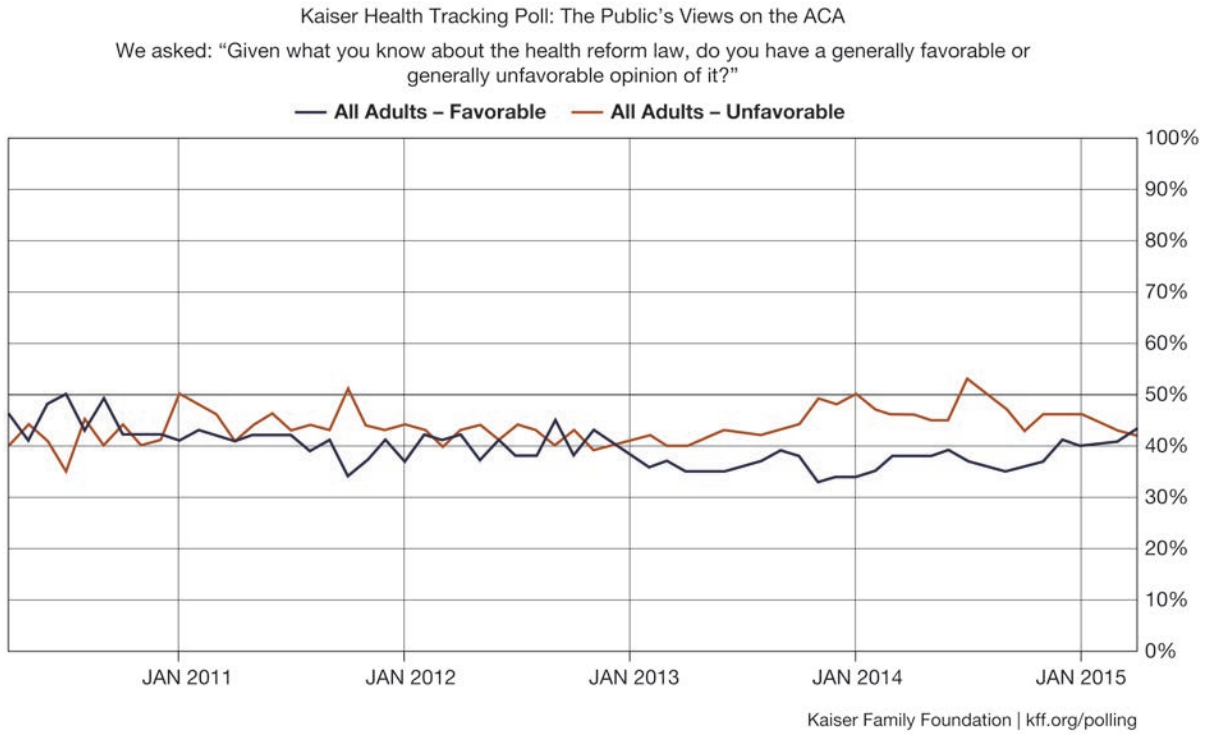
## Health Tracking Poll: Exploring the Public's Views on the Affordable Care Act (ACA)

Trend Group	Subgroup	Trend: Largely Favorable or Unfavorable	How Does the Trend Change Over Time?	Do the Trends Show Any Spikes or Dips? If So, When?
<b>Total</b>	N/A			
<b>Political Party</b>	Democrat			
	Independent			
	Republican			
<b>Annual Income</b>	Less than \$40,000			
	Between \$40,000 and \$89,000			
	\$90,000 or more			
<b>Age</b>	18–64 years old			
	65 years and older			
<b>Sex</b>	Men			
	Women			
<b>Race/Ethnicity</b>	White			
	Black			
	Hispanic			
	Other			
<b>Insurance Status</b>	Insured <65 years old			
	Uninsured <65 years old			

## Staging the Compelling Question

**Featured Source**

**Source A:** Kaiser Family Foundation, opinion poll charting public perceptions of the Affordable Care Act, "Kaiser Health Tracking Poll: The Public's Views on the ACA," January 2011–January 2015



To access data, please use the following link: <http://kff.org/interactive/tracking-opinions-aca/#?response=Favorable--Unfavorable&aRange=twoYear>



## Staging the Compelling Question

Featured Source

Source B: Kaiser Family Foundation, online quiz about ACA issues, "Health Reform Quiz," no date

**Health Reform** Search Graphics & Interactives Polls

Home Health Reform Health Reform Quiz

### Health Reform Quiz

The health reform law promises to deliver big changes in the U.S. health care system. But, as with other sweeping pieces of legislation, it can be hard to get the real facts about what it does. And it is all too easy for misinformation about the law to spread.

Take our short, 10-question quiz to test your knowledge of the law, and then share your results with friends on Twitter or Facebook.

Get Started

Reprinted with permission from the Henry J. Kaiser Family Foundation. <http://kff.org/quiz/health-reform-quiz/>

Supporting Question 1	
<b>Supporting Question</b>	Who were the uninsured before the ACA?
<b>Formative Performance Task</b>	Create a graphic depiction of the uninsured before the ACA.
<b>Featured Source</b>	<b>Source A:</b> Image bank: Graphs and a map depicting facts about the uninsured before the Affordable Care Act
<b>Conceptual Understandings</b>	<p>(12.G5c) Successful implementation of government policy often requires cooperation among many levels of government as well as other public and private institutions. Conflicts between different levels of government sometimes emerge due to different goals, ideas, and resources regarding creation and implementation of policy.</p> <p>(12.G5d) Active and engaged citizens must be effective media consumers in order to be able to find, monitor, and evaluate information on political issues. The media have different venues which have particular strengths and serve distinct and shared purposes. Knowing how to critically evaluate a media source is fundamental to being an informed citizen.</p>
<b>Content Specifications</b>	This conceptual understanding has no content specifications.
<b>Social Studies Practices</b>	<ul style="list-style-type: none"> <li>✔ <b>Gathering, Using, and Interpreting Evidence</b></li> <li>✔ <b>Economics and Economic Systems</b></li> </ul>

## Supporting Question

In order to answer the compelling question—“Why is the ACA so controversial?”—students will need to establish a foundational understanding of the purpose of the legislation. The supporting question for this task—“Who were the uninsured before the ACA?”—has students think about the people who were uninsured before the Affordable Care Act (ACA). In analyzing the graphs provided, students examine who was uninsured and what caused people to be uninsured before the health care reform.

## Formative Performance Task

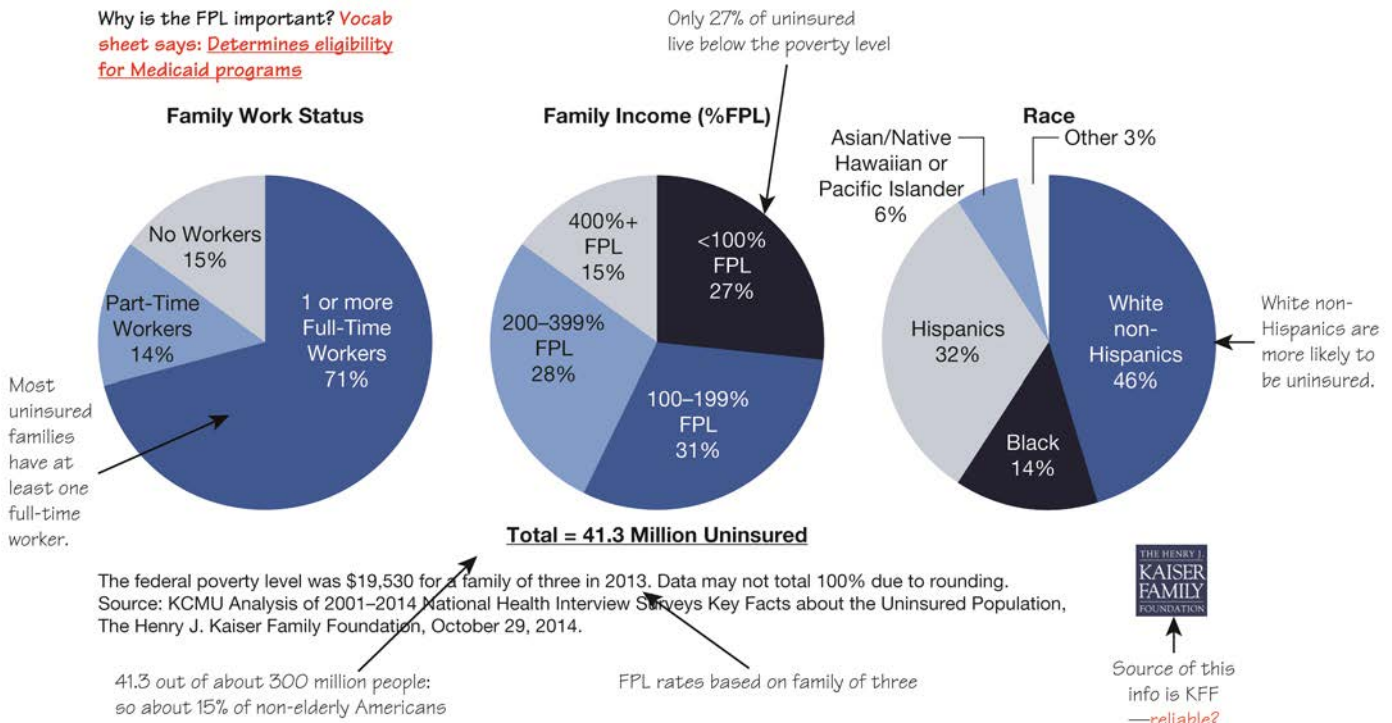
The formative performance task calls on students to analyze a series of graphs presenting different attributes of uninsured people in America in order to answer the supporting question “Who were the uninsured before the ACA?” Each graph in the collection focuses on a different characteristic of uninsured people in America before ACA. For example, the first graph shows national uninsured rates for the nonelderly whereas the second graph is a choropleth map that looks at the percentage of people uninsured by state. Teachers will want to make sure that students pay close attention to any patterns and trends evident in this map. For instance, much of the southern part of the country has higher numbers of uninsured people than other regions of the United States. The last four graphs move away from the numbers of uninsured to examine the characteristics of the uninsured. They examine reasons for being uninsured, barriers to being insured, financial consequences of being uninsured, and demographics of the uninsured (*e.g.*, work status, income levels, and race).

Within this task, students are working directly with the social studies practice of Gathering, Using, and Interpreting Evidence as they analyze the graphs and begin to visualize who was uninsured in the United States before the ACA. In doing so, students should consider who the uninsured were through questions such as these: Why were people uninsured? Where were the uninsured? Did they work? What were the consequences of being uninsured? Included here is a method for having students annotate the five graphs and the map. In this example, students are given graphs with large margins leaving room for handwritten notes. Students should be asked to mark up the graphs by noting information the graphs are trying to convey, questions they might have about the data presented, and any source questions they might have (*e.g.*, Where is the information coming from? Are the data reliable?).

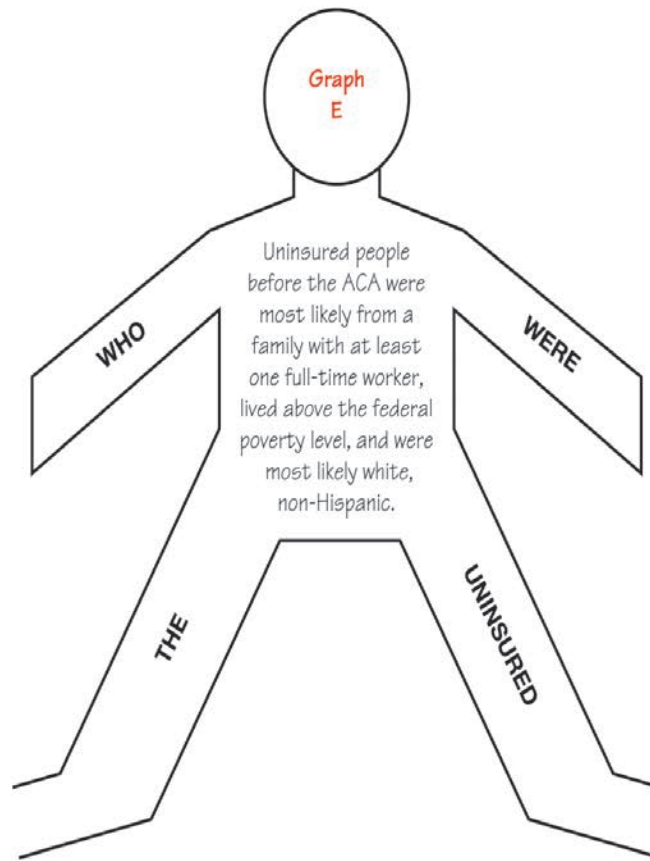
Teachers will want to make sure that, with each graph, students record evidence on how the graphs can be used to answer the supporting question “Who were the uninsured before the ACA?” Using their analyses, students should create graphic depictions of the uninsured before the ACA. One possible way of doing this would be to have students use their analyses to create a paper doll or a series of paper dolls representing the people who were uninsured before the ACA (see the example and template provided).

Students’ understandings of who was uninsured in America before the ACA establish the foundation for the work in subsequent formative performance tasks in which students examine the ACA legislation, its constitutionality, and the persistent controversy surrounding its implementation.

### Example Graph Annotation: Characteristics of the Non-elderly Uninsured, 2013

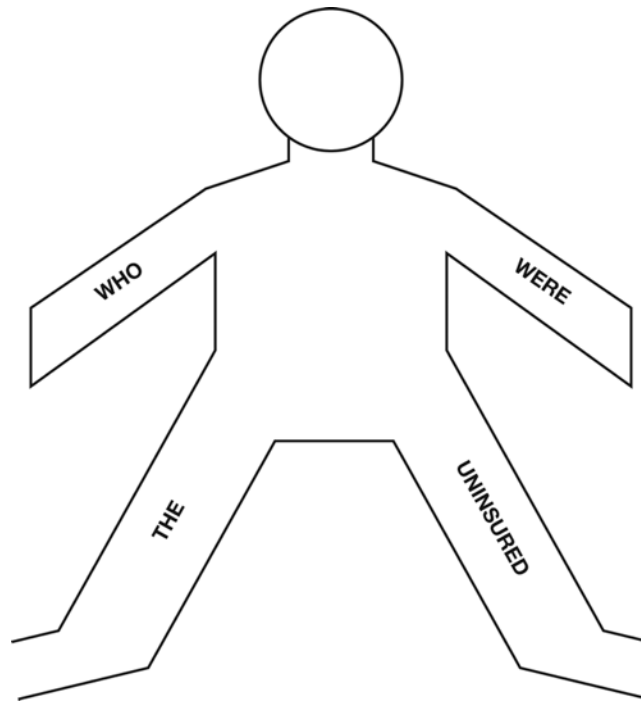


### Example Annotation for Graphic Depiction: Who Were the Uninsured?



Source: Created for the New York K-12 Social Studies Toolkit by Binghamton University.

### Template for Graphic Depiction: Who Were the Uninsured?



Source: Created for the New York State K–12 Social Studies Toolkit by Binghamton University, 2015.

## Featured Source

---

**FEATURED SOURCE A** The featured source for this task is a collection of graphs and one map featuring the rates of uninsured Americans and characteristics of people who were uninsured before implementation of the ACA. Students will analyze the sources to gather information about uninsured people in America. As students work through the graphs, they should be thinking about how each source contributes to the supporting question “Who were the uninsured before the ACA?” Teachers may want to have students work through these graphs in small groups using the graphic organizer, but could begin by modeling how to read a data source using graph A.

For example, graph A shows the uninsured rate for the non-elderly (ages 0-64) over time from 2000 to 2013. In map A, students are able to see the number of uninsured by state. This map allows students to analyze the rate of uninsured in their own state and to look for patterns in uninsured rates by state. For example, students may realize that southern states have higher uninsured rates than their northern counterparts. While graph A and map B deal with the scope of the uninsured in America before ACA, graphs B through E have students look at the characteristics and attributes of the uninsured.

In graph B, students look at reasons why people were uninsured. Again, teachers might want to highlight the idea that the out-of-school/aged-out group represents young people between the ages of 18 and 26 years old and thus where they as 12th graders might fit. Graphs C and D examine the barriers to health care for uninsured Americans and the economic consequences of not being insured and of seeking health care. Graph E includes three pie charts that take a more in-depth look at the individual aspects and demography of uninsured Americans. Included in this source is an examination of family work status, family income, and race. Teachers will want to note that in the family income graph, “FPL” stands for Federal Poverty Level (\$19,530 for a family of three). The percentages in that graph signal the percentage above or below the poverty line. For instance, the graph reads 200-399% FPL 28%. This means that 28% of uninsured people live on an income two to almost four times that of the federal poverty level.

## Additional Resources

---

This supporting task focuses on the uninsured in America as a way to discuss public health care conditions before the ACA, but teachers may want to spend time having students examining the issue of preexisting conditions, which is another issue the ACA was intended to address. The additional resources listed here shed light on the issue of preexisting conditions:

- David S. Hilzenrath, “Papers Show Insurers Limited Coverage for Acne, Pregnancy,” *Washington Post*, September 19, 2009.  
<http://www.washingtonpost.com/wp-dyn/content/article/2009/09/18/AR2009091803501.html>.
- Julie Appleby, “People Left Holding Bag When Policies Revoked,” *USA Today*, updated December 13, 2007.  
[http://usatoday30.usatoday.com/money/perfi/insurance/2007-01-28-insurance-1a-usat\\_x.htm](http://usatoday30.usatoday.com/money/perfi/insurance/2007-01-28-insurance-1a-usat_x.htm).
- Eduardo Porter, “Cost of Benefits Cited as Factor in Slump in Jobs,” *New York Times*, August 18, 2004.  
<http://www.nytimes.com/2004/08/19/business/cost-of-benefits-cited-as-factor-in-slump-in-jobs.html?pagewanted=all&src=pm>.
- “Preexisting Conditions,” video from the PBS Special Report: Health Care Reform, PBS website.  
<http://www.pbs.org/now/shows/health-care-reform/>.

Another resource is the graph in the following article, which examines the confluence of insurance and economics:

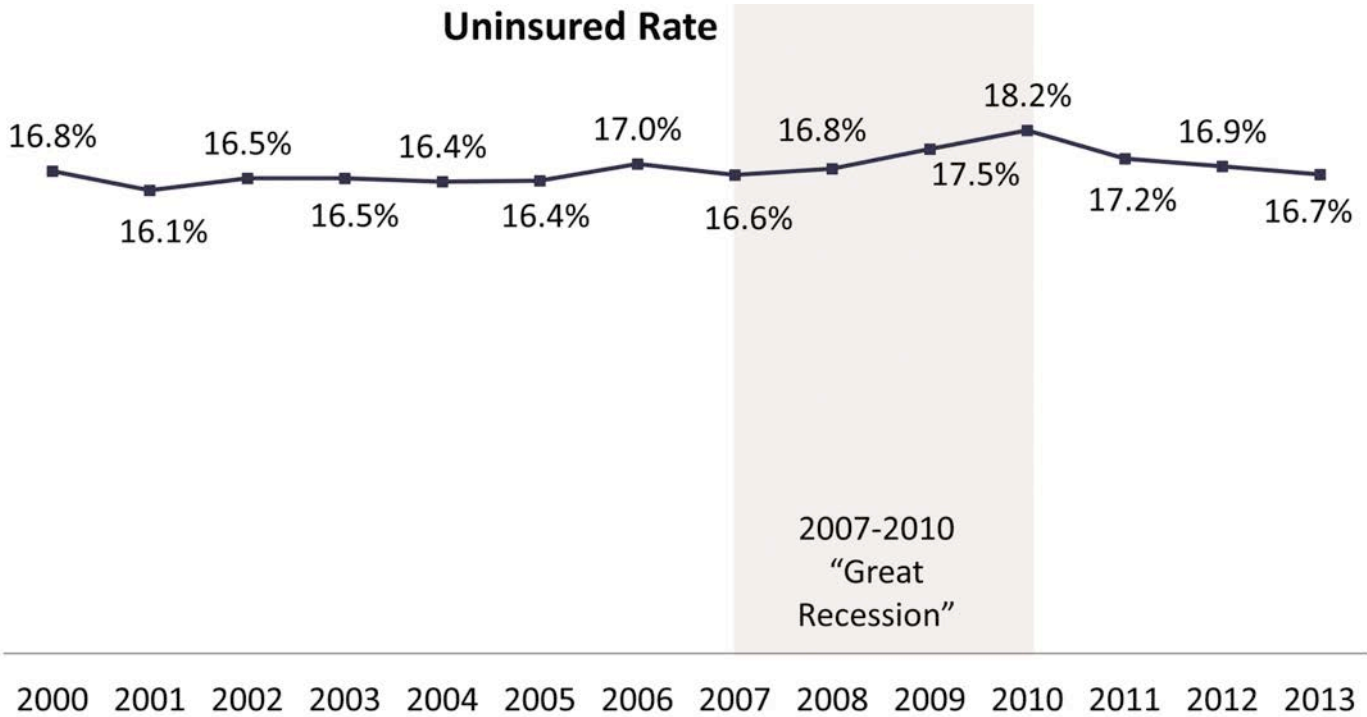
- Charlotte Howard, "It's Time: Obamacare Begins Its Main Act," *The Economist*, November 18, 2013, <http://www.economist.com/news/21589125-obamacare-begins-its-main-act-its-time>.

## Supporting Question 1

**Featured Source**

**Source A:** Image bank: Graphs and map showing rates and descriptions of the uninsured before the Affordable Care Act, 2000–2013

**Graph A: Uninsured Rates among the Non-elderly, 2000–2013**



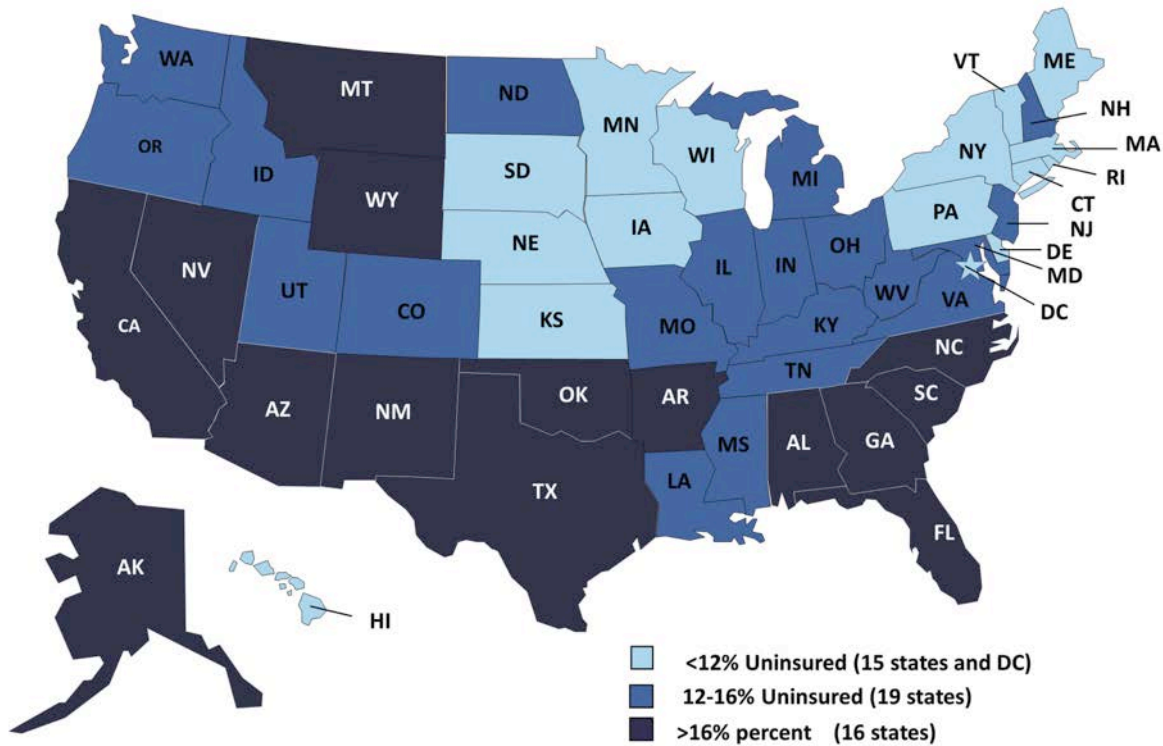
SOURCE: KCMU Analysis of 2001-2014 National Health Interview Surveys



Reprinted with permission from the Henry J. Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured, *Key Facts about the Uninsured Population*, October 2014. <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.



Map A: Uninsured Rates Among the Non-elderly by State, 2013

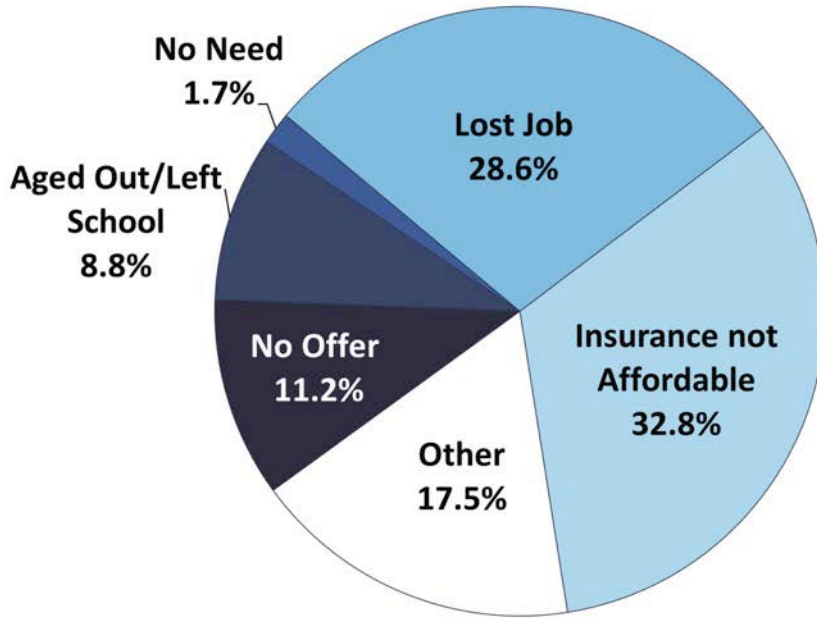


SOURCE: Kaiser Family Foundation analysis of the 2014 ASEC Supplement to the CPS.



Reprinted with permission from the Henry J. Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured, *Key Facts about the Uninsured Population*, October 2014. <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population>.

Graph B: Reasons for Being Uninsured among Uninsured Non-elderly Adults, 2013

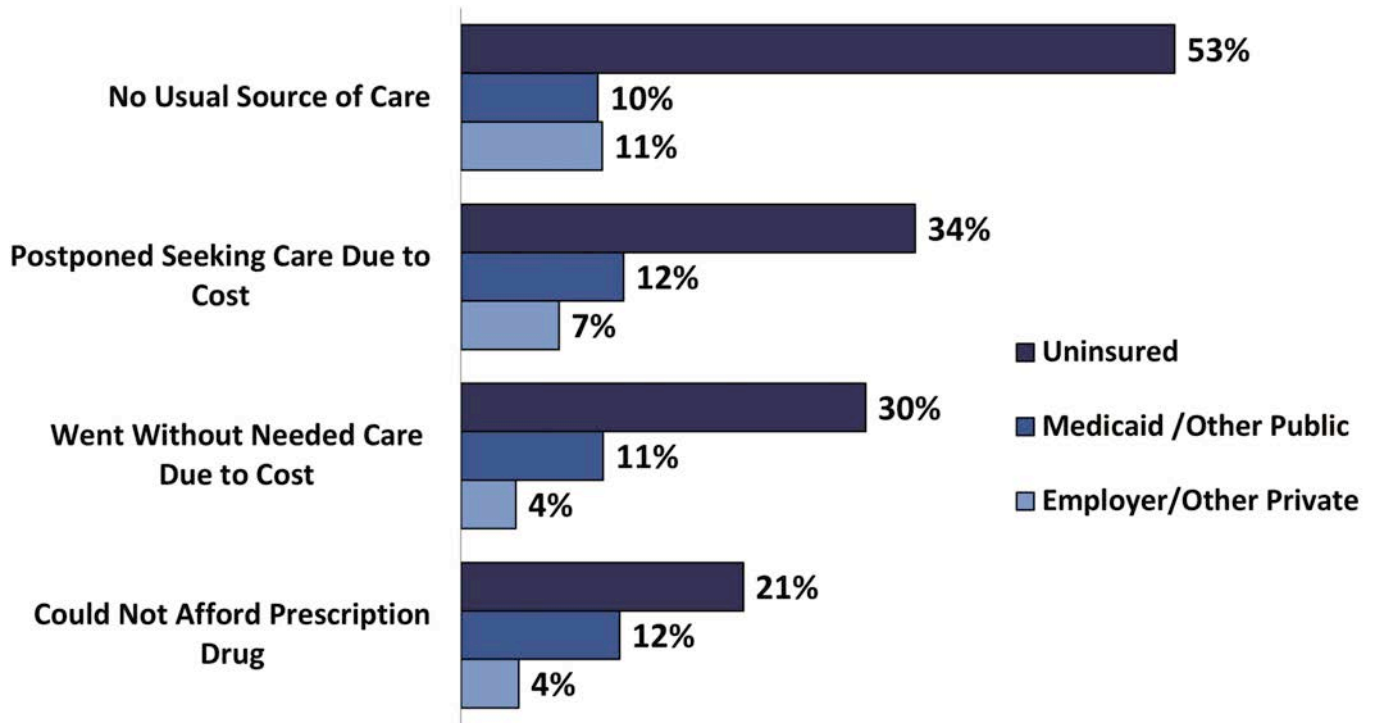


SOURCE: KCMU analysis of 2014 National Health Interview Survey.



Reprinted with permission from the Henry J. Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured, *Key Facts about the Uninsured Population*, October 2014. <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

Graph C: Barriers to Health Care among the Non-elderly Adults by Insurance Status, 2013



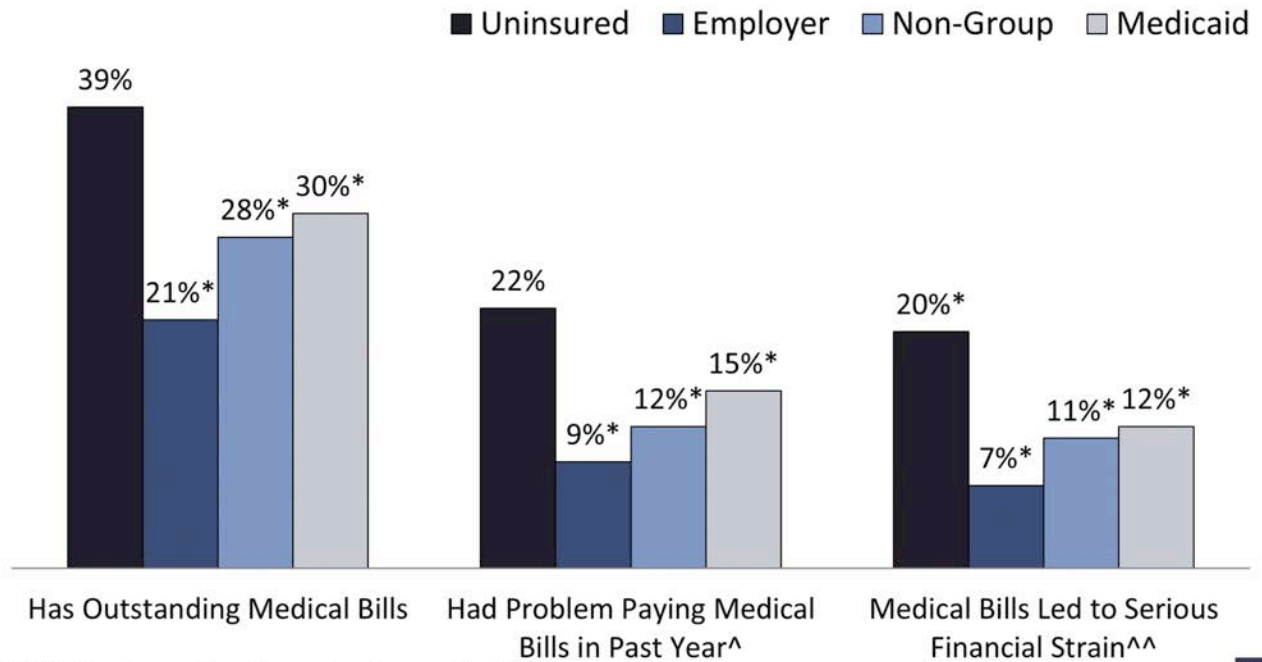
In past 12 months.  
 Respondents who said usual source of care was the emergency room were included among those not having a usual source of care.  
 All differences between uninsured and insurance groups are statistically significant (p<0.05).  
 SOURCE: KCMU analysis of 2014 NHIS.



Reprinted with permission from the Henry J. Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured, *Key Facts about the Uninsured Population*, October 2014. <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

Graph D: Financial Consequences of Medical Bills by Insurance Coverage, 2013

**Percent of adults responding (age 18-64) reporting in the past 12 months:**



SOURCE: 2013 Kaiser Survey of Low-Income Americans and the ACA

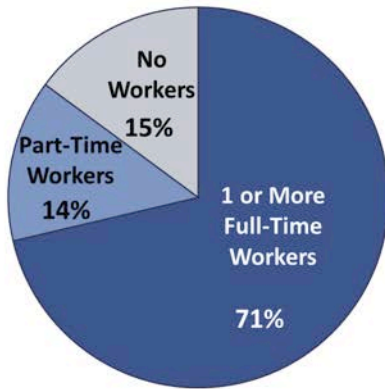
NOTES: <sup>^</sup> Excludes people who reported a problem with medical bills that were not their own. <sup>^^</sup> Defined as reporting that medical bills caused them to use up all or most savings; have difficulty paying for necessities; borrow money; or be contacted by a collection agency. \* Estimate statistically significantly different from uninsured estimate at the 95% confidence level.



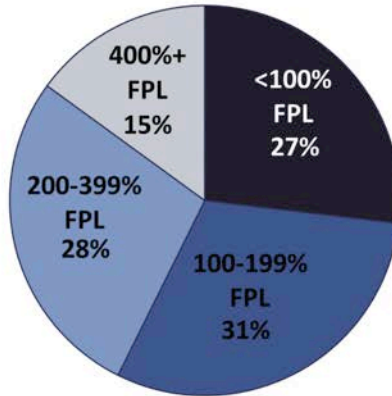
Reprinted with permission from the Henry J. Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured, *Key Facts about the Uninsured Population*, October 2014. <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

Graph E: Characteristics of the Non-elderly Uninsured, 2013

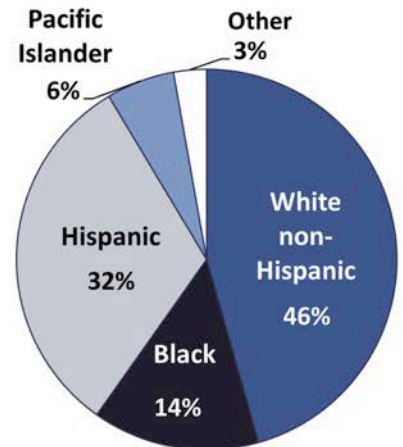
**Family Work Status**



**Family Income (%FPL)**



**Race**



**Total = 41.3 Million Uninsured**

The federal poverty level was \$19,530 for a family of three in 2013. Data may not total 100% due to rounding.  
 SOURCE: Kaiser Family Foundation analysis of the 2014 ASEC Supplement to the CPS.



Reprinted with permission from the Henry J. Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured, *Key Facts about the Uninsured Population*, October 2014. <http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/>.

Supporting Question 2	
<b>Supporting Question</b>	How does the ACA work?
<b>Formative Performance Task</b>	List key components of the ACA and write a paragraph summary of the goals of the ACA and the problems of the ACA.
<b>Featured Sources</b>	<p><b>Source A:</b> <i>The YouToons Get Ready for Obamacare</i></p> <p><b>Source B:</b> “Improving Quality and Lowering Health Care Costs”</p> <p><b>Source C:</b> “Success of Kentucky’s Health Plan Comes With New Obstacles”</p>
<b>Conceptual Understandings</b>	<p>(12.G5c) Successful implementation of government policy often requires cooperation among many levels of government as well as other public and private institutions. Conflicts between different levels of government sometimes emerge due to different goals, ideas, and resources regarding creation and implementation of policy.</p> <p>(12.G5d) Active and engaged citizens must be effective media consumers in order to be able to find, monitor, and evaluate information on political issues. The media have different venues which have particular strengths and serve distinct and shared purposes. Knowing how to critically evaluate a media source is fundamental to being an informed citizen.</p>
<b>Content Specifications</b>	This conceptual understanding has no content specifications.
<b>Social Studies Practice</b>	<ul style="list-style-type: none"> <li>✔ Gathering, Using, and Interpreting Evidence</li> </ul>

## Supporting Question

The second supporting question—“How does the ACA work?”—has students build on their understandings of the Affordable Care Act (ACA) by examining the various components of the act and its initial positive and negative outcomes. In doing so, students are starting to unpack the compelling question by exploring the controversial pieces of the ACA.

## Formative Performance Task

The formative performance task calls on students to list key components of the ACA and to write a paragraph summary of the goals and shortcomings of the ACA. Students will write their lists and their paragraphs after watching a video (and reading the transcript) from the Kaiser Family Foundation that is meant to inform citizens of the changes happening under the ACA. Students will also use the two news sources provided to complete their lists and paragraphs. Students can use the graphic organizer *How Does the ACA Work?* (included in this section) to record their notes from the video, the transcript, and the news articles. As students are considering the information presented in the video and news articles and determining the goals and shortcomings of the ACA, they are working directly with the social studies practice of Gathering, Using, and Interpreting Evidence.

Depending on students’ familiarity with analyzing information through videos, teachers may organize this particular exercise in different ways. Teachers might model taking notes and completing the graphic organizer throughout the video, while students take their own notes. Teachers might also choose to pause the video during the class viewing and allow students to ask questions or clarify their understandings. Alternatively, teachers could

have students work collaboratively to compare their graphic organizers, to find gaps, and to fill in the missing pieces. For English language learners whose primary language is Spanish, it might be helpful to use the Spanish version of the video (<http://kff.org/health-reform/video/los-youtoons-se-preparan-para-obamacare/>) and accompanying transcript (<http://kaiserfamilyfoundation.files.wordpress.com/2013/09/youtoons-spanish-transcript.pdf>).

In addition to gathering and interpreting evidence from the Kaiser Family Foundation video and the news stories, teachers might want students to consider the author, audience, message, meaning, and credibility of the video and articles. It might be helpful to have students consider key questions to ask when analyzing media messages; examples are available from Project Look Sharp, a media literacy initiative from Ithaca College. (See Appendix C of this inquiry.) Having students consider the credibility of the message from the Kaiser Family Foundation helps them to move toward understanding how to evaluate and respond to information on public policy issues.

How Does the ACA Work?		
	Goals of the ACA	Shortcomings of the ACA
Insured Americans		
Uninsured Americans		



## Featured Sources

---

**FEATURED SOURCE A** for this formative performance task consists of a video from the Kaiser Family Foundation, *The YouToons Get Ready for Obamacare* and the accompanying transcript. The video is roughly seven minutes and uses cartoon “citizens” called “YouToons” to graphically explain the various facets of the ACA. Because the video is relatively short, teachers could consider viewing it all the way through once and then viewing it again using some of the scaffolds mentioned earlier. While viewing the video, teachers might help students by highlighting some of the named goals and problems of the ACA. For example, the video describes the variability in insurance coverage:

About half of us will get insurance through our jobs, just like today. About one-third will get covered by the government through Medicare and Medicaid. Around one in ten will buy insurance ourselves. And unfortunately another 30 million of us or so, just under one in ten, still may not have coverage.

Students might highlight a goal such as “One in ten will buy insurance themselves.” And they could highlight a problem such as “Another 30 million still may not have coverage.”

**FEATURED SOURCE B** is an infographic from the US Department of Health and Human Services that summarizes the key components of the ACA. Students could use the infographic to identify the law’s basic components.

**FEATURED SOURCE C** is a news article from the *New York Times*, “Success of Kentucky’s Health Plan Comes With New Obstacles,” which highlights how the ACA is playing out in one state. This article explains how Kentucky is participating in the health networks established by the ACA, while providing vignettes of people who have received health care through the ACA and Kentucky’s Kynect Health Care Exchange. The vignettes provide personal stories that highlight the complexities surrounding the ACA and that will help students better understand the goals and problems of the ACA.

## Additional Resources

---

For students or teachers wanting more information on how the ACA affects different types of citizens, they might use the interactive website and short videos found here:

- *USA Today*, “Breaking Down the Affordable Care Act.”  
<http://usatoday30.usatoday.com/exp/affordable-care-act/index.html?sf17594230=1>.

Students or teachers looking for more information on the actual passage of the ACA into federal law might consider consulting the following sources:

- Emily Smith, “Timeline of the Health Care Law,” CNN website, June 17, 2012.  
<http://www.cnn.com/2012/06/17/politics/health-care-timeline/>.
- Louis Goodman and Tim Norbeck, “A Look Back at How the President Was Able to Sign Obamacare Into Law Four Years Ago,” *Forbes*, March 26, 2014.  
<http://www.forbes.com/sites/physiciansfoundation/2014/03/26/a-look-back-at-how-the-president-was-able-to-sign-obamacare-into-law-four-years-ago/>.

## Supporting Question 2

### Featured Source

**Source A:** Kaiser Family Foundation, video describing aspects of the ACA, *The YouToons Get Ready for Obamacare* and accompanying transcript, 2013



Reproduced with permission from the Kaiser Family Foundation. <http://kff.org/health-reform/video/youtoons-obamacare-video/>.



## The YouToons Get Ready for the Affordable Care Act

Voiceover Script, June 5, 2013

1 Well, it's finally happening. After years of drama on Capitol Hill, a Supreme Court case, a Presidential election, and a  
 2 Mayan Apocalypse that could have stopped it dead in its tracks — but didn't — the marquee elements of the  
 3 Affordable Care Act, sometimes called ObamaCare, are about to kick in. And big changes are coming to health  
 4 insurance in 2014 (twenty-fourteen). *Start=0.00 End= 0.18 Total=0.18*

5 In the next few minutes you'll get a pretty good lay of the land by once again watching your fellow Americans, the  
 6 YouToons, find their way through the system. *Start= 0.19 End= 0.25 Total=0.06*

7 There are four main ways nearly all of us will experience health care once the health reform law goes fully into  
 8 effect. About half of us will get insurance through our jobs, just like today. About one-third will get covered by the  
 9 government through Medicare and Medicaid. Around one in ten will buy insurance ourselves. And unfortunately  
 10 another thirty million of us or so, just under one in ten, still may not have coverage at all. *Start= 0.26 End= 0.48 Total=0.22*

11 Let's begin in the workplace. Many Americans are already covered by their employers, and for them not a whole lot  
 12 will change. There *will* be some new advantages though — like caps on how much you have to pay out of pocket,  
 13 and free preventive care. *Start= 0.48 1.03 End= Total=0.15*

14 The bigger changes are coming for those who work for larger companies but aren't covered now. That's because the  
 15 government will require companies with fifty or more employees to cover full-time workers — or pay a penalty —  
 16 so more workers may find themselves covered. *Start= 1.04 End= 1.16 Total=0.12*

17 Smaller employers won't face the same penalties for refusing to buy insurance but they'll be encouraged to. The  
 18 government will be setting up special marketplaces to make it easier for small employers to take the plunge. Some  
 19 will be offered temporary tax breaks if they do. And unlike now, insurers can't inflate prices if some employees are  
 20 sick. *Start= 1.17 End= 1.34 Total= 0.17*

21 So, many of us will be getting covered at work. A lot of us will be covered with help from the government, just like  
 22 today. Not much will change for seniors on Medicare — the law has already started helping with prescription drugs  
 23 and better preventive care, and that will continue. *Start=1.35 End= 1.46 Total= 0.11*

24 Medicaid, on the other hand, is expanding to cover more of us, especially poor adults, many of whom aren't eligible  
 25 today. If your income is low, Medicaid will cover you, most likely in a private insurance plan. But there's a catch. The  
 26 Supreme Court ruled that governors and legislatures of each state should decide whether or not to be part of  
 27 expanding Medicaid. In states that get on board the feds will cover almost all of the cost. For those that don't, you  
 28 may be left with the same options you have today if you're poor. You'll want to check out your state's decision if you  
 29 think you might qualify for Medicaid. *Start=1.47 End= 2.17 Total=0.30*

30 Even with employer coverage and the expansion in Medicaid, a lot of us will *still* be left out. For those not covered,  
 31 or who find their work coverage too expensive, a new way to buy insurance on our own will be popping up  
 32 everywhere. They're called Health Insurance Marketplaces, though they may have a fancier name than that in your  
 33 state. *Start=2.18 End= 2.34 Total=0.16*

34 The health insurance marketplace is like a virtual insurance mega-mall. Here you'll find private insurers competing  
 35 for your business. You'll be able to pick how much coverage you want and how much you want to pay for it, from  
 36 cheaper high deductible Bronze plans to more expensive Platinum plans. *Start= 2.35 End= 2.49 Total= 0.14*

37 Still, all plans will cover a comprehensive set of services like hospital and doctor visits, maternity care, mental  
 38 health care, and drugs – most everything any of us need, at least when it comes to medical care. *Start=2.50 End= 3.00*  
 39 *Total= 0.10*

40 As with Medicaid, not all governors are on board to set up these marketplaces. But the feds will open their own in  
 41 those states, so you probably won't notice much of a difference. *Start= 3.01 End= 3.08 Total=0.07*

42 One big advantage of buying insurance through these new marketplaces is that the federal government will provide  
 43 most people with a tax credit to make insurance more affordable if you don't have any other options and your  
 44 income is below a certain level. *Start= 3.09 End= 3.19 Total= 0.10*

45 In fact, most people buying on their own will be eligible for a credit and won't have to pay the whole premium  
 46 themselves. And the marketplaces will make sure insurance companies operate fairly under strict rules. They'll  
 47 have to offer everyone insurance even if they're sick. And they won't be able to charge more for pre-existing  
 48 conditions. *Start= 3.20 End= 3.37 Total= 0.17*

49 Unlike today, men and women will pay the same price. And prices for older people will come down, while young  
 50 people will pay more. To keep costs down for young people, they'll be able to stay on their parents' plans 'till  
 51 twenty-six and buy low-budget "catastrophic" plans 'till they're thirty. *Start= 3.38 End= 3.58 Total=0.20*

52 Of course all these changes still don't mean insurance will be *cheap*. Most people buying their own coverage will end  
 53 up paying less with the new health insurance tax credits. But some people will have to pay more, even though many  
 54 of them will be getting better and more secure insurance. *Start= 3.59 End= 4.11 Total= 0.12*

55 And let's be realistic. Not everyone's going to run out and buy insurance. Some might say, "Hold on a minute! If I  
 56 can't be turned down or charged more, why not just wait until I get sick or injured to buy insurance at all?" *Start= 4.12*  
 57 *End= 4.22 Total= 0.10*

58 Well, first, you can only get coverage during special enrollment periods, so if you snooze you may lose. And second,  
 59 thanks to something called the individual mandate, if you're not insured you pay a fine, making this option seem not  
 60 nearly so clever. Still, if you really can't afford to buy in, and can't get insurance anywhere else, the government will  
 61 waive the penalty. So don't panic. *Start=4.23 End= 4.42 Total= 0.19*

62 By now you've probably noticed a lot more people will be getting a lot more coverage. Where will the money to pay  
 63 for that come from? Taxes — many of them targeted at the health industry itself, and even tanning services. Yes,  
 64 individuals will pay too, mostly the wealthiest Americans who will be paying more into Medicare. Also, hospitals  
 65 and insurance companies participating in Medicare will get paid somewhat less. Not painless, but somebody's gotta  
 66 pay. *Start= 4.43 End= 5.09 Total= 0.26*

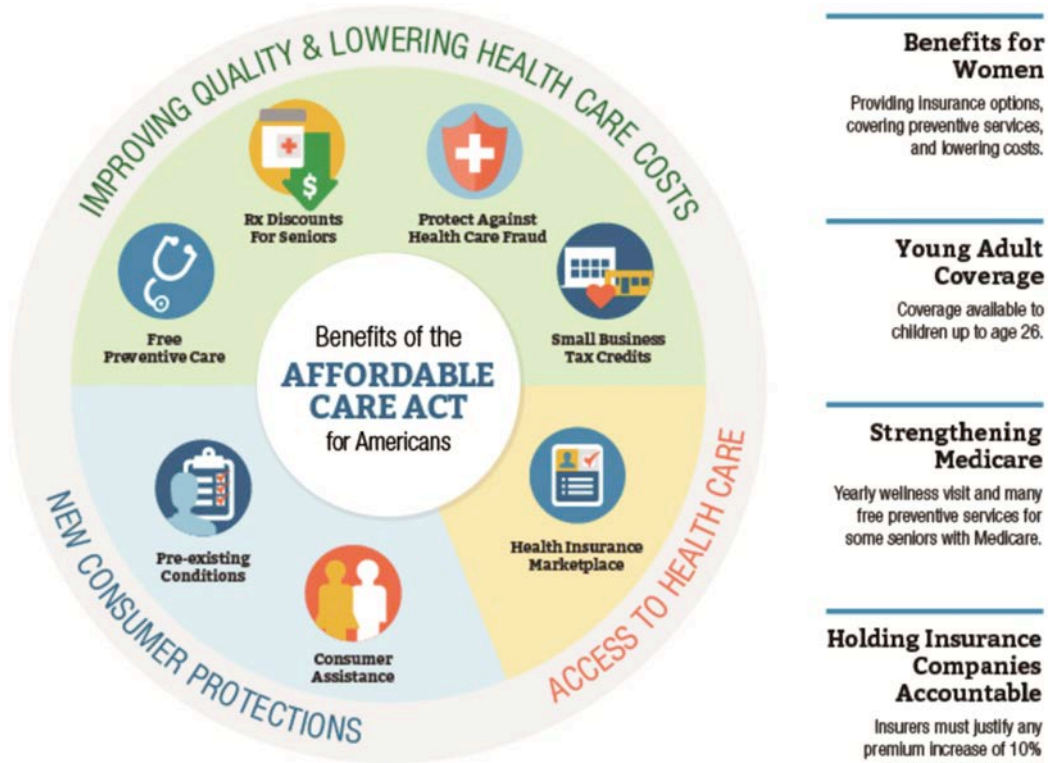
- 67 So as America prepares for twenty-fourteen, how will you be covered? How would you like to be? Now's the time to  
68 figure it out — and get on the path to setting yourself up for the best insurance at the best price... because who  
69 wouldn't want that? *Start= 5.10 End= 5.24 Total= 0.14*

Reprinted with permission from the Kaiser Family Foundation. <http://files.kff.org/attachment/the-youtoons-get-ready-for-obamacare-health-insurance-changes-coming-your-way-under-the-affordable-care-act-transcript>.

## Supporting Question 2

**Featured Source**

**Source B:** US Department of Health and Human Services, infographic showing key features of the ACA, "Improving Quality and Lowering Health Care Costs," 2014



Public domain. US Department of Health and Human Services. <http://www.hhs.gov/healthcare/facts/timeline/index.html>.

## Supporting Question 2

### Featured Source

**Source C:** Abby Goodnough, article describing the benefits of the ACA in Kentucky, “Success of Kentucky’s Health Plan Comes With New Obstacles,” *New York Times*, December 29, 2014

LOUISVILLE, Ky. — In many ways, Kentucky, a poor state with a starkly unhealthy populace, has become a symbol of the Affordable Care Act’s potential.

Largely because the state chose to expand Medicaid, the drop in the uninsured rate has been among the sharpest in the nation. Hospital revenues are up, health care jobs are multiplying and far more Kentuckians are getting preventive checkups and screenings, according to state officials.

Amanda Mayhew is one of the beneficiaries. She earns little enough to qualify for Medicaid under the new guidelines, and she enrolled in August. She has been to the dentist five times to begin salvaging her neglected teeth, has had a dermatologist remove a mole and has gotten medication for her depression, all free.

“I am very, very thankful that Medicaid does cover what I need done right now,” said Ms. Mayhew, 38. “They ended up having to pull three teeth in the last three weeks, and I would have been in a lot of pain without it.”

But as the first year of coverage ends, potential obstacles to the law’s success are also coming into sharp relief here. Relatively few people have signed up for private health plans offered through the state’s new online marketplace, Kynect. People earning between 138 and 400 percent of the poverty level — between about \$16,000 and \$47,000 for a single person — can get subsidies to help with the cost.

Even with that incentive, only about 76,000 Kentuckians signed up for these plans in 2014 and have renewed the coverage for next year. Since the enrollment period for 2015 began on Nov. 15, an additional 9,000 people have selected exchange plans. Before the new coverage options took effect, state officials estimated that some 340,000 uninsured Kentuckians could get private insurance through the exchange.

David Elson signed up for private health insurance in February, but then decided he could not afford the \$350 monthly premium for a plan that included his doctors. He never paid his bill and lost his coverage. His poor health got worse, and in October, he landed in the hospital with end-stage kidney disease.

“The president gets up there and says, ‘We’ve got to get affordable health care for our people,’ ” said Mr. Elson, 61. “It’s not.”

Kentucky’s experience so far underscores some of the challenges the law faces nationally. Nearly 400,000 people here — 9 percent of the population — joined the Medicaid rolls after Gov. Steven L. Beshear, a Democrat, expanded the federal-state program for the poor over the objections of Republicans in the increasingly conservative state. Critics argue that this rapid growth in the Medicaid enrollment will prove too much of a burden on federal and, eventually, state budgets.

At the same time, supporters say the private insurance exchanges will need robust business, including young and healthy customers that help balance the cost of sicker ones, to thrive. And while the more modest private enrollment here is partly due to Kentucky’s relative poverty — more uninsured people here were eligible for Medicaid than for subsidized private coverage when the law took effect, according to the Kaiser Family Foundation — national polls have found that many people simply consider the exchange plans unaffordable, even with subsidies.

“We’ve got a lot of work to do in that area,” said Bill Wagner, the executive director of Family Health Centers, a network of community clinics here that helped 7,000 people enroll in Medicaid this year, but only 700 in private plans.

The Affordable Care Act has rapidly changed the fortunes of Family Health Centers. Last year, half of its 40,000 patients were uninsured; the proportion has dropped to 19 percent. An infusion of Medicaid revenue has helped the organization close an operating deficit, hire four new doctors and start increasing salaries. Construction is almost finished on a huge new downtown clinic, financed largely by \$5 million in Affordable Care Act funds. The network will soon start advertising the new location on bus shelters and billboards, adding to a marketing blitz by hospitals and Medicaid plans that has permeated nearly every neighborhood.

At the same time, morale has flagged this year among exhausted, overwhelmed doctors and nurses at Family Health Centers, some of whom have left.

“You feel like you’re drowning,” said Susan Elrod, a nurse practitioner, referring to patients with multiple complex problems. Some had forgone medical care until getting insurance this year.

### **After Delays, Care**

Ms. Mayhew, an even-keeled single mother of four, was uninsured for most of her adult life until this year. She has gotten checkups at Family Health Centers, where she has been a patient since childhood, but specialty and dental care were beyond her reach until now.

“I am fairly healthy and blessed,” she said from her office at a breast-feeding supply store, where, she noted wryly, she files health insurance claims. “My main issues are my teeth.”

One Thanksgiving, she remembered, an infected tooth hurt so badly that she lay moaning on her couch all day, trying to work up the nerve to extract it herself.

“It’s sad in there,” she warned the hygienist at her appointment this month. A count of her teeth confirmed it.

“She’s missing 1, she has 2, missing 3, missing 4,” the hygienist ticked off. “She’s missing 17. She has 18 through 29. Then she’s missing 30, 31 and 32.”

Ms. Mayhew intended to get Medicaid first thing this year, but faced a delay when the online enrollment system could not confirm her Social Security number. She broke a tooth in August and sobbed when a dentist told her it would cost \$1,400 to fix. With an income of \$25,000 a year and three children still at home, she braced to ask her mother for a loan. But that same day, an enrollment counselor from Family Health Centers called and helped her get signed up.

“The Lord works in wonderful ways,” she said.

She got an emergency appointment at West Louisville Dental, in a low-income neighborhood known as the West End, where 40 percent of the patients are on Medicaid. Since then, she has returned once a month, getting three teeth pulled, six cavities filled, X-rays, a cleaning and an evaluation for gum disease. Next she will get a deeper cleaning to remove bacteria from under her gum line, and more fillings.

Newly motivated, she is eager for a partial denture to replace some of her missing molars and help her chew. Medicaid does not cover dentures, so she is hoping her tax return next spring will cover the cost, which her dentist said could reach \$750.

“How’s that feel?” the hygienist asked after polishing her teeth.



“Wonderful,” Ms. Mayhew replied, serene. “Thank you.”

She is a deeply religious Christian, with a tightly knit family that prays together even at fast-food restaurants and has suffered one health crisis after the next. Her mother was run over by a car and spent six months in hospitals and rehabilitation centers. Then her father got cancer and died within months. And this year, Ms. Mayhew’s cherished grandmother died of complications from a stroke. Her grief, she said, has been hard to bear.

A nurse practitioner at Family Health Centers had prescribed anti-depressants after Ms. Mayhew had her last baby in 2013 — at the time, she had temporary Medicaid for her pregnancy — but she stopped taking them when the coverage ended. Now she is back on them, and feeling good.

“That’s been a big thing for me,” she said.

And yet.

“I don’t love Obamacare,” she said. “There are things in it that scare me and that I don’t agree with.”

For example, she said, she heard from news programs that the Affordable Care Act prohibited lifesaving care for elderly people with cancer.

There is no such provision, although a proposal to pay doctors to engage patients in end-of-life planning — such as whether they would want life-sustaining treatment if they were terminally ill — was removed from the law after it sparked a political firestorm over “death panels.” The misperception remains widespread: A poll this month by the Kaiser Family Foundation found that 41 percent of Americans still believe the law created “a government panel to make decisions about end-of-life care for people on Medicare.” An equal number found the law did not.

“If we have Obamacare and the insurance is available to me, I will use it and be thankful for it,” Ms. Mayhew said. “But would I gladly give up my insurance today if it meant that some of the things that are in the law were not in place? Yes, I would.”

### **A Silver Lining**

For Mr. Elson, with advanced diabetes, chronic high blood pressure and an income too high for Medicaid but too low to pay all his bills, the Affordable Care Act came too late.

He had forgone insulin for most of the year when he arrived at his eye doctor’s office in September, huffing and puffing due to fluid in his lungs. He was off his blood pressure pills, too, and all of his medications except a drug he takes for neuropathic pain caused by diabetes. His swollen legs were covered in painful blisters where excess fluid had seeped out.

In the past he had vowed to keep working through his ailments — installing security systems, a business that he said earned \$28,000 in a good year. But now he sounded defeated.

“I don’t have no get-up-and-go,” he said. “I’m getting to the point that now it hurts too much to work.”

He had surgery last winter to stop bleeding at the back of his eyes, a complication of diabetes, and the ophthalmologist, Dr. Inder P. Singal, was pleased with the result. But when Mr. Elson told him he was still uninsured because the premiums and deductible had proved too high, Dr. Singal shook his head.

“What a great intent,” the doctor said of the health care law, “but there are still way too many kinks.”

With the help of a Family Health Centers counselor, Mr. Elson had chosen a midlevel silver plan from Anthem Blue Cross and Blue Shield, one of the few his kidney specialist would accept. He qualified for a subsidy of \$250 a month, but still owed \$350 a month toward the premium. He also qualified for a reduced deductible, but it was still \$2,600, which nagged at him after he signed up.

Ten days after his eye appointment, Mr. Elson went to see Ms. Elrod, his nurse practitioner at Family Health Centers. He had gained almost 50 pounds in two weeks — water weight, because his failing kidneys were not removing excess fluid and waste. His birthday had just passed, and a medical assistant offered good wishes.

“Somebody didn’t make it that extra year,” she said. “You did.”

“I should be grateful,” Mr. Elson replied. “Believe me, I am.”

Ms. Elrod took one look at him and urged him to go to the emergency room. “You’ve let yourself get so sick again,” she said, pointing out that he had not been to see her in 10 months. “I mean, this is coming down to your life.”

Mr. Elson demurred, saying he had “too much darn work” and there was no one to feed his cat.

“If something happens to you, you’re not going to be able to take care of the cat,” Ms. Elrod shot back. She refilled his prescriptions and made him promise to go to the hospital if his condition got worse.

A few nights later, after gaining an additional 10 pounds, he checked himself into University of Louisville Hospital, a safety net hospital that treats the city’s uninsured.

There, he was told something he had been dreading: his kidney function had dropped to less than 10 percent of the normal level, and he had to start dialysis to save his life. That would mean being hooked up to a machine four hours a day, three days a week, to clear the toxins and extra fluid from his body.

“That is an example of what years and years of not taking your blood pressure medication, your diabetes being uncontrolled — that is the endpoint right there,” Ms. Elrod said.

Over 10 days in the hospital, as he received his first dialysis treatments, Mr. Elson fretted about the business he was losing and might continue to lose given the 12 hours a week he would owe to dialysis. Early one morning, as the hulking dialysis machine hummed behind him, he veered between denial and acceptance.

“I’m not used to being set down somewhere, you know?” he said. “I guess it’s a new era. Yep. I just don’t know if I can handle it.”

Dr. Lina Mackelaite, his kidney specialist, said she hoped he would remain compliant despite a history of skipping appointments and not taking his medications.

“He didn’t always do what he was supposed to do,” she said.

The bad news came with a silver lining: Because he needed dialysis to survive, he was now eligible for Medicare, the government insurance program normally reserved for people 65 and older. The coverage would begin on Jan. 1 and would pay 80 percent of his medical costs; he would be responsible for the other 20 percent, plus a monthly premium of about \$100.

For the kind of dialysis he needs, the per-person cost to Medicare was almost \$88,000 in 2011, according to the National Institutes of Health. The cost to Mr. Elson, too, would almost certainly be considerable, but he was not thinking about it yet.

He has settled into a new routine, waking at 4:30 a.m. to get to the dialysis clinic by 5 and finish his treatment in time to put in a day's work. Usually he sleeps through the treatments, curled under a stained blanket he brings from home, a roomful of other dialysis patients filling identical chairs.

"I don't think there's a person in here that really wants to do it," he said as he arrived at the dialysis clinic one morning. "But if the alternative is being six feet under, or doing it, I'm doing it."

He has lost 70 pounds of water weight and appears re-energized. He has become more careful about what he eats, he said, and his blood sugars have dropped. He can sleep soundly again, with no pain waking him overnight.

Hooked up to the machine one recent morning, Mr. Elson pulled his new Medicare card out of his shirt pocket and held it to the light before carefully tucking it back inside.

"I finally got insurance," he said. "What a way to get it."

Then he drifted into sleep.

From *The New York Times*, December 29, 2014 © 2014 The New York Times. All rights reserved. Used by permission and protected by the Copyright Laws of the United States. The printing, copying, redistribution, or retransmission of this Content without express written permission is prohibited. <http://www.nytimes.com/2014/12/30/us/kentucky-health-plan-is-flooded-with-the-poorest-and-sickest.html#story-continues-4>.

## Supporting Question 3

<b>Supporting Question</b>	Why is the ACA a constitutional controversy?
<b>Formative Performance Task</b>	Perform a reader’s theater of <i>National Federation of Independent Business v. Sebelius</i> and write either a paragraph majority opinion or a paragraph dissenting opinion on the case.
<b>Featured Sources</b>	<b>Source A:</b> Supreme Court case brief: <i>National Federation of Independent Business v. Sebelius</i> (excerpt), <b>Source B:</b> Court transcript: <i>National Federation of Independent Business v. Sebelius</i> (excerpt) <b>Source C:</b> “Supreme Court on Health Care Law: How They Voted, What They Wrote”
<b>Conceptual Understandings</b>	(12.G5c) Successful implementation of government policy often requires cooperation among many levels of government as well as other public and private institutions. Conflicts between different levels of government sometimes emerge due to different goals, ideas, and resources regarding creation and implementation of policy.  (12.G5d) Active and engaged citizens must be effective media consumers in order to be able to find, monitor, and evaluate information on political issues. The media have different venues which have particular strengths and serve distinct and shared purposes. Knowing how to critically evaluate a media source is fundamental to being an informed citizen.
<b>Content Specifications</b>	This conceptual understanding has no content specifications.
<b>Social Studies Practices</b>	<ul style="list-style-type: none"> <li>✔ Gathering, Using, and Interpreting Evidence</li> <li>✔ Civic Participation</li> </ul>

### Supporting Question

For the third supporting question, students build on their understandings of the Affordable Care Act (ACA) by looking closely at the Supreme Court case, *National Federation of Independent Business v. Sebelius* that seemingly settled the constitutionality of the law. By closely reading the case and writing either a supporting or a dissenting opinion, students will better understand the controversy surrounding the ACA and why many voters are divided on the law.

### Formative Performance Task

The formative performance task calls on students to perform a reader’s theater of *National Federation of Independent Business v. Sebelius* and write a paragraph supporting the majority opinion on the case or a paragraph supporting the dissenting opinion on the case. The readers’ theater allows for a better understanding of the constitutionality of the ACA from the vantage point of the petitioner as well as the Supreme Court. Since the role of the Supreme Court is to interpret the constitutionality of laws by practicing judicial review, viewing the ACA through the lens of its Supreme Court case becomes vital to understanding the conflicting opinions over the constitutionality of congressional health care reform.

In order to set up the readers’ theater, nine students should be assigned the roles of Supreme Court justices. Three additional students should be assigned the following speaking roles: (1) Paul Clement, counsel representing the Federation of Independent Business; (2) Edwin S. Kneedler, the solicitor general; and (3) H. Bartow Farr III, the amicus curiae. It is important for students to know that the solicitor general represents the national government and that the amicus curiae is a person who offers information that bears on a case but is not solicited by either side.

The remaining students should take on such roles as stenographers, news reporters, or law clerks. These students could use the graphic organizer “Reader’s Theater: *National Federation of Independent Business v. Sebelius*” (provided here) to take notes on key arguments presented by Clement, Kneeder, and Farr and on the insights delivered by the justices.

Students will use their experiences with the readers’ theater, along with the transcript and docket, to write a paragraph expressing a majority or a dissenting opinion. This task allows for students to take an active approach in assessing the arguments for and against constitutionality and to assert their own beliefs using contemporary sources. In doing so, they are using the social studies practices of Gathering, Using, and Interpreting Evidence and Civic Participation.

Reader's Theater: <i>National Federation of Independent Business v. Sebelius</i>	
Key Arguments	
Paul Clement, counsel representing the Federation of Independent Business	
Edwin S. Kneedler, solicitor general	
H. Bartow Farr III, amicus curiae	
Useful Insight or Points of Contention From the Bench	
Chief Justice Roberts	
Justice Sotomayor	
Justice Scalia	
Justice Thomas	
Justice Alito	
Justice Kagan	
Justice Ginsburg	
Justice Kennedy	
Justice Breyer	

## Featured Sources

---

**FEATURED SOURCE A** is an excerpt from the Supreme Court case briefing for *National Federation of Independent Business v. Sebelius, Secretary of Health and Human Services* (the full briefing is 193 pages). Included in the brief is a short description of ACA legislation, an explanation of its constitutionality from lower courts, and the affirming and dissenting opinions of the Supreme Court justices. In using this source, teachers will want to start by having students read through the syllabus of the brief (5 pages). The syllabus of the brief allows students to understand why the ACA's constitutionality was called into question and how the justices voted. After the readers' theater, teachers will want to redirect students to this document as they begin to gather information to write their own affirming or dissenting opinions on the case. To support student reading of this document, teachers could choose to annotate the document, provide definitions for vocabulary, highlight key terms or ideas, or explain the content verbally. Teachers will want to provide both the original source and their annotations for students to use. An example of what this annotation might look like can be found at the end of this section.

**FEATURED SOURCE B** is an excerpt from the transcript of the hearing before the Supreme Court (the full transcript is 103 pages). This document will be used as the dialogue for the readers' theater. The transcript has been excerpted so that pieces of each argument are represented. The excerpt could be broken into 4 "acts": Act 1, the remarks of Paul Clement (pages 4, 7, 9, 11, 12, 19, and 20); Act 2, the remarks of Edwin S. Kneeder (pages 28, 29, 31, 33, 41, 49, and 50); Act 3, the remarks of H. Bartow Farr III (pages 57, 58, 59, 63, 64, 79, and 80); and Act 4, Clement's rebuttal (pages 80–84). However, teachers could also choose to use the transcript in its entirety. The transcript is important to the supporting question because it represents an examination of the constitutionality of the ACA. Students will be able to hear the positions of the petitioners who believe the ACA is unconstitutional as well as the viewpoint of the respondents who aim to see ACA upheld by the court. Teachers will also want to point out to the students that this document shines light on how the justices ended up in a vote of 5-4. Their statements in the transcript indicate that some justices supported the legislation as constitutional while others believed it needed to be reversed. Teachers will also want to redirect students to this document as they are gathering information to write their affirming or dissenting opinion.

**FEATURED SOURCE C** is an at-a-glance look at how the Supreme Court voted in *National Federation of Independent Business v. Sebelius, Secretary of Health and Human Services* and brief quotations from their writings. The article highlights three quotes from the majority opinion written by Chief Justice Roberts and three quotes from the dissenting opinions written by Justices Scalia, Kennedy, Thomas, and Alito. Teachers will want to point out that these are just brief quotes from these opinions; teachers wanting to use the full transcripts of the majority and/or dissenting opinions can find them in the full case briefing (as mentioned in Featured Source A).

## Example of an Annotation for the Supreme Court Brief Syllabus

### Supreme Court Case Brief: Syllabus Annotation

#### *Original Text from Syllabus, page 3*

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. Congress already possesses expansive power to regulate what people do. Upholding the Affordable Care Act under the Commerce Clause would give Congress the same liscense to regulate what people do not do. The Framers knew the difference between doing something and doing nothing. They gave Congress the power to *regulate* commerce, not to *compel* it. Ignoring that distinction would undermine the principle that the Federal Government is a government of limited and enumerated powers. The individual mandate thus cannot be sustained under Congress’s power to “regulate Commerce.” Pp. 16-27.

#### *Example of Annotated Text from Syllabus, page 3*

*See higlighted, underlined, and re-defined words as ways teachers might annotate a challenging text*

**Construing** (interpreting) the **Commerce Clause\*** to permit Congress to regulate individuals precisely *because* (italics mean it’s emphasized) they are doing nothing would open a new and potentially **vast domain** (a big area) to congressional authority. Congress alaredy possesses expansive power to regulate what people do. Upholding the Affordable Care Act under the **Commerce Clause\*** would give Congress the same **liscense** (permission) to regulate what people do not do. The Framers knew the difference between doing something and doing nothing. They gave Congress the power to **regulate** (supervise) commerce, not to **compel** (force) it. Ignoring that **distinction** (the difference) would undermine the principle that the Federal Government is a government of limited and **enumerated** (listed in the Constitution) powers. The individual mandate thus cannot be **sustained** (upheld) under Congress’s power to “regulate **Commerce**.” pp. 16-27.

**Commerce Clause\*:** the power to trade, found in the Constitution, Article 1, Section 8.



## Additional Resources

---

Students who want additional support in analyzing and interpreting the Supreme Court Case could consult the following:

- *National Federation of Independent Business v. Sebelius*, docket number: 11-393, March 28, 2012, Oral argument - audio. [http://www.supremecourt.gov/oral\\_arguments/argument\\_audio/2013](http://www.supremecourt.gov/oral_arguments/argument_audio/2013).
- James F. Freeley III, “*National Federation of Independent Business v. Sebelius*: The Constitutionality of Health Care Reform and the Spending Clause,” *Connecticut Law Review*, vol. 45, January 2013. <http://connecticutlawreview.org/files/2013/01/Freeley.45.CONNtemplations.191.pdf>.

Teachers who want additional student-friendly, yet effective and challenging, versions of the Supreme Court decision should see the following:

- “How the Justices Ruled on the Health Care Law,” *New York Times*, June 28, 2012, <http://www.nytimes.com/interactive/2012/06/28/us/how-the-justices-ruled-on-health-care.html?ref=us>.
- “Summary of the Supreme Court Affordable Care Act Opinion,” Foley Hoag website, June 28, 2012. <http://www.foleyhoag.com/publications/alerts-and-updates/2012/june/summary-of-supreme-court-affordable-care-act-opinion-062812>.

Teachers who want students to have a little fun with the court case could show video using animals to reenact a Supreme Court session and Justice Ruth Bader Ginsburg’s reaction:

- *Last Week Tonight with John Oliver: Real Animals, Fake Paws Footage*, YouTube. <https://www.youtube.com/watch?v=tug71xZL7yc&list=UU3XTzVzaHQEd30rQbuvCtTQ&index=3>.
- Jess Kravin, “Justice Ginsburg Was Very Amused by John Oliver’s Doggy Supreme Court,” *Wall Street Journal*, October 28, 2014. <http://blogs.wsj.com/law/2014/10/28/justice-ginsburg-was-very-amused-by-john-olivers-doggy-supreme-court/>.

## Supporting Question 3

### Featured Source

**Source A:** US Supreme Court, case brief articulating sides of a case about the ACA, *National Federation of Independent Business v. Sebelius*, (excerpt from the syllabus), 2012

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**NATIONAL FEDERATION OF INDEPENDENT  
BUSINESS ET AL. v. SEBELIUS, SECRETARY OF  
HEALTH AND HUMAN SERVICES, ET AL.**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT

No. 11–393. Argued March 26, 27, 28, 2012—Decided June 28, 2012\*

In 2010, Congress enacted the Patient Protection and Affordable Care Act in order to increase the number of Americans covered by health insurance and decrease the cost of health care. One key provision is the individual mandate, which requires most Americans to maintain “minimum essential” health insurance coverage. 26 U. S. C. §5000A. For individuals who are not exempt, and who do not receive health insurance through an employer or government program, the means of satisfying the requirement is to purchase insurance from a private company. Beginning in 2014, those who do not comply with the mandate must make a “[s]hared responsibility payment” to the Federal Government. §5000A(b)(1). The Act provides that this “penalty” will be paid to the Internal Revenue Service with an individual’s taxes, and “shall be assessed and collected in the same manner” as tax penalties. §§5000A(c), (g)(1).

Another key provision of the Act is the Medicaid expansion. The current Medicaid program offers federal funding to States to assist pregnant women, children, needy families, the blind, the elderly, and the disabled in obtaining medical care. 42 U. S. C. §1396d(a). The Affordable Care Act expands the scope of the Medicaid program and increases the number of individuals the States must cover. For ex-

---

\*Together with No. 11–398, *Department of Health and Human Services et al. v. Florida et al.*, and No. 11–400, *Florida et al. v. Department of Health and Human Services et al.*, also on certiorari to the same court.

Cite as: 567 U. S. \_\_\_\_ (2012)

3

### Syllabus

power have been, they uniformly describe the power as reaching “activity.” *E.g.*, *United States v. Lopez*, 514 U. S. 549, 560. 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. Congress already possesses expansive power to regulate what people do. Upholding the Affordable Care Act under the Commerce Clause would give Congress the same license to regulate what people do not do. The Framers knew the difference between doing something and doing nothing. They gave Congress the power to *regulate* commerce, not to *compel* it. Ignoring that distinction would undermine the principle that the Federal Government is a government of limited and enumerated powers. The individual mandate thus cannot be sustained under Congress’s power to “regulate Commerce.” Pp. 16–27.

(b) Nor can the individual mandate be sustained under the Necessary and Proper Clause as an integral part of the Affordable Care Act’s other reforms. Each of this Court’s prior cases upholding laws under that Clause involved exercises of authority derivative of, and in service to, a granted power. *E.g.*, *United States v. Comstock*, 560 U. S. \_\_\_\_\_. The individual mandate, by contrast, vests Congress with the extraordinary ability to create the necessary predicate to the exercise of an enumerated power and draw within its regulatory scope those who would otherwise be outside of it. Even if the individual mandate is “necessary” to the Affordable Care Act’s other reforms, such an expansion of federal power is not a “proper” means for making those reforms effective. Pp. 27–30.

3. CHIEF JUSTICE ROBERTS concluded in Part III–B that the individual mandate must be construed as imposing a tax on those who do not have health insurance, if such a construction is reasonable.

The most straightforward reading of the individual mandate is that it commands individuals to purchase insurance. But, for the reasons explained, the Commerce Clause does not give Congress that power. It is therefore necessary to turn to the Government’s alternative argument: that the mandate may be upheld as within Congress’s power to “lay and collect Taxes.” Art. I, §8, cl. 1. In pressing its taxing power argument, the Government asks the Court to view the mandate as imposing a tax on those who do not buy that product. Because “every reasonable construction must be resorted to, in order to save a statute from unconstitutionality,” *Hooper v. California*, 155 U. S. 648, 657, the question is whether it is “fairly possible” to inter-

4 NATIONAL FEDERATION OF INDEPENDENT  
BUSINESS *v.* SEBELIUS  
Syllabus

pret the mandate as imposing such a tax, *Crowell v. Benson*, 285 U. S. 22, 62. Pp. 31–32.

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.

(a) The Affordable Care Act describes the “[s]hared responsibility payment” as a “penalty,” not a “tax.” That label is fatal to the application of the Anti-Injunction Act. It does not, however, control whether an exaction is within Congress’s power to tax. In answering that constitutional question, this Court follows a functional approach, “[d]isregarding the designation of the exaction, and viewing its substance and application.” *United States v. Constantine*, 296 U. S. 287, 294. Pp. 33–35.

(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.

(c) Even if the mandate may reasonably be characterized as a tax, it must still comply with the Direct Tax Clause, which provides: “No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.” Art. I, §9, cl. 4. A tax on going without health insurance is not like a capitation or other direct tax under this Court’s precedents. It therefore need not be apportioned so that each State pays in proportion to its population. Pp. 40–41.

5. CHIEF JUSTICE ROBERTS, joined by JUSTICE BREYER and JUSTICE KAGAN, concluded in Part IV that the Medicaid expansion violates the Constitution by threatening States with the loss of their existing Medicaid funding if they decline to comply with the expansion. Pp. 45–58.



Cite as: 567 U. S. \_\_\_\_ (2012)

5

## Syllabus

(a) The Spending Clause grants Congress the power “to pay the Debts and provide for the . . . general Welfare of the United States.” Art. I, §8, cl. 1. Congress may use this power to establish cooperative state-federal Spending Clause programs. The legitimacy of Spending Clause legislation, however, depends on whether a State voluntarily and knowingly accepts the terms of such programs. *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17. “[T]he Constitution simply does not give Congress the authority to require the States to regulate.” *New York v. United States*, 505 U. S. 144, 178. When Congress threatens to terminate other grants as a means of pressuring the States to accept a Spending Clause program, the legislation runs counter to this Nation’s system of federalism. Cf. *South Dakota v. Dole*, 483 U. S. 203, 211. Pp. 45–51.

(b) Section 1396c gives the Secretary of Health and Human Services the authority to penalize States that choose not to participate in the Medicaid expansion by taking away their existing Medicaid funding. 42 U. S. C. §1396c. The threatened loss of over 10 percent of a State’s overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion. The Government claims that the expansion is properly viewed as only a modification of the existing program, and that this modification is permissible because Congress reserved the “right to alter, amend, or repeal any provision” of Medicaid. §1304. But the expansion accomplishes a shift in kind, not merely degree. The original program was designed to cover medical services for particular categories of vulnerable individuals. Under the Affordable Care Act, Medicaid is transformed into a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the poverty level. A State could hardly anticipate that Congress’s reservation of the right to “alter” or “amend” the Medicaid program included the power to transform it so dramatically. The Medicaid expansion thus violates the Constitution by threatening States with the loss of their existing Medicaid funding if they decline to comply with the expansion. Pp. 51–55.

(c) The constitutional violation is fully remedied by precluding the Secretary from applying §1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion. See §1303. The other provisions of the Affordable Care Act are not affected. Congress would have wanted the rest of the Act to stand, had it known that States would have a genuine choice whether to participate in the Medicaid expansion. Pp. 55–58.

6. JUSTICE GINSBURG, joined by JUSTICE SOTOMAYOR, is of the view that the Spending Clause does not preclude the Secretary from withholding Medicaid funds based on a State’s refusal to comply with the

6 NATIONAL FEDERATION OF INDEPENDENT  
BUSINESS *v.* SEBELIUS  
Syllabus

expanded Medicaid program. But given the majority view, she agrees with THE CHIEF JUSTICE's conclusion in Part IV–B that the Medicaid Act's severability clause, 42 U. S. C. §1303, determines the appropriate remedy. Because THE CHIEF JUSTICE finds the withholding—not the granting—of federal funds incompatible with the Spending Clause, Congress' extension of Medicaid remains available to any State that affirms its willingness to participate. Even absent §1303's command, the Court would have no warrant to invalidate the funding offered by the Medicaid expansion, and surely no basis to tear down the ACA in its entirety. When a court confronts an unconstitutional statute, its endeavor must be to conserve, not destroy, the legislation. See, *e.g.*, *Ayotte v. Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 328–330. Pp. 60–61.

ROBERTS, C. J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and III–C, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined; an opinion with respect to Part IV, in which BREYER and KAGAN, JJ., joined; and an opinion with respect to Parts III–A, III–B, and III–D. GINSBURG, J., filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part, in which SOTOMAYOR, J., joined, and in which BREYER and KAGAN, JJ., joined as to Parts I, II, III, and IV. SCALIA, KENNEDY, THOMAS, and ALITO, JJ., filed a dissenting opinion. THOMAS, J., filed a dissenting opinion.

Public domain. US Supreme Court. <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>.

## Supporting Question 3

**Featured Source**

**Source B:** US Supreme Court, official court transcript of a case about the ACA, *National Federation of Independent Business v. Sebelius* (excerpt), 2012



Official

1                   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - -X

3   NATIONAL FEDERATION OF INDEPENDENT :

4   BUSINESS, ET AL., :

5                   Petitioners                   :   No. 11-393

6                   v.                                   :

7   KATHLEEN SEBELIUS, SECRETARY OF :

8   HEALTH AND HUMAN SERVICES, ET AL. :

9   - - - - -X

10   and

11   - - - - -X

12   FLORIDA, ET AL., :

13                   Petitioners                   :   No. 11-400

14                   v.                                   :

15   DEPARTMENT OF HEALTH AND :

16   HUMAN SERVICES, ET AL. :

17   - - - - -X

18   Washington, D.C.

19   Wednesday, March 28, 2012

20

21                   The above-entitled matter came on for oral

22   argument before the Supreme Court of the United States

23   at 10:19 a.m.

24   APPEARANCES:

25   PAUL D. CLEMENT, ESQ., Washington, D.C.; for

Official

1           Petitioners.  
2       EDWIN S. KNEEDLER, ESQ., Deputy Solicitor General,  
3           Department of Justice, Washington, D.C.; for  
4           Respondents.  
5       H. BARTOW FARR, III, ESQ., Washington, D.C.; as  
6           Court-appointed amicus curiae.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Official

1 P R O C E E D I N G S

2 (10:19 a.m.)

3 CHIEF JUSTICE ROBERTS: We will continue  
4 argument this morning in Case Number 11-393, National  
5 Federation of Independent Business v. Sebelius, and Case  
6 11-400, Florida v. The Department of HHS.

7 Mr. Clement.

8 ORAL ARGUMENT OF PAUL D. CLEMENT

9 ON BEHALF OF THE PETITIONERS

10 MR. CLEMENT: Mr. Chief Justice, and may it  
11 please the Court:

12 If the individual mandate is  
13 unconstitutional, then the rest of the Act cannot stand.  
14 As Congress found and the Federal Government concedes,  
15 the community-rating and guaranteed-issue provisions of  
16 the Act cannot stand without the individual mandate.  
17 Congress found that the individual mandate was essential  
18 to their operation.

19 And not only can guaranteed issue and  
20 community rating not stand, not operate in the manner  
21 that Congress intended, they would actually counteract  
22 Congress's basic goal of providing patient protection  
23 but also affordable care.

24 You can -- if you do not have the individual  
25 mandate to force people into the market, then community

Official

1 they wouldn't have passed an information --

2 MR. CLEMENT: I think a couple of things.

3 One, you get -- I mean, I would think you'd sort of have  
4 to take the bitter with the sweet. And if Congress --  
5 if we're going to look at Congress's goal of providing  
6 patient protection but also affordable care, we can't --  
7 I don't think it works to just take the things that save  
8 money and cut out the things that are going to make  
9 premiums more expensive. But at a minimum --

10 JUSTICE SOTOMAYOR: I think on the bottom  
11 line, is why don't we let Congress fix it?

12 MR. CLEMENT: Well, let me answer the bottom  
13 line question, which is, no matter what you do in this  
14 case, at some point there's going to be -- if you strike  
15 down the mandate, there's going to be something for  
16 Congress to do. The question is really what task do you  
17 want to give Congress? Do you want to give Congress the  
18 task of fixing the statute after something has been  
19 taken out, especially a provision at the heart, or do  
20 you want to give Congress the task of fixing health  
21 care? And I think it would be better in this  
22 situation --

23 JUSTICE SOTOMAYOR: We're not taking -- if  
24 we strike down one provision, we're not taking that  
25 power away from Congress. Congress could look at it

Official

1 JUSTICE SOTOMAYOR: Because Congress would  
2 choose to take one path rather than another. That's  
3 sort of taking onto the Court more power than one, I  
4 think, would want.

5 MR. CLEMENT: And I agree. We're simply  
6 asking this Court to take on, straight on, the idea of  
7 the basic remedial inquiry into severability which looks  
8 to the intent of the Congress --

9 JUSTICE SCALIA: Yes, I wanted to ask you  
10 about that. Why do we look to the -- are you sure we  
11 look to the intent of the Congress? I thought that, you  
12 know, sometimes Congress says that these provisions will  
13 -- all the provisions of this Act will be severable, and  
14 we ignore that when the Act really won't work, when the  
15 remaining provisions just won't work. Now, how can you  
16 square that reality with the proposition that what we're  
17 looking for here is what would this Congress have  
18 wanted?

19 MR. CLEMENT: Well, two responses,  
20 Justice Scalia: We can look at this Court's cases on  
21 severability, and they all formulate the test a little  
22 bit differently.

23 JUSTICE SCALIA: Yes, they sure do.

24 MR. CLEMENT: But every one of them talks  
25 about congressional intent. But here's the -- there's

Official

1 that it's congressional intent that governs. Now,  
2 everybody on this Court has a slightly different way of  
3 divining legislative intent. And I would suggest the  
4 one common ground among every member of this Court, as I  
5 understand it, is you start with the text. Everybody  
6 can agree with that.

7 JUSTICE KAGAN: So, Mr. Clement, let's start  
8 with the text. And you suggest, and I think that there  
9 is -- this is right, that there is a textual basis for  
10 saying that the guarantee-issue and the community-rating  
11 provisions are tied to the mandate. And you -- you  
12 pointed to where that was in the findings.

13 Is there a textual basis for anything else?  
14 Because I've been unable to find one. It seems to me  
15 that if you look at the text, the sharp dividing line is  
16 between guarantee issue, community ratings, on the one  
17 hand; everything else, on the other.

18 MR. CLEMENT: Well, Justice Kagan, I'd be  
19 delighted to take you through my view of the text and  
20 why there are other things that have to fall.

21 The first place I'd ask you to look is  
22 Finding (J), which is on the same page, 43a. And as I  
23 read that, that's a finding that the individual mandate  
24 is essential to the operation of the exchanges.

25 But there are other links between guaranteed

Official

1 issue and community rating and the exchanges. And  
2 there, I think, it's just the way that the exchanges are  
3 supposed to work, and the text makes this clear, is  
4 they're supposed to provide a market where people can  
5 compare community-rated insurance. That's what makes  
6 the exchanges function.

7 JUSTICE KAGAN: Although the exchanges  
8 function perfectly well in Utah, where there is no  
9 mandate. They function differently, but they function.  
10 And the question is always, does Congress want half a  
11 loaf? Is half a loaf better than no loaf? And on  
12 something like the exchanges, it seems to me a perfect  
13 example where half a loaf is better than no loaf. The  
14 exchanges will do something. They won't do everything  
15 that Congress envisioned.

16 MR. CLEMENT: Well, Justice Kagan, I think  
17 there are situations where half a loaf is actually  
18 worse, and I want to address that. But before I -- more  
19 broadly -- but before I do that, if I can stick with  
20 just the exchanges.

21 I do think the question that this Court is  
22 supposed to ask is not just whether they can limp along  
23 and they can operate independently, but whether they  
24 operate in the manner that Congress intended. And  
25 that's where I think the exchanges really fall down,

Official

1 what?

2 MR. CLEMENT: It is whether the statute can  
3 operate in the manner that Congress -- that Congress  
4 intended. And --

5 JUSTICE SOTOMAYOR: No statute can do that,  
6 because once we chop off a piece of it, by definition,  
7 it's not the statute Congress passed. So, it has to be  
8 something more than that.

9 MR. CLEMENT: Justice Sotomayor, every one  
10 of your cases, if you have a formulation for  
11 severability, if you interpret it woodenly, it becomes  
12 tautological. And Justice Blackmun addressed this in  
13 footnote 7 of the Brock opinion that we rely on, where  
14 he says: Of course, it's not just -- you know, it  
15 doesn't operate exactly in the manner because it doesn't  
16 have all the pieces, but you still make an inquiry as to  
17 whether -- I mean, when Congress links two provisions  
18 together and one really won't work without the other --

19 JUSTICE SOTOMAYOR: So, what is wrong with  
20 the presumption that our law says, which is we presume  
21 that Congress would want to sever? Wouldn't that be the  
22 simplest, most objective test? Going past what  
23 Justice Scalia says we have done, okay, get rid of  
24 legislative intent altogether, which some of our  
25 colleagues in other contexts have promoted, and just



Official

1 say: Unless Congress tells us directly it's not  
2 severable, we shouldn't sever. We should let them fix  
3 their problems.

4           You still haven't asked -- answered me why  
5 in a democracy structured like ours, where each branch  
6 does different things, why we should involve the Court  
7 in making the legislative judgment?

8           MR. CLEMENT: Justice Sotomayor, let me try  
9 to answer the specific question and then answer the big  
10 picture question. The specific question is -- I mean,  
11 you could do that. You could adopt a new rule now that  
12 basically says, look, we've sever --

13           JUSTICE SOTOMAYOR: It's not a new rule. We  
14 presume. We've rebutted the presumption in some  
15 cases --

16           MR. CLEMENT: Right. But --

17           JUSTICE SOTOMAYOR: -- but some would call  
18 that judicial action.

19           MR. CLEMENT: I think in fairness, though,  
20 Justice Sotomayor, to get to the point you're wanting to  
21 get to, you'd have to ratchet up that presumption a  
22 couple of ticks on the scale, but -- and because the one  
23 thing --

24           JUSTICE SOTOMAYOR: And what's wrong with  
25 that?

Official

1 all my time on -- fighting over the periphery, because I  
2 do think there are some provisions that I think you  
3 would make, as an exercise of your own judgment, the  
4 judgment that once you've gotten rid of the core  
5 provisions of this Act, that you would then decide to  
6 let the periphery fall with it.

7           But if you want to keep the periphery,  
8 that's fine. What I think is important, though, as to  
9 the core provisions of the Act, which aren't just the  
10 mandate, community rating, and guaranteed issue, but  
11 include the exchanges, the tax credit, Medicare, and  
12 Medicaid -- as to all of that, I think you do want to  
13 strike it all down to avoid a redux of Buckley.

14           If I could reserve the remainder of my time.

15           CHIEF JUSTICE ROBERTS: Thank you, Mr.  
16 Clement.

17           Mr. Kneedler.

18           ORAL ARGUMENT OF EDWIN S. KNEEDLER

19           ON BEHALF OF THE RESPONDENTS

20           MR. KNEEDLER: Thank you, Mr. Chief Justice,  
21 and may it please the Court:

22           There should be no occasion for the Court in  
23 this case to consider issues of severability, because,  
24 as we argue, the -- the minimum coverage provision is  
25 fully consistent with Article I of the Constitution.

Official

1 But if the Court were to conclude otherwise, it should  
2 reject Petitioners' sweeping proposition that the entire  
3 Act must fall if this one provision is held  
4 unconstitutional.

5 As an initial matter, we believe the Court  
6 should not even consider that question. The vast  
7 majority of the provisions of this Act do not even apply  
8 to the Petitioners, but instead apply to millions of  
9 citizens and businesses who are not before the Court.

10 CHIEF JUSTICE ROBERTS: How does your  
11 proposal actually work? Your idea is that, well, they  
12 can take care of it themselves later. I mean, do you  
13 contemplate them bringing litigation and saying -- I  
14 guess the insurers would be the most obvious ones --  
15 without -- without the mandate, the whole thing falls  
16 apart, and we're going to bear a greater cost, and so  
17 the rest of the law should be struck down.

18 And that's a whole other line of litigation?

19 MR. KNEEDLER: Well, I -- I think the  
20 continuing validity of any particular provision would  
21 arise in litigation that would otherwise arise under  
22 that provision by parties who are actually --

23 CHIEF JUSTICE ROBERTS: But what cause of  
24 action is it? I've never heard of a severability cause  
25 of action.

Official

1 challenge -- and particularly like tax credits or taxes  
2 which are challenged only after going through the  
3 Anti-Injunction Act, just because no one has standing  
4 doesn't mean someone must.

5 But beyond that --

6 JUSTICE SCALIA: But those are provisions  
7 that have been legitimately enacted. The whole issue  
8 here is whether these related provisions have been  
9 legitimately enacted or whether they are so closely  
10 allied to one that has been held to be unconstitutional  
11 that they also have not been legitimately enacted.

12 You can't compare that to -- to cases  
13 dealing with a statute that nobody denies is -- is  
14 constitutional.

15 MR. KNEEDLER: This case is directly  
16 parallel to the Printz case, in our view. In that case,  
17 the Court struck down several provisions of the Brady  
18 Act but went on to say it had no business addressing the  
19 severability of other provisions that did not apply to  
20 the people before the Court.

21 JUSTICE BREYER: But what he's thinking --

22 JUSTICE SOTOMAYOR: But is that a matter  
23 of --

24 JUSTICE BREYER: What he's thinking of is  
25 this: I think Justice Scalia is thinking, I suspect, of

Official

1                   It's a question of which side -- should the  
2 Court say we're going to wreck the whole thing, or  
3 should the Court leave it to Congress?

4                   MR. KNEEDLER: We think the Court should  
5 leave it to Congress for two reasons. One is the point  
6 I'm making now about justiciability, or whether the  
7 Court can properly consider it at all. And the second  
8 is we think only a few provisions are inseverable from  
9 the minimum coverage provision.

10                   I just would like to --

11                   CHIEF JUSTICE ROBERTS: Before you go,  
12 Mr. Kneedler, I'd like your answer to Justice Breyer's  
13 question.

14                   I think you were interrupted --

15                   MR. KNEEDLER: Yes.

16                   CHIEF JUSTICE ROBERTS: -- before you had a  
17 chance --

18                   MR. KNEEDLER: No, we believe that in that  
19 case, the tax -- the tax provision should not be struck  
20 down. In the first place, the Anti-Injunction Act would  
21 bar a direct suit to challenge it. And it would be very  
22 strange to allow a tax to be struck down on the basis of  
23 a severability analysis. Severability arises in a case  
24 only where it's necessary to consider what relief a  
25 party before the Court should get. The only party --

Official

1 rating. That is one package that Congress deemed  
2 essential.

3 CHIEF JUSTICE ROBERTS: How do you know  
4 that? Where is this line? I looked through the whole  
5 Act. I didn't read -- well --

6 MR. KNEEDLER: It is -- it is in  
7 Congress's --

8 CHIEF JUSTICE ROBERTS: Where is the sharp  
9 line?

10 MR. KNEEDLER: It is in Congress's findings  
11 that the -- that the minimum coverage provision --  
12 without it, the Court -- the Congress said, in Finding  
13 (I), without that provision, people would wait to get  
14 insurance, and therefore -- and cause all the adverse  
15 selection problems --

16 CHIEF JUSTICE ROBERTS: No, no. That --

17 MR. KNEEDLER: -- that gave rise to it.

18 CHIEF JUSTICE ROBERTS: That makes your case  
19 that the one provision should fall if the other does.  
20 It doesn't tell us anything about all the other  
21 provisions.

22 MR. KNEEDLER: Well, I -- I think -- I think  
23 it does, because Congress said it was essential to those  
24 provisions, but it conspicuously did not say that it was  
25 essential to other provisions.

Official

1 JUSTICE SCALIA: Anticipation of the minimum  
2 coverage. That's going to bankrupt the insurance  
3 companies, if not the States, unless this minimum  
4 coverage provision comes into effect.

5 MR. KNEEDLER: There's no reason to think  
6 it's going to -- it's going to bankrupt anyone. The  
7 costs will be set to cover those -- to cover those  
8 amounts that are --

9 JUSTICE SOTOMAYOR: I thought that the  
10 26-year-olds were saying that they were healthy and  
11 didn't need insurance yesterday.

12 MR. KNEEDLER: Two and a half --

13 JUSTICE SOTOMAYOR: So, today they're going  
14 to bankrupt the --

15 MR. KNEEDLER: Two and a half million people  
16 would be -- would be thrown off the insurance rolls if  
17 the Court were to say that. Congress made many changes  
18 to Medicare rates that have gone into effect. For  
19 Congress -- for the courts to have to unwind millions of  
20 Medicare reimbursement rates -- Medicare has covered 32  
21 million insurance -- preventive care visits by patients  
22 as a result of this Act.

23 CHIEF JUSTICE ROBERTS: All of that was  
24 based on the assumption that the mandate was  
25 constitutional. And if -- that certainly doesn't stop

Official

1 us from reaching our own determination on that.

2 MR. KNEEDLER: No, but what I'm saying is  
3 it's a question of legislative intent, and we have a  
4 very fundamental indication of legislative intent that  
5 it -- that Congress did not mean the whole Act to fall  
6 if -- without the minimum coverage provision, because we  
7 have many provisions that are operating now without  
8 that.

9 But there's a further indication about why  
10 the line should be drawn where I've suggested, which is  
11 the package of these particular provisions. All of the  
12 other provisions of the Act would continue to advance  
13 Congress's goal, as the test that was articulated in  
14 Booker, but it's been said in Regan and other cases.  
15 You look to whether the other provisions can continue to  
16 advance the purposes of the Act.

17 Here they unquestionably can. The public  
18 health -- the broad public health purposes of the Act  
19 that are unrelated to the minimum coverage provision but  
20 also the other provisions designed to enhance affordable  
21 -- access to affordable care: The employer  
22 responsibility provision, the credit for small  
23 businesses, which is already in effect, by the way, and  
24 affecting many small businesses. That --

25 JUSTICE SCALIA: But many people might



Official

1 AS THE COURT-APPOINTED AMICUS CURIAE

2 MR. FARR: Mr. Chief Justice, and may it  
3 please the Court:

4 At the outset, I would just like to say I  
5 think that the Government's position in this case that  
6 the community-rating and guaranteed-issue provisions  
7 ought to be struck down is an example of the best  
8 driving out the good, because, even without the minimum  
9 coverage provision, those two provisions, guaranteed  
10 issue and community rating, will still open insurance  
11 markets to millions of people that were excluded under  
12 the prior system and for millions of people will lower  
13 prices, which were raised high under the old system  
14 because of their poor health.

15 So, even though the system is not going to  
16 work precisely as Congress wanted, it would certainly  
17 serve central goals that Congress had of expanding  
18 coverage for people who were unable to get coverage or  
19 unable to get it at affordable prices.

20 So, when the government --

21 JUSTICE GINSBURG: One of the points that  
22 Mr. Kneedler made is that the price won't be affordable  
23 because the -- he spoke of the adverse selection  
24 problem, that there would be so fewer people in there,  
25 the insurance companies are going to have to raise the

Official

1 premiums.

2 So, it's nice that Congress made it possible  
3 for more people to be covered, but the reality is they  
4 won't because they won't be able to afford the premium.

5 MR. FARR: Well, Justice Ginsburg, let me  
6 say two things about that.

7 First of all, when we talk about premiums  
8 becoming less affordable, it's very important to keep in  
9 mind different groups of people, because it is not  
10 something that applies accurately to everybody.

11 For people who were not able to get  
12 insurance before, obviously, their insurance beforehand  
13 was -- the price was essentially infinite. They were  
14 not able to get it at any price. They will now be able  
15 to get it at a price that they can afford.

16 For people who are unhealthy and were able  
17 to get insurance, but perhaps not for the things that  
18 they were most concerned about, or only at very high  
19 rates, their rates will be lower under the system, even  
20 without the minimum coverage provision.

21 Also, you have a large number of people who,  
22 under the Act --

23 JUSTICE SCALIA: Excuse me. Why do you  
24 say -- I didn't follow that. Why?

25 MR. FARR: Because --

Official

1 JUSTICE SCALIA: Why would their rates be  
2 lower?

3 MR. FARR: Their rates are going to be lower  
4 than they were under the prior system because they are  
5 going into a pool of people, rather than -- some of whom  
6 are healthy, rather than having their rates set  
7 according to their individual health characteristics.  
8 That's why their rates were so high.

9 JUSTICE KAGAN: But the problem, Mr. Farr,  
10 isn't it, that they're going to a pool of people that  
11 will gradually get older and unhealthier. That's the  
12 way the thing works. Once you say that the insurance  
13 companies have to cover all of the sick people and all  
14 of the old people, the -- the rates climb. More and  
15 more young people and healthy people say why should we  
16 participate; we can just get it later when we get sick.  
17 So, they leave the market. The rates go up further.  
18 More people leave the market. And the whole system  
19 crashes and burns, becomes unsustainable.

20 MR. FARR: Well, that's --

21 JUSTICE KAGAN: And this is not --

22 MR. FARR: Sorry.

23 JUSTICE KAGAN: -- like what I think. What  
24 do I know? It's just what -- what's reflected in  
25 Congress's findings, that it's -- it looks at some

Official

1 premium -- everybody regardless of their age is charged  
2 the same premium. Some States had a variance of 1.5  
3 to 1. Massachusetts, for example, which did have good  
4 subsidies, but their age band was two to one.

5 So, when Congress is enacting this Act, it's  
6 not simply looking at the States and thinking: Well,  
7 that didn't go very well. Why don't we put in a minimum  
8 coverage provision? That will solve the problem.

9 Congress did a lot of different things to  
10 try to combat the adverse selection.

11 Now, if I could turn to the finding, because  
12 I think this is the crux of the Government's position,  
13 and then the plaintiffs pick up on that and then move --  
14 move from that to the rest of the Act. And it seems to  
15 me, quite honestly, it's an important part because that  
16 is textual. You know, in this whole sort of quest for  
17 what we're trying to figure out, the finding seems to  
18 stand out as something that the Court can rely on and  
19 say here's something Congress has actually told us.

20 But I think the real problem with the  
21 finding is the -- the context in which Congress made it.  
22 It's quite clear. If the Court wants to look, the  
23 finding is on page 42 -- 43a, excuse me, of the  
24 Solicitor General's severability brief, in the appendix.

25 But the finding is made specifically in the

Official

1 context of interstate commerce. That is why the  
2 findings are in the Act at all. Congress wanted to  
3 indicate to the Court, knowing that the minimum coverage  
4 provision was going to be challenged, wanted to indicate  
5 to the Court the basis on which it believed it had the  
6 power under the Commerce Clause to enact this law.

7           Why does that make a difference with respect  
8 to Finding (I), which is the one that the Government is  
9 relying on, and in particular the last sentence, which  
10 says this requirement "is essential to creating  
11 effective health insurance markets" in which guaranteed  
12 issue and pre-existing illnesses can be covered.

13           And the reason is because the word  
14 "essential" in the Commerce Clause context doesn't have  
15 the colloquial meaning. In the Commerce Clause context,  
16 "essential" effectively means useful. So that when one  
17 says -- in Lopez, when the Court says section 922(q) is  
18 not an essential part of a larger regulatory scheme of  
19 economic activity, it goes on to say: In which the  
20 regulatory scheme would be undercut if we didn't have  
21 this provision.

22           Well, if that's all Congress means, I agree  
23 with that. The system will be undercut somewhat if you  
24 don't have the minimum coverage provision. It's like  
25 the word "necessary" in the Necessary and Proper Clause

Official

1 there's no reason to answer that question as any other  
2 way than yes, Congress would want these provisions.

3 JUSTICE KENNEDY: Is that the real Congress  
4 or a hypothetical Congress?

5 (Laughter.)

6 MR. FARR: An objective Congress, Your  
7 Honor, not the specific -- not with a vote count.

8 JUSTICE BREYER: Have you come across --

9 MR. FARR: Excuse me.

10 JUSTICE SCALIA: Why put -- why put Congress  
11 to that false choice?

12 MR. FARR: Well --

13 JUSTICE SCALIA: You know -- you only have  
14 two choices, Congress. You can have the whole bill or  
15 you can have -- you can have parts of the bill or no  
16 bill at all. Why that false choice?

17 MR. FARR: I think the reason is because  
18 severability is by necessity a blunt tool. The Court  
19 doesn't have -- even if it had the inclination, doesn't  
20 essentially have the authority to retool the statute --

21 JUSTICE BREYER: Yes. Oh, I know. So, you  
22 -- I would say stay out of politics. That's for  
23 Congress, not us.

24 MR. FARR: Right.

25 JUSTICE BREYER: But the -- the question

Official

1 here is -- you've read all these cases or dozens -- have  
2 you ever found a severability case where the Court ever  
3 said: Well, the heart of the thing is gone, and,  
4 therefore, we strike down these other provisions that  
5 have nothing to do with it, which could stand on their  
6 feet independently and can be funded separately or don't  
7 require money at all.

8 MR. FARR: I think the accurate answer would  
9 be I am not aware of a modern case that says that. I  
10 think there probably are cases in the '20s and '30s that  
11 would be more like that.

12 If I could just take one second to address  
13 the economists' brief because Justice Alito raised it  
14 earlier. I just want to make one simple point. Leaving  
15 aside the whole balancing thing, if one looks at the  
16 economists' brief, I think it's very important to note  
17 that when they're talking about one side of the balance  
18 -- may I finish?

19 CHIEF JUSTICE ROBERTS: Certainly.

20 MR. FARR: When they're talking about the  
21 balance, they're not just talking about the minimum  
22 coverage provision. They very carefully word it to say  
23 the minimum coverage provision and the subsidy programs.  
24 And then, so when you're doing the mathematical  
25 balancing, the subsidy programs are extremely large.

Official

1 They -- in year 2020, they're expected to be over  
2 \$100 billion in that one year alone. So, if you're  
3 looking at the numbers, please consider that.

4 Thank you, Your Honors.

5 CHIEF JUSTICE ROBERTS: Thank you, Mr. Farr.

6 Mr. Clement, you have 4 minutes remaining.

7 REBUTTAL ARGUMENT OF PAUL D. CLEMENT

8 ON BEHALF OF THE PETITIONERS

9 JUSTICE SOTOMAYOR: Mr. Clement, could you  
10 respond to amici's point? He says that Congress didn't  
11 go into this Act to impose minimum coverage. They went  
12 into the Act to have a different purpose, i.e., to get  
13 people coverage when they needed it, to increase  
14 coverage for people, that this is only a tool. But  
15 other States -- going back to my original point, that  
16 there are other tools besides minimum coverage that  
17 Congress can achieve the same goals. So, if we strike  
18 just a tool, why should we strike the whole Act --

19 MR. CLEMENT: Mr. Chief --

20 JUSTICE SOTOMAYOR: -- when Congress has  
21 other tools available?

22 MR. CLEMENT: Mr. Chief Justice, I'll make  
23 four points in rebuttal, but I'll start with Justice  
24 Sotomayor's question, which is to simply say this isn't  
25 just a tool; it's the principal tool. Congress



Official

1 identified it as an essential tool. It's not just a  
2 tool to make it work. It's a tool to pay for it, to  
3 make it affordable. And, again, that's not my  
4 characterization; that's Congress's characterization in  
5 Sub-finding (I) on page 43a of the Government's brief.

6 Now, that brings me to my first point in  
7 rebuttal, which is Mr. Kneedler says, quite correctly --  
8 tells this Court don't look at the budgetary  
9 implications. Well, the problem with that, though, is  
10 once it's common ground that the individual mandate is  
11 in the statute at least in part to make community rating  
12 and guaranteed issue affordable, that really is all you  
13 have to identify. That establishes the essential link  
14 that it's there to pay for it.

15 You don't have to figure out exactly how  
16 much that is and which box -- I mean, it clearly is a  
17 substantial part of it, because what they were trying to  
18 do was take healthy individuals and put them into the  
19 risk pool -- and this is quoting their finding -- which  
20 is in order -- they put people into the market, which  
21 will lower premiums. So, that's what their intent was.

22 So, you don't have to get to the final  
23 number. You know that's what was going on here, and  
24 that's reason alone to sever it.

25 Now, the Government -- Mr. Kneedler also

Official

1 says there's an easy dividing line between what they  
2 want to keep and what they want to dish out. The  
3 problem with that is that, you know, you read their  
4 brief and you might think, oh, there's a  
5 guaranteed-issue and a community-rating provision  
6 subtitle in the bill. There's not.

7           To figure out what they're talking about you  
8 have to go to page 6 of their brief, of their opening  
9 severability brief, where they tell you what's in and  
10 what's out. And the easy dividing line they suggest is  
11 actually between 300g(a)(1) and 300g(a)(2), because on  
12 community rating, they don't -- they say that (a)(1)  
13 goes, but then they say (a)(2) has to stay because  
14 that's the way that you'll have some sort of -- kind of  
15 Potemkin community rating for the exchanges. But if you  
16 actually look at those provisions, (a)(2) makes all  
17 these references to (a)(1). It just doesn't work.

18           Now, in getting back to the -- an inquiry  
19 that I think this Court actually can approach is, to  
20 look at what Congress was trying to do, you need look no  
21 further than the title of this statute: Patient  
22 Protection and Affordable Care. I agree with Mr. Farr  
23 that community rating and guaranteed issue were the  
24 crown jewels of this Act. They were what was trying to  
25 provide patient protection. And what made it

Official

1 affordable? The individual mandate. If you strike down  
2 guaranteed issue, community rating, and the individual  
3 mandate, there is nothing left to the heart of the Act.

4           And that takes me to my last point, which is  
5 simply this Court in Buckley created a halfway house,  
6 and it took Congress 40 years to try to deal with the  
7 situation, when contrary to any time of their intent,  
8 they had to try to figure out what are we going to do  
9 when we're stuck with this ban on contributions, but we  
10 can't get at expenditures because the Court told us we  
11 couldn't. And for 40 years, they worked in that halfway  
12 house.

13           Why make them do that in health care? The  
14 choice is to give Congress the task of fixing this  
15 statute, the residuum of this statute after some of it  
16 is struck down, or giving them the task of simply fixing  
17 the problem on a clean slate. I don't think that's a  
18 close choice. If the individual mandate is  
19 unconstitutional, the rest of the Act should fall.

20           CHIEF JUSTICE ROBERTS: Thank you, Mr.  
21 Clement.

22           Mr. Farr, you were invited by this Court to  
23 brief and argue in these cases in support of the  
24 decision below on severability. You have ably carried  
25 out that responsibility, for which we are grateful.

Public domain. US Supreme Court. [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/11-393.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-393.pdf)

## Supporting Question 3

### Featured Source

**Source C:** CNN, summary of justices' votes and writings, "Supreme Court on Health Care Law: How They Voted, What They Wrote," June 28, 2012

The U.S. Supreme Court upheld President Barack Obama's sweeping health care legislation — the Patient Protection and Affordable Care Act — in a narrow 5-4 ruling. The court's ruling upheld the law's central provision — a requirement that all people have health insurance.

Chief Justice John Roberts wrote the majority opinion. He was joined by Justices Sonia Sotomayor, Stephen Breyer, Ruth Bader Ginsburg, and Elena Kagan. Those in the dissent included Justices Anthony Kennedy, Samuel Alito, Antonin Scalia, and Clarence Thomas.

### Majority Opinion

"The Federal Government does not have the power to order people to buy health insurance. Section 5000A would therefore be unconstitutional if read as a command. The Federal Government does have the power to impose a tax on those without health insurance. Section 5000A is therefore constitutional, because it can reasonably be read as a tax." – Chief Justice John Roberts

"The Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits. The Court does so today. But the Court does not express an opinion on the wisdom of the Affordable Care Act. Under the Constitution, that judgment is reserved to the people." – Chief Justice John Roberts

"Upholding the individual mandate under the Taxing Clause does not recognize any new federal power. It determines that Congress has used an existing one." – Chief Justice John Roberts

### Dissenting Opinion

"Whether federal spending legislation crosses the line from enticement to coercion is often difficult to determine, and courts should not conclude that legislation is unconstitutional on this ground unless the coercive nature of an offer is unmistakably clear. In this case, however, there can be no doubt." – Justices Scalia, Kennedy, Thomas, Alito

"The values that should have determined our course today are caution, minimalism, and the understanding that the Federal Government is one of limited powers. But the Court's ruling undermines those values at every turn." – Justice Scalia

"Imposing a tax through judicial legislation inverts the constitutional scheme, and places the power to tax in the branch of government least accountable to the citizenry." – Justice Scalia

Reprinted with permission from CNN. <http://www.cnn.com/interactive/2012/06/us/scotus.healthcare/>.

## Supporting Question 4

<b>Supporting Question</b>	Why is the ACA <i>still</i> controversial?
<b>Formative Performance Task</b>	Develop a claim supported by evidence about why the ACA is still controversial.
<b>Featured Sources</b>	<p><b>Featured Source A:</b> “If Supreme Court Strikes Federal Exchange Subsidies, Health Law Could Unravel,” NPR, November 2014</p> <p><b>Featured Source B:</b> “Six Charts to Explain Health-Care Polling”</p> <p><b>Featured Source C:</b> “Following Midterms, both Democrats and Republicans expect Washington continue to debate the Affordable Care Act,” <i>Kaiser Family Foundation</i>, November 2014</p>
<b>Conceptual Understandings</b>	<p>(12.G5c) Successful implementation of government policy often requires cooperation among many levels of government as well as other public and private institutions. Conflicts between different levels of government sometimes emerge due to different goals, ideas, and resources regarding creation and implementation of policy.</p> <p>(12.G5d) Active and engaged citizens must be effective media consumers in order to be able to find, monitor, and evaluate information on political issues. The media have different venues which have particular strengths and serve distinct and shared purposes. Knowing how to critically evaluate a media source is fundamental to being an informed citizen.</p>
<b>Content Specifications</b>	This conceptual understanding has no content specifications.
<b>Social Studies Practices</b>	<ul style="list-style-type: none"> <li>✔ <b>Gathering, Using, and Interpreting Evidence</b></li> <li>✔ <b>Economics and Economic Systems</b></li> </ul>

### Supporting Question

Having examined the foundations, opportunities, shortcomings, and constitutionality of the Affordable Care Act (ACA), students will consider the reasons why the act remains mired in controversy. Students will analyze two contemporary news sources with economic data and polling numbers over the past several years in order to develop a claim that answers the supporting question “Why is the ACA *still* controversial?” In doing so, students will move toward the Summative Performance Task by working with additional data that capture the political divide, the extent to which the law is reaching the uninsured, and the economic benefits and costs associated with the new law.

### Formative Performance Task

The formative performance task requires students to address the supporting question by using sources and developing claims with evidence to describe why the ACA remains controversial. In describing the persistent controversy, students will work with a newspaper blog and a news release that help to shed light on how and why this law remains controversial to some sections of the American public. To create relevancy for their 12th-grade students, teachers might help to highlight data or polling results that shed light on what 18- to 26-year-olds think or how they fall into the data on the uninsured.

Within this task, students are working directly with the social studies practice Gathering, Using, and Interpreting Evidence as they read and analyze each source while making claims supported by evidence. Students are also working with the social studies practice Economics and Economic Systems as they consider and weigh the various

economic costs and benefits of the law. Depending on their experience with making claims supported with evidence, students may need examples or guided instruction on how to develop a claim and what constitutes a claim with evidence. The scaffold presented here could help students organize their claim(s) and evidence.

Why Is the ACA <i>Still</i> Controversial?	
<b>Your emerging claim about why the ACA is still controversial</b>	The ACA remains controversial because it has been highly politicized.
<b>Evidence from the source that supports your claim</b>	<p>“Less than a month after the ACA was signed into law, Republicans and Democrats took sharply opposing positions on the law. The partisan divide has shrunk slightly since then, but the basic storyline remains the same: Democrats like the law, Republicans despise it and independents tilt against it.”</p> <p><b>Source B:</b> “Six Charts to Explain Health-Care Polling,” <i>Washington Post</i>, June 28, 2012</p> <p>“This also reflects sharp partisan differences, with three quarters (74%) of Republicans reporting an unfavorable view and two thirds (67%) of Democrats reporting a favorable view.”</p> <p><b>Source C:</b> “Following Midterms, both Democrats and Republicans expect Washington continue to debate the Affordable Care Act, but the public is splintered over what Congress should do,” <i>Kaiser Family Foundation</i>, November 2014.</p>

It is important to note that when working with any current event, especially a controversial one, it may be wise to substitute or supplement the sources included here with more recent polling and economic data. Students could be encouraged to search for additional data that capture the latest perspectives on and impact of the ACA. In doing so, they should analyze their data using multiple sources and perspectives in order to more fully understand various viewpoints around the ACA. This activity also serves as an opportunity in which teachers can help students understand how all media messages are constructed and how the public should go about finding reliable, trustworthy sources of information. As a starting point for the conversation, teachers could point students to the Project Smart Guide, *Key Questions to Ask When Analyzing Media Messages*, which is included as Appendix C.

## Featured Sources

**FEATURED SOURCE A** Teachers will want to start by having students examine Featured Source A, the February 2015 *New York Times* article “How an Adverse Supreme Court Ruling Would Send Obamacare into a Tailspin.” The article highlights the fact that the ACA is still being hotly contested in the courts and that the controversy is far from over. Teachers will want to use this article to encourage students to begin to think about supporting question “Why is the ACA *still* controversial.”

**FEATURED SOURCE B** is a series of five charts from a *Washington Post* blog posting entitled, “Six Charts to Explain Health Care Polling” dated June 2012. (NOTE: We were only able to obtain access to and permission to use five of the six charts.) In addition to having students interpret the information presented in the charts, teachers should point students to the sources of this data (e.g., Kaiser Family Foundation, Pew Research Center, and ABC) and have them consider the validity of each provider as well as the nature of blog posts versus news articles.

**FEATURED SOURCE C** is a second set of charts found in the news release from the Kaiser Family Foundation, “Following Midterms, Both Democrats and Republicans Expect Washington Continue to Debate the Affordable Care Act, But the Public Is Splintered Over What Congress Should Do” dated November 2014. As with the charts in Featured Source B, teachers will want students to consider the sources of this data as they consider the substance of the information presented.

## Additional Resources

---

As noted earlier, students should have the opportunity to search for additional contemporary sources using the Internet. There are many ways to structure student research and teachers should scaffold according to students’ experience with independent research. However, this is a 12th-grade inquiry, and it may be important for students to be given the opportunity to search broadly on a search engine (e.g., Google or Yahoo) and for the class to have a discussion on narrowing the hits to those that are most credible and germane to the inquiry. Another way of structuring the research is to point students to online news outlets (e.g., CNN, *New York Times*, *Wall Street Journal*, and *Forbes*) and for them to find one to three articles across those news outlets and to do a comparison on ACA coverage. Regardless of the approach, teachers play an important role in helping students to become increasingly proficient at finding credible sources of information online.

Students could be guided to search for particular controversies that continue to swirl around the ACA. These topics could include examining objections to subsidies, increased taxes (e.g., medical device), religious objections, and the concerns of small businesses.



## Supporting Question 4

### Featured Source

**Source A:** Margot Sanger-Katz, article describing potential problems with the ACA, “How an Adverse Supreme Court Ruling Would Send Obamacare into a Tailspin,” *New York Times*, February 27, 2015

“How an Adverse Supreme Court Ruling Would Send Obamacare into a Tailspin.” *New York Times*, February 27, 2015.

Even if you don’t receive Obamacare subsidies, you could still be harmed by the Supreme Court case that could take them away.

A court ruling for the plaintiffs in the case, *King v. Burwell*, would have wide-reaching effects for the individual insurance markets in around three dozen states. The approximately six million people currently receiving subsidies in those states would be hit hard, of course. But so could the millions who now buy their own insurance without subsidies. The results could be surging prices and reduced choice for health insurance shoppers across the income spectrum.

It’s a phenomenon some health policy experts call the “death spiral,” the result of an insurance pool getting smaller and sicker as more healthy people leave an increasingly expensive health insurance market.

The question before the court on Wednesday is whether the federal government can keep distributing subsidies in states that failed to set up their own health insurance marketplaces. For most people receiving subsidies, the full cost of insurance plans would be unaffordable, meaning that only people with the most serious health conditions would be likely to keep buying it.

But the loss of all those low-income, relatively healthy people could destabilize the individual health insurance markets for everyone else. No one knows for sure how bad things would get, but economic forecasters estimate that, on average, prices in the affected states would rise by at least a third, and some 1.4 million unsubsidized people would leave the increasingly expensive market.

The health law was intended to make the individual health insurance market more fair and accessible than it was before the Affordable Care Act passed. The law requires health insurers to sell their products to anyone willing to buy — even people with known diseases that are likely to mean big health care bills. The law also limits how much insurers can vary premiums they charge to different people; insurers can charge higher prices to older customers than younger ones, but they can’t charge a higher price to a patient with cancer than one who is healthy.

But to balance out all the sick people that those provisions help, the law creates inducements for healthy customers to buy insurance. The biggest one is the tax credits that are available on a sliding scale to middle-income Americans. And there’s the individual mandate: Anyone who can afford insurance and doesn’t sign up will face a tax penalty. Taken together, those provisions help people with limited means afford insurance premiums, and they serve to discourage people from waiting until they’re already sick to buy insurance.

Upset that balance, and the policy structure will become broken.

If the Supreme Court rules that the tax credits can only be awarded in certain states, insurance will become immediately unaffordable for many people getting the subsidies. About 87 percent of people in the affected states qualify for some kind of subsidy, and, in some cases, the subsidy covers the entire cost of the insurance premium. The ruling will also effectively knock out the mandate, since the law says that no one can be punished for failing to have insurance if none is affordable.

You might think that such a ruling would leave the market unchanged for the consumers who were always paying their insurance premiums out of pocket. But a small number of people now getting subsidies will find a way to buy insurance — sick people — and their choice has implications for everyone else in the market.

“The effect is likely to pull in these very sick people,” said Christine Eibner, a senior economist at the RAND Corporation, whose calculations estimate that prices could rise by an average of 47 percent.

We don’t have to speculate to imagine a universe with the health law’s insurer regulations but with no subsidies. In the 1990s, a handful of states forced insurers to cover everyone but did not provide subsidies. In all of those states, prices for insurance went up substantially and the number of people in the market declined. Sicker customers, who had been shut out of the unregulated market, bought insurance. Healthier ones, facing increasing prices, fled it. Insurance companies also often stopped selling individual insurance in those states, finding the line of business unprofitable and the size of the market too small to be worth the risk.

Pre-Obamacare, the states with the highest individual health insurance rates — including Massachusetts, New Jersey and New York — all had similar insurance regulations. When subsidies became available, insurance prices actually went down in New York by 50 percent.

“We have learned pretty quickly that that policy environment doesn’t work well,” said Mark Hall, a professor of law at Wake Forest University. Mr. Hall wrote a series of papers examining the effects of reform on various state markets. If the court eliminates the subsidies, “it would be a big mess” in the affected states, he said.

“Death spiral” probably overstates the likely effect in some states. As my colleague Josh Barro has written, New York’s individual health insurance market did remain intact, in some ways — it was just absurdly expensive, and it shut out a lot of people. That was the experience in some other states, too. Kentucky, however, fared worse: More than 40 insurers left the market when the legislature passed its reforms. The law was rescinded.

History is a good reminder that results are unpredictable and variable. Some markets could collapse, while others might achieve some new, more expensive equilibrium. Anthony Lo Sasso, a professor at the University of Illinois, Chicago, who has studied the states that tried these policies, said the ones that fared best tended to be the ones that heavily regulated their insurers in other ways. He places few of the federal exchange states in that category.

Whatever happens is likely to happen very fast. In theory, the “death spiral” occurs slowly, over time, as customers become sicker and prices increase in response. But that’s probably not how things would happen in the Obamacare marketplaces.

Insurers can set their prices only once a year, and most customers have a small window each year to buy coverage. That means that insurers are likely to hike their prices substantially for 2016, anticipating their changing customer base. Depending on how worried they get, those high prices could become a self-fulfilling prophecy.

From *The New York Times*, February 27, 2015 © 2015 The New York Times. All rights reserved. Used by permission and protected by the Copyright Laws of the United States. The printing, copying, redistribution, or retransmission of this Content without express written permission is prohibited. [http://www.nytimes.com/2015/03/02/upshot/how-an-adverse-supreme-court-ruling-would-send-obamacare-into-a-tailspin.html?\\_r=0&abt=0002&abg=0](http://www.nytimes.com/2015/03/02/upshot/how-an-adverse-supreme-court-ruling-would-send-obamacare-into-a-tailspin.html?_r=0&abt=0002&abg=0).

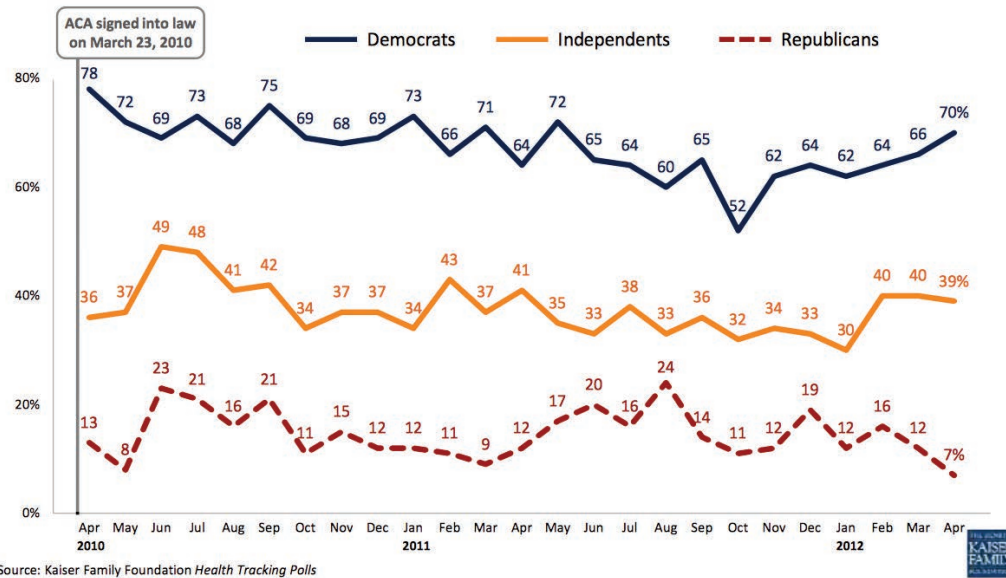
## Supporting Question 4

### Featured Source

**Source B:** Scott Clement, charts that summarize issues related to the ACA, "Six Charts to Explain Health-Care Polling," *Washington Post*, June 28, 2012

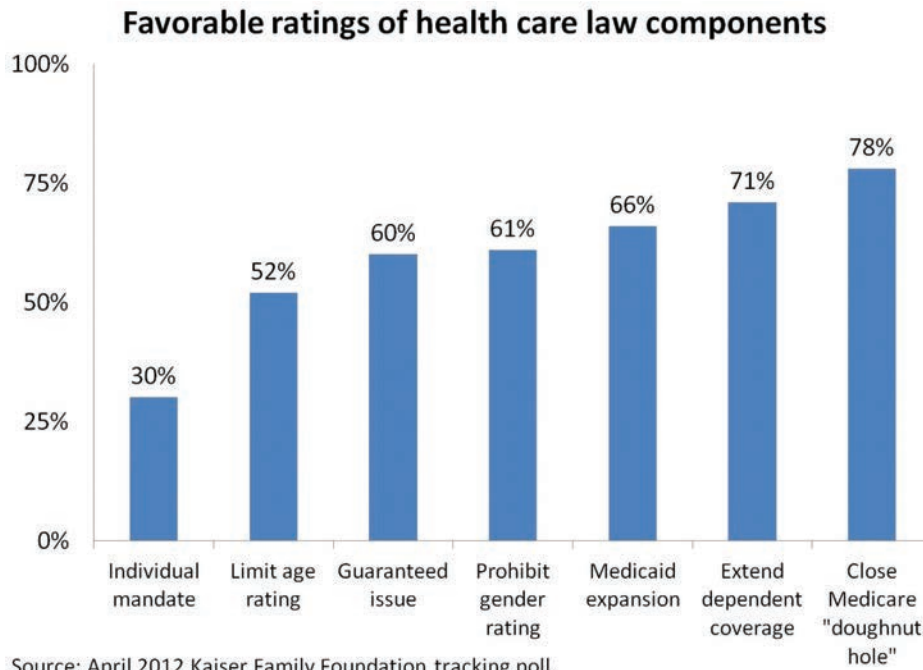
*NOTE: Two of the charts referred to in the title are no longer available.*

Percent who say they have a favorable opinion of the health reform law:



Source: Kaiser Family Foundation Health Tracking Polls

Chart 1: Percentages of people with a favorable opinion of the ACA



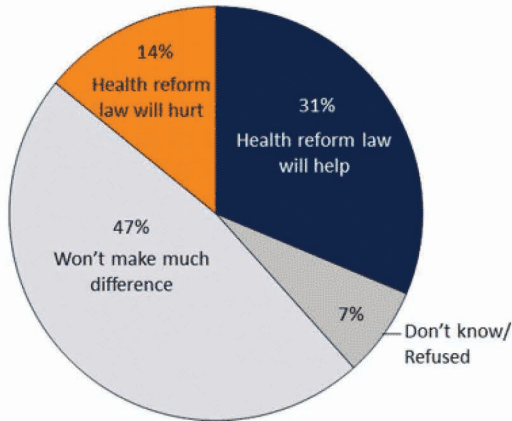
Source: April 2012 Kaiser Family Foundation tracking poll.

Chart 2: Percentages of people with favorable ratings of the ACA components

## The Uninsured and the ACA

In general, do you expect that when it's fully put in place, the recently passed health reform law will help your own situation when it comes to getting health care, hurt your situation, or won't it make much difference?

AMONG THOSE AGES 18-64 WHO ARE CURRENTLY UNINSURED



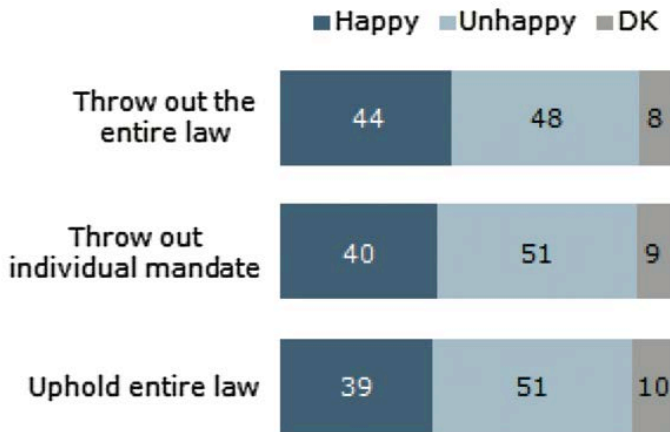
Source: Kaiser Family Foundation Health Tracking Poll (conducted August 10-15, 2011)



Chart 3: Percentages of uninsured people's perceptions about the ACA

## No Health Care Ruling Would Please a Majority of Americans

Would you be happy or unhappy if Supreme Court decides to ...



PEW RESEARCH CENTER Jun 7-17, 2012. Respondents were asked about their reaction to each possible ruling separately.

Chart 4: Percentages of people's perceptions of the potential actions of the Supreme Court regarding the ACA

[http://www.washingtonpost.com/blogs/the-fix/post/six-charts-to-explain-health-care-polling/2012/06/28/gJQAlBrn8V\\_blog.html](http://www.washingtonpost.com/blogs/the-fix/post/six-charts-to-explain-health-care-polling/2012/06/28/gJQAlBrn8V_blog.html)

## Supporting Question 4

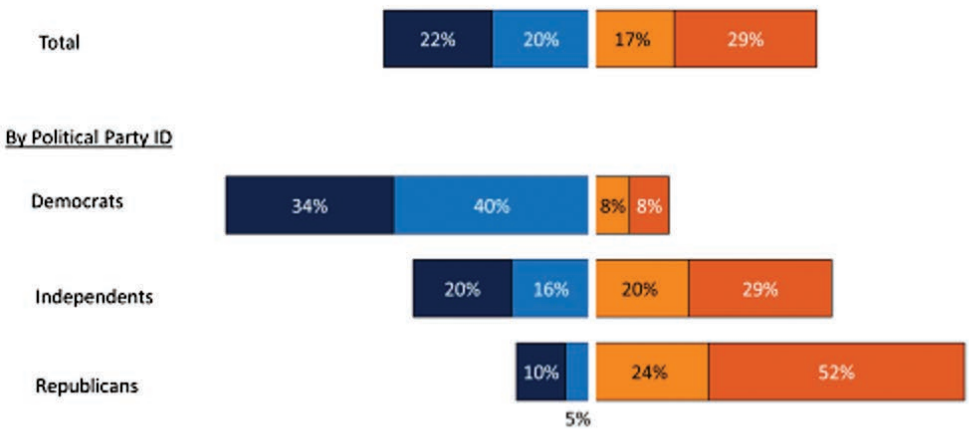
**Featured Source**

**Source C:** Kaiser Family Foundation, charts depicting political implications for the ACA , “Following Midterms, Both Democrats and Republicans Expect Washington to Continue to Debate the Affordable Care Act, But the Public is Splintered Over What Congress Should Do,” November 21, 2014

### Partisans Divided On Future Of Law

What would you like to see Congress do when it comes to the health care law?

- Expand what the law does
- Move forward with implementing the law as it is
- Scale back what the law does
- Repeal the entire law



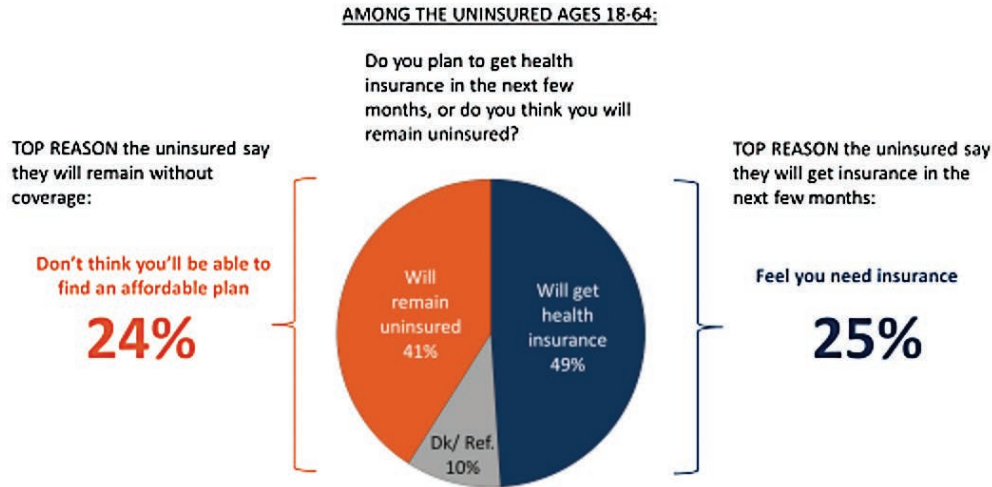
NOTE: None of these/something else (vol.) and Don't know/Refused responses not shown.  
SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted November 5-13, 2014)



Chart 1: Percentages of people’s perceptions of the actions Congress should take with regard to the ACA

<http://kff.org/health-reform/press-release/following-midterms-both-democrats-and-republicans-expect-washington-to-continue-to-debate-the-affordable-care-act-but-the-public-is-splintered-over-what-congress-should-do/>

## Reasons Uninsured Expect To Get Coverage Or Remain Uninsured



NOTE: Question wording abbreviated. See topline for full question wording.  
 SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted November 5-13, 2014)



Chart 2: Percentages of uninsured people’s expectations about the ability to obtain coverage under the ACA

<http://kff.org/health-reform/press-release/following-midterms-both-democrats-and-republicans-expect-washington-to-continue-to-debate-the-affordable-care-act-but-the-public-is-splintered-over-what-congress-should-do/>



## Summative Performance Task

<b>Summative Performance Task</b>	<b>ARGUMENT</b> Why is the ACA so controversial? Construct an argument ( <i>e.g.</i> , detailed outline, poster, or essay) that addresses the compelling question using specific claims and relevant evidence and information from contemporary sources.
	<b>ACT</b> Create a student guide to the ACA that explains why 12th graders should care about this act. Within the guide, include a list of credible resources for learning more about the ACA.

In this task, students begin by constructing an evidence-based argument responding to the prompt, “Why is the ACA so controversial?” It is important to note that students’ arguments could take a variety of forms. In some cases, teachers may have students complete a detailed outline that includes claims with evidentiary support. In other cases, teachers may want students to write a paper that formalizes their arguments. Teachers’ decisions to do either may be predicated on whether they plan to do the Taking Informed Action exercise described in the next section.

At this point in their inquiry, students have examined the origins, opportunities, shortcomings, and constitutionality of the Affordable Care Act (ACA), in addition to the sustained controversy surrounding its implementation. Students should be expected to demonstrate the breadth of their understandings and their abilities to use evidence from multiple sources to support their distinct claims.

Before engaging in the Summative Performance Task, it may be helpful for students to review the sources provided and the graphic organizers created during the formative performance tasks. Doing so should help them develop their claims and highlight the appropriate evidence to support their arguments. The Evidence Chart below can be used to provide students with support as they build their arguments with claims and evidence.

Students’ arguments likely will vary, but could include any of the following:

- The Affordable Care Act is controversial because of the deep political divides in America.
- The Affordable Care Act is controversial because the law was deeply flawed from inception.
- The Affordable Care Act is controversial because the law is enacting positive change within the health care system and is bound to be economically and/or politically disruptive.

It is possible for students to find support for any of these arguments in the sources provided and through their analyses of the sources. Regardless of the students’ views of the ACA, teachers will want to help them work to write counterclaims so they acknowledge the varied perspectives on the legislation. As Justice Stevens wrote in his dissent in the Supreme Court case *Morse v. Frederick* (Bong Hits for Jesus) (2007), “a rule that permits only one point of view to be expressed is less likely to produce correct answers than the open discussion of countervailing views.”

### Action

This inquiry embeds the Taking Informed Action sequence into the formative and summative performance tasks. The three activities described in this inquiry represent a logic that asks students to (1) *understand* the issues evident from the inquiry in a larger and/or current context, (2) *assess* the relevance and impact of the issues, and (3) *act* in ways that allow students to demonstrate agency in a real-world context.

In Formative Performance Tasks 1, 2, and 3, students work to understand the issue by exploring the foundations for and the initial controversies surrounding the ACA. In Formative Performance Task 4, students begin assessing

the current impact of the legislation by examining contemporary news sources as well as economic and political data aimed at grounding their analyses. Finally, students act within the Summative Performance Task. After constructing their arguments in response to the compelling question, students create a guide to the ACA that answers the question of why 12th graders should care about this controversial act. Within this guide, students might choose to use what they have learned about their age demographic (18 to 26 years) in relationship to the ACA or they may choose to use what they have learned to highlight reasons why 18-year-olds should care about controversial public policy issues. Within the guide, students should note both strengths and weaknesses of the ACA and include a list of credible resources for learning more about the policy. Students should look for opportunities to share and disseminate the guide at a student forum or assembly or on a school or classroom website.





## Evidence Chart

Initial Claim	
What is your opening claim about the controversial nature of the Affordable Care Act? This claim should appear in the opening section of your argument. Make sure to cite your sources.	

Evidence	
What evidence do you have from the sources you investigated to support your initial claim? Make sure to cite your sources.	

Additional Claims	
What are some additional claims you can make that extend your initial claim? Make sure to cite your sources.	

Additional Evidence	
What additional evidence do you have from the sources you investigated that support your additional claims? Make sure to cite your sources.	

Double Check	
What ideas from the sources contradict your claims? Have you forgotten anything? Make sure to cite your sources.	

Pulling It Together	
What is your overall understanding of the compelling question? This should be included in your conclusion. Make sure to cite your sources.	

## Common Core Connections Across the Grade 12 Inquiry

Social studies teachers play a key role in enabling students to develop the relevant literacy skills found in the New York State P–12 Common Core Learning Standards for English Language Arts and Literacy. The Common Core emphasis on more robust reading, writing, speaking and listening, and language skills in general and the attention to more sophisticated source analysis, argumentation, and the use of evidence in particular are evident across the Toolkit inquiries.

Identifying the connections with the Common Core Anchor Standards will help teachers consciously build opportunities to advance their students’ literacy knowledge and expertise through the specific social studies content and practices described in the annotation. The following table outlines the opportunities represented in the Grade 12 Inquiry through illustrative examples of each of the standards represented.

<b>Compelling Question</b>	Why is the ACA so controversial
----------------------------	---------------------------------

Common Core Anchor Standard Connections	
<b>Reading</b>	<p><b>CCSS.ELA-LITERACY.CCRA.R.1</b> Read closely to determine what the text says explicitly and to make logical inferences from it; cite specific textual evidence when writing or speaking to support conclusions drawn from the text.</p> <p>See Formative Performance Task 4: Develop a claim supported by evidence about why the ACA is still controversial.</p> <p><b>CCSS.ELA-LITERACY.CCRA.R.6</b> Assess how point of view or purpose shapes the content and style of a text.</p> <p>See Staging the Compelling Question: Students are prompted to look through the data for trends such as what groups are in favor and what groups are opposed to the ACA according to gender, race/ethnicity, political identification, age, income level, and insurance status.</p> <p><b>CCSS.ELA-LITERACY.CCRA.R.7</b> Integrate and evaluate content presented in diverse media and formats, including visually and quantitatively, as well as in words.</p> <p>See Formative Performance Task 2: Students will form their lists by watching a video (and reading the transcript) from the Kaiser Family Foundation that is meant to inform citizens of the changes happening under the ACA.</p>
<b>Writing</b>	<p><b>CCSS.ELA-LITERACY.CCRA.W.1</b> Write arguments to support claims in an analysis of substantive topics or texts using valid reasoning and relevant and sufficient evidence.</p> <p>See Summative Performance Task: Students create a student guide to the ACA that explains why 12th graders should care about this controversial act. Within the guide, students should note both strengths and weaknesses of the act and include a list of credible resources for learning more about the ACA.</p> <p><b>CCSS.ELA-LITERACY.CCRA.W.5</b> Develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach.</p> <p>See Summative Performance Task: Students develop an outline of their argument using an Evidence chart.</p>
<b>Speaking and Listening</b>	<p><b>CCSS.ELA-LITERACY.CCRA.SL.1</b> Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others’ ideas and expressing their own clearly and persuasively.</p> <p>See Formative Performance Task 3: The formative performance task calls on students to perform a reader’s theater of <i>National Federation of Independent Business v. Sebelius</i> and write a paragraph majority or dissenting opinion on the case.</p>

Language

**CCSS.ELA-LITERACY.CCRA.L.3** Apply knowledge of language to understand how language functions in different contexts, to make effective choices for meaning or style, and to comprehend more fully when reading or listening.

See Appendix A: Affordable Care Act Inquiry Vocabulary: Students use the vocabulary guide to understand words and phrases in complex texts in understanding the law (Formative Performance Tasks 1 and 2) and the Supreme Court Case (Formative Performance Task 3).

## Appendix A: Affordable Care Act Inquiry Vocabulary

Term	Meaning
<b>Affordable Care Act (ACA)</b>	A United States federal statute (the full name is the Patient Protection and Affordable Care Act) signed into law by President Barack Obama on March 23, 2010. The ACA was enacted with the goals of increasing the quality and affordability of health insurance, lowering the uninsured rate by expanding public and private insurance coverage, and reducing the costs of health care for individuals and the government.
<b>amicus curiae</b>	A person who offers information that bears on a court case but does not represent either the petitioners or respondents.
<b>Anti-Injunction Act</b>	A United States federal statute that prohibits any federal court from issuing an injunction against proceedings in any state court.
<b>Commerce Clause</b>	Clause that states that the United States Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."
<b>Federal Poverty Level (FPL)</b>	Baseline income level where poverty is less than a given number per the size of a family. The FPL determines eligibility for Medicaid programs.
<b>Health and Human Services (HHS)</b>	US government department concerned with issues of health.
<b>individual mandate</b>	An individual mandate is a requirement by law that certain persons purchase or otherwise obtain a good or service.
<b>jurisprudence</b>	The study and theory of law.
<b>Kaiser Family Foundation</b>	Nonprofit organization that aims to promote health reform.
<b>Medicaid</b>	United States health care system for families and individuals with low income and limited resources.
<b>Medicare</b>	Federal insurance program began in 1966, which guarantees access to insurance for people aged 65 years and older who paid into Social Security and young people with disabilities.
<b><i>National Federation of Independent Business v. Sebelius</i></b>	A landmark United States Supreme Court decision in which the court upheld Congress's power to enact most provisions of the Patient Protection and Affordable Care Act (ACA), commonly called Obamacare.
<b>Obamacare</b>	Another term for the Affordable Care Act.
<b>petitioners</b>	The party that has called for a court to solve a legal issue.
<b>pre-existing condition</b>	Medical condition that existed before a person had insurance coverage .
<b>rebuttal</b>	Evidence that is provided to invalidate or nullify other evidence.
<b>respondents</b>	A person or party that is called on to issue a response to a petitioner.
<b>Severability Clause</b>	Provision dealing with contracts, which states that if one part of the contract is deemed illegal, then the whole contract must be struck down or nullified.
<b>solicitor general</b>	Person chosen to represent the United States before the Supreme Court.
<b>state exchanges</b>	Organizations set up to facilitate the purchase of health insurance in each state in accordance with Patient Protection and Affordable Care Act.

## Appendix B: Additional Resources for Teaching this Inquiry

### Books

- Josh Blackman, *Unprecedented: The Constitutional Challenge to Obamacare*. New York: Public Affairs, 2013.
- Ezekiel Emanuel, *Reinventing American Healthcare: How the Affordable Care Act Will Improve Our Terribly Complex, Blatantly Unjust, Outrageously Expensive, Grossly Inefficient, Error Prone System*. New York: Public Affairs, 2014.
- Diana E. Hess, *Controversy in the Classroom: The Democratic Power of Discussion*. New York: Routledge, 2009.

### Articles

- Diana E. Hess, “Discussing Controversial Public Issues in Secondary Social Studies Classrooms: Learning from Skilled Teachers,” *Theory and Research in Education* 30, no. 1 (2002): 10–41.  
<https://dlib.lib.washington.edu/dspace/bitstream/handle/1773/7549/9907909.pdf?sequence=1>.
- Sara Rosenbaum, “The Patient Protection and Affordable Care Act: Implications for Public Health Policy and Practice” *Public Health Reports* 126, no. 1 (2011): 130–135.  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001814/>.

### Websites

- “Why is Obamacare So Controversial?” *BBC News*, March 28, 2014. <http://www.bbc.com/news/world-us-canada-24370967>.
- “Analysis of the Arguments — The Supreme Court Health Care Challenges,” *New York Times*, March 28, 2014 [http://www.nytimes.com/interactive/2012/03/27/us/27scotus.html?\\_r=0](http://www.nytimes.com/interactive/2012/03/27/us/27scotus.html?_r=0). (Note: the website contains audio recordings.)
- Center for Media Literacy. <http://www.medialit.org>.
- Project Look Sharp. <http://www.projectlooksharp.org>.
- “Discussing Controversial Issues: Public Issues Discussion.” <http://www.lawanddemocracy.org/discussionpi.html>.

## Appendix C: Key Questions to Ask When Analyzing Media Messages

PROJECT <b>LOOK SHARP</b>		NAMLE
<b>AUDIENCE &amp; AUTHORSHIP</b>	<b>AUTHORSHIP</b>	Who made this message?
	<b>PURPOSE</b>	Why was this made? Who is the target audience (and how do you know)?
	<b>ECONOMICS</b>	Who paid for this?
	<b>IMPACT</b>	Who might benefit from this message? Who might be harmed by it? Why might this message matter to me?
	<b>RESPONSE</b>	What kinds of actions might I take in response to this message?
<b>MESSAGES &amp; MEANINGS</b>	<b>CONTENT</b>	What is this about (and what makes you think that)? What ideas, values, information, and/or points of view are overt? Implied? What is left out of this message that might be important to know?
	<b>TECHNIQUES</b>	What techniques are used? Why were those techniques used? How do they communicate the message?
	<b>INTERPRETATIONS</b>	How might different people understand this message differently? What is my interpretation of this and what do I learn about myself from my reaction or interpretation?
<b>REPRESENTATIONS &amp; REALITY</b>	<b>CONTEXT</b>	When was this made? Where or how was it shared with the public?
	<b>CREDIBILITY</b>	Is this fact, opinion, or something else? How credible is this (and what makes you think that)? What are the sources of the information, ideas, or assertions?

Project Look Sharp, Ithaca College. © 2015. <http://www.projectlooksharp.org/?action=medialithandouts>.