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-NEW DEVELOPMENTS-

PeopleV.US v. OBAMA:[1] AN ANALYSIS OF RELIGIOUS CHALLENGES TO THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

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[1] PeopleV.US v. Obama, No. 2:10-cv-01477 (D. Nev. filed Aug. 31, 2010).

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I. INTRODUCTION

"Modern Health Care for All Americans."[3] This was one of the central tenets on which President Obama built his 2008 campaign for the highest political office in the nation.[4] The now Chief Executive of the United States made good on his promise with the signing of the Patient Protection and Affordable Care Act ("PPACA") on March 23, 2010.[5] However, as benevolent as the intentions of Obama's push for health care reform may have been, the response by Americans has been varied, with many opposing the reform package on economic, political, or constitutional grounds.

Numerous lawsuits have been filed by state Attorneys General against the federal government, challenging the constitutionality of the PPACA's requirement that all Americans maintain health care coverage or face tax penalties.[6] While the primary focus in the media has been on these lawsuits, U.S. citizens are also heading to the courts. On August 31, 2010, a class action lawsuit, *PeopleV.US v. Obama*, was filed in a Nevada federal court, challenging the PPACA.[7] The class plaintiffs claim that the bill's requirement that all U.S. citizens and residents maintain health care coverage violates: (1) The Free Exercise Clause of the First Amendment[8]; (2) The Establishment Clause of the First Amendment[9] and; (3) The Religious Freedom Restoration Act of 1993 ("RFRA").[10]

Judge James C. Mahan of the United States District Court for the District of Nevada will be forced to decide whether the PPACA violates the First Amendment religious rights of the

[3] Barack Obama, *Perspective: Health Care Reform and the Presidential Candidates*, 359 NEW ENG. J. MED. 1537, 1538 (2008), *available at* http://www.nejm.org/doi/pdf/10.1056/NEJMp0807677. Obama wrote, "[w]e need health care reform now. All Americans should have high quality, affordable medical care that improves health and reduces the burdens on providers and families . . . I believe that by working together we can make these goals a reality." *Id.*

[4] *See* Organizing for America: Organizing on the Issues, http://www.barackobama.com/issues/ (last visited Sept. 19, 2010).

[5] Patient Protection and Affordable Care Act, H.R. 3590, 111th Cong. (2d Sess. 2009). The PPACA is a comprehensive health care bill enacted in order to "expand health care coverage to 31 million currently uninsured Americans through a combination of cost controls, subsidies and mandates." *Id.*

[6] *See* Karen Pierog et. al, *States Launch Lawsuits Against Health Care Plan*, REUTERS, Mar. 22, 2010, http://www.reuters.com/article/idUSTRE62L3B820100322.

[7] PeopleV.US v. Obama, No. 2:10-cv-01477 (D. Nev. filed Aug. 31, 2010).

[8] U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof*") (emphasis added).

[9] *Id.* ("Congress *shall make no law respecting an establishment of religion*") (emphasis added).

[10] Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(a)-(b) (2010). RFRA states that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," except where the government action "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." *Id.*

plaintiffs, as well as any rights guaranteed by RFRA. This article will first examine the history and details of the PPACA. Next, the article will describe the plaintiffs and their specific objections to the PPACA, focusing on their religious challenges. Third, the article will examine these challenges in relation to First Amendment and RFRA jurisprudence and policy. Finally, the article will assess the merits of the *PeopleV.US v. Obama* lawsuit and make predictions as to the future litigation of the suit.[11]

II. THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

The signing of the PPACA signifies the materialization of a one hundred-year effort to reform health care in the United States.[12] Health care reform took center-stage during the 2008 election, when then-Senator Barack Obama promised sweeping reform of the health care system.[13] During his campaign, Obama set forth his vision for universal health care, focusing primarily on access to care, the elimination of waste of health care resources, and the establishment of a public health infrastructure that would work in conjunction with the medical system to improve health care overall.[14] Barack Obama was elected President on November 4, 2008.

Upon being sworn into office on January 20, 2009, President Obama quickly focused his efforts on following through with his promise for health care for all U.S. citizens and residents. On March, 5, 2009, he brought together representatives from Congress, industry, and unions in order to have a forum to launch his health care reform efforts.[15] Four months later, House Democrats introduced the Affordable Health Choices Act of 2009 (also known as the "public

[11] PeopleV.US v. Obama, No. 2:10-cv-01477 (D. Nev. filed Aug. 31, 2010).
[12] Karen S. Palmer, Speech at the Physicians for a National Health Program Meeting (Spring 1999) (transcript available at http://www.pnhp.org/facts/a_brief_history_universal_health_care_efforts_in_the_us.php?page=all).
[13] Nick Divito, *Class Action Challenges Federal Health Care*, COURTHOUSE NEWS SERVICE, Aug. 31, 2010, http://www.courthousenews.com/2010/08/31/30017.htm.
[14] Obama, *supra* note 3, at 1538. During the campaign, Barack Obama's proposal for health care reform encompassed three main tenets: (1) that "all Americans should have access the benefits of modern medicine;" (2) the elimination of waste in the medical system; and (3) a medical system that promotes disease prevention and improved health. *Id.*
[15] Will Dunham, *Timeline: Milestones in Obama's Quest for Health care Reform*, REUTERS, Mar. 22, 2010, http://www.reuters.com/article/idUSTRE62L0JA20100322. At the time, Obama was determined to pass a plan by the end of 2009. *Id.*

option"), in an effort to implement health care reform by the end of 2009.[16] The bill's efforts were derailed by Republican opposition and the Senate Finance Committee's rejection of the proposed plan.[17] The implementation of the public option was further stunted by the election of Republican Scott Brown to replace the late-Senator Edward Kennedy.[18] After Brown's election, Democrats set aside their health care reform efforts because Brown's opposition to the public option would have left them short of the sixty votes necessary to overcome a filibuster, a necessary condition for the bill to advance.[19]

Finally, on February 22, 2010, President Obama unveiled his own health care reform bill.[20] A summit was held with Republican opponents three days later.[21] Ultimately, on March 21, 2010, the House of Representatives approved the bill and sent it to the Senate for approval.[22] After Senate approval, Obama signed the bill into law on March 23, 2010.[23] Subsequent to its enactment, the PPACA was modified by the Health Care and Education Reconciliation Act, which was signed on March 30, 2010.[24]

While complex and lengthy in its text, the PPACA is broken down into a number of steps to be accomplished over the next six years.[25] The purpose of these steps is "to improve the U.S.

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[16] *Id.*

[17] Jonathan Karl & Z. Byron Wolf, *Senate Finance Committee Rejects Public Option Proposal in Health Care Bill*, ABC NEWS, Sept. 29, 2009, http://abcnews.go.com/Politics/Health care/senate-finance-committee-vote-public-option-health-care/story?id=8701097. Republicans opposed the public option on the grounds that the bill would result in a litany of tax increases, impose substantial fines on those unable to obtain coverage, and would put a great burden upon the states to pay for health care costs. *Id.*

[18] Dunham, *supra* note 15.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Posting of Jesse Lee to The White House Blog, http://www.whitehouse.gov/blog/2010/03/23/behalf-my-mother (Mar. 23, 2010, 13:33 EST). Obama signed the bill with great emotion. *Id.* He made reference to a number of individuals for whom he signed the bill, including his own mother, who he said, "argued with insurance companies even as she battled cancer in her final days." *Id.*

[24] *See* Health Care and Education Reconciliation Act of 2010, H.R. 4872, 111th Cong. (2d Sess. 2010). The Act modified the calculation of the refundable tax credit for premium assistance for coverage under a qualified health plan, reduced the penalty imposed on individuals for declining to enroll in a health plan, altered the PPACA's definition of "modified adjusted gross income," and made a number of other changes to the provisions of the PPACA. *Id.*

[25] *See* Inside the Patient Protection and Affordable Care Act: What Healthcare Reform Entails, http://www.fivecentnickel.com/2010/03/22/inside-the-patient-protection-and-affordable-care-act-what-healthcare-reform-entails/ (last visited Sept. 19, 2010). The first few years will focus on extending coverage to currently uninsured individuals through the use of temporary insurance. *Id.* In 2012, the focus will shift to reform hospitals and practitioner quality of care. *Id.* Tax consequences related to the new insurance scheme will go into effect in 2013. *Id.* Finally, in 2014, the new insurance scheme will go into full effect. *Id.*

health care system by expanding coverage, improving quality of care, reforming government programs, reducing costs, increasing focus on wellness/prevention, and reforming the payment and delivery systems."[26] The implementation of the PPACA will culminate in 2014 when state health insurance exchanges for small businesses and individuals will open, and uninsured individuals will be required to obtain minimum essential coverage or begin facing a fine.[27]

With regard to minimum coverage and the fine, the PPACA mandates that as of January 1, 2014, every U.S. citizen and resident must obtain federally "qualified" health insurance or pay a penalty, known as the "annual shared responsibility payment."[28] This requirement is known as the PPACA's "individual mandate."[29] Qualified insurance plans include government-sponsored programs, employer-sponsored plans, privately purchased plans, grandfathered health plans, and other coverage recognized by the federal government.[30] The failure of an individual to obtain and maintain the minimum coverage will result the individual paying "a tax penalty of the greater of $695 per year up to the maximum of three times that amount ($2085) per family or 2.5% of household income."[31] This penalty will go into effect gradually, beginning in 2014 and coming to fruition in 2016.[32] At that point, the penalty will increase annually, factoring in the cost-of-living adjustment.[33]

The PPACA provides a few exceptions to the required minimum coverage and annual shared responsibility payments for individuals with financial difficulties, and for those who belong to certain religions or religious institutions. The first religious exemption under the PPACA is entitled the "Religious Conscience Exemption." This exemption allows individuals who are "members of religions that have established tenets or teachings that bar the 'acceptance of the benefits of any private or public insurance,'" to escape the minimum coverage and annual shared responsibility payments.[34] It is important to note that this exemption does not extend to

[26] Expected Changes Effective 2010, at 1 (2010), https://www.benefitmall.com/portal/EmailArchive/eede59f7-c798-465c-bf7c-e63f4ec2b0f6.pdf.
[27] Inside the Patient Protection and Affordable Care Act: What Healthcare Reform Entails, *supra* note 25.
[28] Class Action Compl. for Declaratory and Injunctive Relief at ¶¶ 97-99, PeopleV.US v. Obama, No. 2:10-cv-01477 (D. Nev. Aug. 31, 2010).
[29] Inside the Patient Protection and Affordable Care Act: What Healthcare Reform Entails, *supra* note 25.
[30] 26 U.S.C. § 5000A (2010).
[31] The Henry J. Kaiser Family Foundation: *Focus on Health Reform: Summary of New Health Reform Law*, at 1, Mar. 26, 2010, http://www.kff.org/healthreform/upload/8061.pdf.
[32] *Id.*
[33] *Id.*
[34] *Health Care Bill Exemptions*, NEWS ON HEALTH CARE, Sept. 20, 2010, http://www.newsonhealth care.com/health care-bill-exemption/.

individuals who personally object to insurance requirements for religious reasons, but only to those individuals who are part of a denomination that as a whole is against insurance requirements.[35]

The second religious exemption under the PPACA is for individuals who belong to a "Health Care Sharing Ministry." A "Health Care Sharing Ministry," as defined by Section 501(c)(3) of the PPACA, "[h]as members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs, and without regard to the State in which a member resides or is employed."[36] A limited group of individuals qualify for this exemption.

III. PEOPLE V.US V. OBAMA COMPLAINT

A. Background on the Plaintiffs

The complaint in *People V.US v. Obama* was filed in the United States District Court for the District of Nevada on August 31, 2010.[37] The lawsuit was filed by attorney Joel F. Hansen, Esq., a partner at Hansen Rasmussen, LLC in Las Vegas, Nevada.[38] This lawsuit is not the first lawsuit that Mr. Hansen has undertaken challenging federal legislation on religious grounds. In 2007, he represented Jonathan J. Hansen and Jonathan's son in a cause of action against the U.S. Department of the Treasury, claiming that for religious reasons, Jonathan and his son should be exempt from paying self-employment Social Security taxes.[39]

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[35] *Id.* Examples of such denominations include the Amish and Christian Scientists. *Id.*

[36] *Id.* The organization of members must have been in existence as of December 31, 1999, and must have shared medical expenses continuously since this time. *Id.* The ministry must also conduct an annual audit in accordance with the generally accepted accounting principles set forth by the Financial Accounting Standards Board and the Securities and Exchange Commission. *Id.*

[37] Compl. at ¶ 1.

[38] Joel F. Hansen for Attorney General, http://www.votejoelhansen.com/ (last visited Jan. 24, 2011).
Joel F. Hansen was admitted to the Nevada bar in 1978 after obtaining his J.D. from Brigham Young University. *Id.* Mr. Hansen sought election to become the Nevada Attorney General, however he lost the election, and Catherine Cortez Mastro was reelected. *Id.* His platform rested primarily on his challenge to the PPACA through this impending lawsuit. *Id.* His campaign website even links to a webpage that provides information about the lawsuit, and allows visitors to join in the suit. *Id.*

[39] Hansen v. Dep't of Treasury, 528 F.3d 597, 599 (9th Cir. 2007). As a general principle, Jonathan Hansen did not believe in obtaining a social security number. *Id.* He claimed that his son should not have to obtain a social security number to claim a tax deduction. *Id.* The cause of action was dismissed for lack of subject matter jurisdiction, and also because the plaintiff did not specify the statutes and regulations to which he objected. *Id.* at 602-03.

Mr. Hansen was hired by the organization PeopleV.US to file this lawsuit against the government, claiming that the PPACA "violates 60% of the Bill of Rights," and that private individuals must mobilize in order to assert their rights.[40] PeopleV.US is a non-profit organization made up of various professionals, including lawyers and political consultants.[41] The mission of this organization is to uphold the Constitution of the United States in the face of legislation that violates the rights it guarantees.[42] The group's fundraising efforts have been led by Tony Dane, the first named individual plaintiff in the complaint.[43] Joining PeopleV.US in this cause of action are two other groups that focus on conservative values and the upholding of the Constitution: The Independent American Party of Nevada[44] and the Nevada Eagle Forum.[45]

The other members of the class of plaintiffs are individuals whose beliefs and interests are aligned with the aforementioned organizations. These individuals have joined in the lawsuit in order to defend individual constitutional rights from the "socialistic . . . and compelled system of beliefs" of the PPACA.[46] While various state Attorneys General have filed lawsuits, challenging that the PPACA violates the rights of states, those actions focus primarily on Tenth Amendment violations.[47] The plaintiffs feel that the filing of this class action is necessary to address individual rights.[48] It is important to note that under the terms of the PPACA, none of

[40] Traci Pistocco, *PeopleV.Us Filed Comprehensive Suit on ObamaCare*, PRNEWSWIRE, Sept. 1, 2010, http://www.prnewswire.com/news-releases/peoplevus-files-comprehensive-suit-on-obamacare-101961853.html.
[41] PeopleV.US, About, http://www.peoplev.us/about.aspx (last visited Sept. 19, 2010).
[42] *Id.*
[43] Kasie Hunt, *Health Care Opposition Groups Fund GOP Challengers*, POLITICO, Aug. 9, 2010, http://www.politico.com/news/stories/0810/40839.html.
[44] Independent American Party: Nevada State Affiliate of the National Constitution Party, http://www.iapn.org/newiap/2010aboutus.html (last visited Sept. 20, 2010). The Independent American Party of Nevada was founded in 1967 by Daniel M. Hansen, a business owner and ex-Republican activist. *Id.* Joel Hansen, the lawsuit's attorney, is currently serving as a National Committee Alternate for the party, on its list of Officers and Directors for 2010. *Id.*
[45] Alex Constantine's Anti-Fascist Encyclopedia, *The "No. 1 Conservative in Nevada" – Eagle Forum Christo-Fascist & Teabagger is Janine Hansen—is Running in State Assembly Race*, INDEPENDENT POLITICAL REPORT, Mar. 10, 2010, http://www.antifascistencyclopedia.com/allposts/the-no-1-conservative-in-nevada-eagle-forum-christo-fascist-janine-hansen-is-running-in-state-assembly-race. The Nevada Eagle Forum is also closely tied to Hansen, as his sister, Janine Hansen serves as the organization's State President and Constitutional Issues Chairman. *Id.* The organization is concerned with the preservation of marriage and family, and opposing abortion and women in the military. *Id.*
[46] Ryan J. Reilly, *Nevada Man Sues Over Health Care, Calls 'Socialistic' Law 'Involuntary Servitude,'* TMP MUCKRAKER, Sept. 6, 2010, http://tpmmuckraker.talkingpointsmemo.com/2010/09/nevada_christian_sues_over_health_care_calls_socialistic_law_involuntary_servitude.php.
[47] *Id.*
[48] *Id.*

the plaintiffs qualify for either the financial hardship exemption or the religious exemption to the individual mandate or annual shared responsibility payment.

B. The Specific Claims of the Complaint

The plaintiffs of the *PeopleV.US v. Obama* class action assert that the PPACA's requirement that all U.S. citizens and residents maintain health care coverage or pay a penalty violates a spectrum of Constitutional and other federally guaranteed rights.[49] The claimants assert that Congress does not have the authority under the Constitution to "compel citizens who have not purchased, and do not wish to purchase, health insurance or to make that purchase as a condition of living and residing within a state of the United States."[50]

Specifically, the plaintiffs challenge the constitutionality of the PPACA's insurance requirement and the Congressional action leading to the PPACA under eight different amendments of the Bill of Rights, the Commerce Clause, and RFRA.[51] With regard to religious objections, the claimants argue that the requirement that all U.S. citizens and residents maintain health care coverage violates the Establishment Clause of the First Amendment, the Free Exercise Clause of the First Amendment, and the terms of RFRA.[52]

In order to illustrate the potential injury to be suffered by the plaintiffs at the hands of the PPACA's individual mandate, the complaint details the financial obligations of the plaintiffs

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[49] Compl. at ¶ 4.

[50] *Id.*

[51] *Id.* at ¶¶ 5-18.

> Plaintiffs challenge the constitutionality of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act under the enumerated powers of Article I to the Constitution; the Commerce Clause; the freedom of association protected by the First Amendment to the Constitution; the rights of conscience and the free exercise of religion protected by the First Amendment to the Constitution; the due process provisions of the Fifth Amendment Due Process Clause; the liberty provision of the Fifth Amendment Due Process Clause; the rights retained by the People under the Ninth Amendment, and the powers reserved to the State of Nevada and the People under the Tenth Amendment; the right to Equal Protection under the Fifth Amendment ; the right to privacy protected as a liberty right under the Fourth and Fifth Amendment [sic], as a right retained by and reserved to the people under the Ninth Amendment and Tenth Amendment; and as emanating from *inter alia*, the First, Third, Fourth, Fifth, and Ninth Amendments to the Constitution; the right to be free from involuntary servitude protected by the Thirteenth Amendment; and the rights protected under the Fourteenth Amendment to the Constitution.
>
> *Id.* at ¶ 5 (citations omitted).

[52] *Id.* at ¶¶ 9, 17-18.

over the next ten years relative to paying the penalty for not purchasing coverage. It notes that over that time, each plaintiff will have to pay a minimum of $3,895 dollars if he or she declines to purchase coverage.[53] The complaint then claims that the plaintiffs are harmed by these expenses because, "they are compelled to adjust their fiscal affairs now to prepare themselves to pay thousands of dollars over the next several years as required by the PPACA's mandate that Plaintiffs purchase an approved health insurance policy."[54]

The meat of the complaint is in the details of the plaintiffs' specific allegations. In total, the complaint sets forth the details of ten different plaintiff groups' rationales for challenging the PPACA on constitutional grounds. With regard to religious objections, the complaint elaborates on the beliefs and allegations of three different sets of plaintiffs (some overlapping) with specific personal and constitutional objections to the PPACA. Understanding the content of these objections is crucial for evaluating the merits of the religious objections under contemporary constitutional law.

The first group of plaintiffs noted in the complaint as objecting to the PPACA on religious grounds is the "Abortion-Free Exercise Clause Christian Religious Pro-Life Abortion Objectors."[55] These objectors' primary assertion is that by either obtaining minimal coverage or paying the penalty fee, their religious beliefs on abortion will be compromised because the government will fund abortions through the PPACA.[56]

The second group of plaintiffs consists of Tracie Pistocco and Christopher Hansen, who are identified in the complaint under the heading, "Anti-Socialism Religious Objector-Free Exercise Clause."[57] They argue that the PPACA is part of a socialistic belief system that is a form of state religion that conflicts with the Free Exercise Clause of the First Amendment.[58]

[53] *Id.* at ¶ 19.
[54] *Id.* at ¶ 21.
[55] Compl. at ¶ 71. This group, made up of individuals, Ivy Hippler and Janine Hawkins, as well as the members of PeopleV.US, all identify themselves as "Christians." *Id.* Janine Hopkins is identified specifically as a member of the Church of Jesus Christ of Latter Day Saints, also known as the Mormon Church. *Id.*
[56] *Id*. at ¶ 74.
[57] *Id.* at ¶¶ 73-74.
[58] *Id.* Ms. Pistocco believes that acts of charity are and should be limited to commands of the Bible. *Id.* She asserts that the annual shared responsibility payment that the PPACA demands of individuals who fail to obtain minimum coverage is a form of forced charity that is in direct conflict with her Christian beliefs and practices. *Id.* Similarly, Mr. Hansen asserts that the PPACA "destroys his ability to exercise his religion according to the dictates of his own conscience," because he views the devil as the originator of forced charity. *Id.*

Both plaintiffs allege that in declining to obtain coverage, they will be forced to contribute charitable funds to a socialist religion through the annual shared responsibility payment.[59]

Also asserting that the PPACA is an extension of a socialist religion, the third group of plaintiffs challenges the constitutionality of the act under the Establishment Clause of the First Amendment. Tony Dane and Gale Carlton assert that the PPACA "is the establishment of Socialism as a civil/secular religion, and compels participation in this state-sponsored religion by way of the Individual Mandate and the annual shared responsibility payment."[60] In their opinion, such an establishment of a secular religion undercuts the First Amendment guarantee that the government will never establish a national religion.[61] All of the mentioned plaintiffs also incorporate these objections into their assertion that the PPACA violates RFRA for forcing them to choose between subscribing to a system of health care that is repugnant to their religious beliefs, or paying a financially burdensome penalty.[62]

IV. RELEVANT FIRST AMENDMENT AND RFRA JURISPRUDENCE AND ANALYSIS OF THE CLAIMS

A. First Amendment Free Exercise Clause Jurisprudence and Analysis

The plaintiffs' claim that the individual mandate of the PPACA violates the Free Exercise Clause of the First Amendment is likely to fail because free exercise protection is only warranted when a law or regulation is aimed at curtailing the exercise of religious beliefs, or when an individual lawfully objects to a neutral law because of organized religious beliefs. Current Free Exercise Clause analysis must be undertaken within the framework of the test enunciated by the United States Supreme Court in *Emp't Div. v. Smith*.[63] In *Smith*, the Court held that while laws aimed at infringing upon religious beliefs violate the Free Exercise Clause of the First Amendment, belief infringement that is "merely the incidental effect of a generally applicable

[59] *Id.* at ¶ 73.
[60] *Id.* at ¶ 76.
[61] Compl. at ¶ 76.
[62] *Id.* at ¶¶ 223, 227.
[63] Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 878 (1990). In *Smith*, Respondents were denied unemployment benefits after being discharged from their jobs for violating an Oregon state law prohibiting the use of hallucinogens. *Id.* at 874. The Respondents engaged in the use of peyote as part of a religious ceremony in their Native American faith. *Id.* The Court held that because the use of peyote was prohibited by a state law that was not aimed at religion, the Respondents' rights under the Free Exercise Clause of the First Amendment had not been infringed upon. *Id.* at 890.

and otherwise valid provision" does not constitute a First Amendment violation.[64] Applying the *Smith* framework to the free exercise claims of the plaintiffs of *PeopleV.US v. Obama* illustrates that these claims will likely fail because the PPACA is a secularly valid law with a main purpose that is wholly unrelated to interference with religious beliefs.[65]

In *Smith*, Justice Antonin Scalia, writing for the majority, articulated the current legal conception of protection under the Free Exercise Clause when he declared that free exercise protection only extends to individuals when a law or regulation has the purpose of infringing upon their religious beliefs.[66] Scalia elaborated on this holding by reasoning that the government has an interest in enforcing laws that prohibit "socially harmful conduct."[67] This interest would be undercut by a broad reading of protection under the Free Exercise Clause because such an interpretation would "permit every citizen to become a law unto himself."[68]

Further narrowing the scope of free exercise protection, Justice Scalia pronounced that states need not provide a compelling interest for those laws that have an incidental effect on religious beliefs, because requiring a compelling interest would create "a private right to ignore generally applicable law."[69] He drew a comparison between the application of a "compelling interest" test to laws that limit the content of free speech, and such application here, noting that "we have held that generally applicable laws unconcerned with regulating speech that have the

[64] *Id.* at 878.
[65] PeopleV.US v. Obama, No. 2:10-cv-01477 (D. Nev. filed Aug. 31, 2010).
[66] *Smith*, 494 U.S. at 878. Scalia took great pains to distinguish *Smith* from the Court's prior holdings in *Sherbert v. Verner* and *Thomas v. Review Bd. of the Ind. Emp't Sec. Div*. where a broad reading of free exercise protection was implied. *Id.* at 883 (citing Sherbert v. Verner, 374 U.S. 398, 407-409 (1963) (holding where a woman was discharged from her job for refusing to work on the Sabbath Day of her religion, the denial of benefits was impermissible because only a compelling state interest can override the free exercise guarantee of the First Amendment); Thomas v. Review Bd. of the Ind. Sec. Div., 450 U.S. 707, 720 (1981) (holding that a man who failed to work on turrets for military equipment because such work conflicted with his religion's prohibition on working on the production of war materials was protected by the Free Exercise Clause because a neutral law that "unduly burdens the free exercise of religion" offends the Constitution) (citing Wisconsin v. Yoder, 406 U.S. 205, 220 (1972)). Scalia noted that "a distinctive feature of unemployment compensation programs is that their eligibility criteria invite consideration of the particular circumstances behind an applicant's unemployment," and where an individual has "good cause" for employment termination, related to religion, an exception to unemployment regulations should be made. *Smith*, 494 U.S. at 884.
[67] *Id.* at 885. Scalia illustrated the potential slippery slope of claims that would arise under a broad reading of the free exercise protection, by pointing to the Court's recent decision in *United States v. Lee. Id.* at 889; United States v. Lee, 455 U.S. 252, 261 (1982). In *Lee*, an Amish man sought an exemption from paying Social Security taxes because the Amish generally oppose participation in government welfare programs. 455 U.S. at 256. The majority observed that the man did not fit into the legal exemption from contributing to Social Security, and held that he was not exempt because "it would be difficult to accommodate the comprehensive social security system with myriad exceptions flowing from a wide variety of religious beliefs." *Id.* at 259-260.
[68] *Smith*, 494 U.S. at 879.
[69] *Id*. at 886.

effect of interfering with speech do not thereby become subject to compelling-interest analysis under the *First Amendment*."[70] He also warned of the difficulty that courts would face if they were forced to determine which religious beliefs are central or important enough to warrant application of the "compelling interest" test.[71]

The last significant declaration from the *Smith* holding that pronounces a narrow application of free exercise protection is Justice Scalia's proclamation that while states may create religious exemptions for certain secular laws, they are not required to do so.[72] He again implicates the slippery slope that would arise if religious exemptions were mandatory, identifying an unlimited range of laws and "civil obligations" that would be subject to a litany of exemptions: laws concerning payment of taxes, child neglect, military services, animal cruelty, etc.[73]

Analyzed under the framework of *Smith*, the Free Exercise Clause violations asserted by the plaintiffs in *PeopleV.US v. Obama* are not likely to withstand free exercise legal scrutiny, primarily because the PPACA is a secular law. The goal of the PPACA is to provide greater access to health care for all U.S. citizens and residents. Such an aim is consistent with the government's interest in promoting general social welfare. The purpose of the act is neutral and does not purport to interfere with the exercise of religious beliefs. Although the plaintiffs contend that the PPACA interferes with their exercise of religion because the act imposes a set of Socialist or Marxist beliefs on U.S. citizens and residents, the truth of this claim is irrelevant to free exercise analysis because the imposition of values is not the purpose of the act. Rather, as Justice Scalia articulated in *Smith*, to regard neutral laws that have an incidental effect on religious practice as warranting the protection of the Free Exercise Clause of the First Amendment would essentially place the beliefs of individuals above the laws of the United States.[74] Allowing the beliefs of individuals to trump state and federal law and to permit individuals to ignore the law would undercut the legal system.

Following from this concern for usurpation of federal law, the plaintiffs' free exercise claims are also likely to fail because the federal government will not be subject to the "compelling interest" test. Put simply, because Congress did not enact the PPACA with the

[70] *Id.* at 886 (citing Citizen Publ'g Co. v. United States, 394 U.S. 131, 139 (1969)).
[71] *Id.* at 886-87.
[72] *Id.* at 888-89.
[73] PeopleV.US v. Obama, No. 2:10-cv-01477 (D. Nev. filed Aug. 31, 2010).
[74] *Smith*, 494 U.S. at 879.

intention of either dissuading individuals from their religious beliefs or imposing a system of religious beliefs on society, the government will not have to justify its interest in creating and enforcing the act, under free exercise analysis.

Finally, the plaintiffs are unlikely to succeed in asserting their free exercise claims because they do not fall under the religious exemptions of the PPACA carved out by Congress. As Justice Scalia pronounced in *Smith*, the government is not obligated to draft a religious exemption for a neutral law; however, in drafting the PPACA, Congress chose to include such exemptions.[75] The plaintiffs here do not fall under the PPACA's exemption for members of organized religions that object to government health care as a main tenet of their belief system, nor are the plaintiffs exempted under the "Health Care Sharing Ministries" exemption.[76] Rather, as evidenced by the language utilized in the complaint, the plaintiffs object to the PPACA on individual grounds, stemming from their religious beliefs.[77] Consistent with Scalia's observation in *Smith*, recognition of an exemption for all individuals who challenge the PPACA for religious reasons could ultimately lead to limitless exceptions to nearly any law or regulation.[78]

Furthermore, the plaintiffs do not actually object to the PPACA's individual mandate. They object to the act's potential funding of abortion and what they see as the act's imposition of Socialist or Marxist beliefs upon Americans. Unlike the Amish and Christian Scientists, who believe as a tenet of their faith that organized health care is in direct opposition of their beliefs, these plaintiffs make no such assertion. The plaintiffs object to the PPACA on the premise that the funds that they will pay through the annual shared responsibility payments will ultimately fund abortion, and because they envision these payments to be forced contributions to charity under a Socialist or Marxist system.[79] The plaintiffs' failure to contend that the actual individual mandate interferes with their religious beliefs further supports Justice Scalia's reasoning that exemptions should not be required, for fear of potential abuse.

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[75] *Id.* at 888-89.

[76] News on Health Care, *supra* note 34.

[77] Compl. at ¶ 71 ("Based on *their* deeply held religious beliefs and convictions, these Plaintiffs object to being forced by the federal government to contribute in any way to the funding of abortion") (emphasis added); *Id*. at ¶ 74 ("In *his* belief, Satan is the founder of compelled 'charity,' which violates the principles set forth in the scriptures in which *Christopher Hansen* believes . . . .") (emphasis added).

[78] *Smith*, 494 U.S at 888.

[79] Compl. at ¶¶ 71, 73. The plaintiffs will face additional challenges in advancing their objections to the PPACA's use of federal funds for abortion because President Obama pronounced that, "[t]he [PPACA] specifically prohibits the use of tax credits and cost-sharing reduction payments to pay for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered) in the health insurance exchanges that will be operational in 2014." Exec. Order No. 13,535, 3 C.F.R. 13535 (Mar. 24, 2010).

B. First Amendment Establishment Clause Jurisprudence and Analysis

The merit of the plaintiffs' claim that the PPACA violates the Establishment Clause of the First Amendment is uncertain, as the outcome of Establishment Clause analysis will ultimately turn on the Court's willingness to construe "religion" broadly to include Socialism or Marxism, as suggested by the plaintiffs and the case law they use in support of their position. In *Lemon v. Kurtzman*, the United States Supreme Court set forth three criteria that a government action must satisfy in order to withstand an Establishment Clause challenge: A government action must "(1) reflect a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion; and (3) the action must avoid an excessive government entanglement with religion."[80] The application of this test turns upon the definition of "religion," which was construed broadly by the Supreme Court in *United States v. Seeger* and *Welsh v. United States*.[81] The success of the plaintiffs' assertion that the PPACA violates the Establishment Clause of the First Amendment for proliferating Socialist values depends upon the application of the *Lemon* test to the PPACA and the definition of "religion" that the Court maintains.

In *Lemon*, Chief Justice Burger, writing for the majority, pronounced the *Lemon* test as a culmination of "criteria developed by the Court over many years."[82] In clarifying the reach of the Establishment Clause of the First Amendment, Burger determined that the Court's holding "[does] not call for total separation between church and state; total separation is not possible in

[80] Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). In *Lemon*, the Supreme Court addressed Establishment Clause challenges to Pennsylvania and Rhode Island statutes that provided state funds to religiously affiliated elementary and secondary schools. *Id.* at 606. Collectively, the two statutes provided salary compensation and reimbursement to nonpublic schools for various expenses related to secular courses. *Id.* at 607-11. After developing the three-prong Lemon test, the Court found that both statues violated the Establishment Clause of the First Amendment because the relationship between the state and the schools accorded in these statutes, gave "rise to entanglements between church and state." *Id.* at 620-21.

[81] United States v. Seeger, 380 U.S. 163, 174, 184 (1965) (holding that the petitioners, who objected to serving in the armed forces on the basis of their beliefs in an ethical creed, should have been exempted from military service under a statutory religious exemption to such service because their beliefs were parallel to a belief in a God); Welsh v. United States, 398 U.S. 333, 343-44 (1970) (finding that the petitioner was entitled to be exempt from service in the army under the conscientious objector exemption because he believed that killing was morally reprehensible).

[82] *Lemon*, 403 U.S. at 612-13. Chief Justice Burger referred to the Court's opinion in *Bd. of Educ. v. Allen*, where the Court found that a state's furnishing of secular test books to public and parochial school students did not violate the Establishment Clause because the books were not "instrumental in the teaching of religion." *Id.* at 612 (citing Bd. of Educ. v. Allen, 392 U.S. 236, 248 (1968)). Burger also made reference to the Court's holding in *Walz v. Tax Comm'r*, where the Court upheld tax exemptions for real properties owned by religious organizations, after considering whether there was "an impermissible degree of entanglement" between the government and religion. *Id.* at 614 (citing Walz v. Tax Comm'r, 397 U.S. 664, 675 (1970)).

an absolute sense . . . [s]ome relationship between government and religious organizations is inevitable," admitting that there is a fine line between the overlap of secular and religious regulation and practice.[83] To determine whether there is excessive entanglement between the government and religion, Chief Justice Burger suggested consideration of the purposes and characteristics of the institution to receive benefit, the nature of the benefit provided by the government, and the resulting relationship between the secular and religious entities.[84]

Despite the fact that the *Lemon* majority enumerated the three-pronged test for evaluating First Amendment Establishment Clause claims, the Court did not consider the reach of the concept of "religion." However, prior to *Lemon*, in *Seeger*, the Court proclaimed that the definition of "religion" must be broadened beyond belief in a "Supreme Being," and rather in determining what qualifies as a "religious belief" for purposes of statutory religious exemptions, a Court must ask, "does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption."[85] Broadening the concept of "religion" even further, in *Welsh*, the Court pronounced that "the central consideration in determining whether the registrant's beliefs are religious is whether these beliefs play the role of a religion and function as a religion in the registrant's life," implicating a highly subjective interpretation of what constitutes "religion."[86]

Analyzed in accordance with the three-pronged *Lemon* test, the constitutionality of PPACA's individual mandate and annual shared responsibility payment will ultimately turn on the District Court's interpretation of "religion." With regard to the first prong of the *Lemon* test, the PPACA's individual mandate and annual shared responsibility payment serve a secular purpose by aiming to expand affordable health care to all U.S. citizens and residents through mandated enrollment in health care. Even if the plaintiffs were able to successfully persuade the court that the act enshrines a form of Socialism that is consistent with the definition of "religion" set forth in *Seeger* and *Welsh*, the individual mandate and annual shared responsibility payment would still likely satisfy this criteria, as the primary purpose of the act is secular in nature.[87]

The individual mandate and annual shared responsibility payment of the PPACA may fail the second prong of the *Lemon* test, which requires that a government action not inhibit or

[83] *Id.* at 614.
[84] *Id.* at 615.
[85] *Seeger*, 380 U.S. at 174, 184.
[86] *Welsh*, 398 U.S. at 339.
[87] *Seeger*, 380 U.S. at 163; *Welsh*, 398 U.S. at 339.

advance religion, if the Court construes Socialism or Marxism as falling within *Seeger's* and *Welsh's* broad interpretation of "religion."[88] The plaintiffs contend that the individual mandate and annual shared responsibility payment advances "the establishment of Socialism as a civil/secular religion."[89] In support of their argument, the complaint cites case law characterizing Marxism as proclaiming, "that 'reality' is 'constantly changing'" and as promoting an "ultimate reality."[90] As the plaintiffs indicate, this characterization of Marxism is vulnerable to falling within the definition of religion set forth by *Welsh*: "any set of beliefs addressing matters of 'ultimate concern' occupying a 'place parallel to that filled by God in traditionally religious persons.'"[91] The plaintiffs' argument is compelling and could prove successful, depending upon the court's interpretation of "religion" and its understanding of Socialist and Marxist values.

In consideration of whether or not to conclude that Socialism or Marxism are within the definition of "religion," the court will be forced to determine the implications of characterizing social philosophies as religious in nature. To extend the scope of the concept of "religion" to include Socialism or Marxism could have dangerous implications for the legislative and legal systems. Traditionally, Socialism and Marxism have been construed as political doctrines rather than as doctrines of religion. The government is likely to argue that allowing such doctrines to be encompassed in the definition of "religion" for purposes of Establishment Clause jurisprudence would create the potential for individuals to object to other socially valuable laws on the grounds that those laws promote a system of values that amount to the establishment of religion. Construing the definition of "religion" as being virtually limitless presents the possibility that any set of values could be construed as religious in nature:

> Unless some distinguishing elements are chosen and some beliefs or behavior excluded, what purports to be a definition of religion would be merely a description—an open-ended compendium of historical experience. Limiting factors must therefore be chosen, either on the basis of inductive reasoning or in response to some a priori vision of the appropriate indicia of religiosity.[92]

[88] *Seeger*, 380 U.S. at 163; *Welsh*, 398 U.S. at 339.
[89] Compl. at ¶ 76.
[90] *Id.* at ¶ 136 (citing Rosenberger v. Rector and Visitors of Univ. of Virginia, 515 U.S. 819, 819, 822-23 (1995) (finding that on the basis of religion, the University of Virginia discriminated against a student paper by refusing to pay outside printers because the paper "primarily promot[ed] or manifest[ed] a particular belief in or about a deity or an ultimate reality").
[91] *Id; Welsh*, 398 U.S. at 339.
[92] Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1071 (1978).

Unless the definition of "religion" is construed narrowly, Social Security benefits and taxes, which both serve to promote the social welfare, could be understood as promoting Socialist or Marxist values. Therefore, inclusion of these values in the scope of "religion" could undercut important systems of social welfare.

However, these policy considerations must be contemplated in conjunction with the broad interpretation of "religion" set forth in *Seeger* and *Welsh*. The plaintiffs in *PeopleV.US v. Obama* assert that the principles and theories of Marxism and Socialism are analogous to a religion.[93] Their complaint presents scholarly evidence that "civil religion in America" exists as "everything is centered in the only god, the nation."[94] In order to draw a parallel between Marxism in particular, and religion, the complaint cites a writing by Leon Trotsky, in which Trotsky refers to Marx as a "prophet" and Lenin as "the greatest executor of the testament."[95] The plaintiffs' presentation of Socialism and Marxism is consistent with the Supreme Court's understanding of religion in *Seeger* and *Welsh*, in which it declared that religion is more than a belief in a Supreme Being, but rather a set of beliefs running parallel to traditional religion.[96] The plaintiffs' characterization of the nation as God, and Marx and Lenin as prophets is consistent with religion under *Seeger* and *Welsh.*

The question of whether or not Socialism falls within the scope of "religion" also complicates analysis of the PPACA's individual mandate and annual shared responsibility payment under the third-prong of the *Lemon* test, which requires government action to avoid "excessive entanglement" with religion.[97] Determination of such entanglement must follow from Chief Justice Burger's suggested analysis of the characteristics of the institution to receive benefit, the nature of the benefit provided by the government, and the resulting relationship between the secular and religious entities.[98] The individual mandate and annual shared responsibility payment of the PPACA aim to benefit U.S. citizens and residents as a class, without regard to religion. The nature of the benefit is wholly related to the promotion of

[93] Compl. at ¶ 135-37 "Because Marxism proclaims that 'reality' is 'constantly changing' then dialectical materialism is a Marxist theory that promotes an 'ultimate reality' or an 'ultimate concern' for believers and followers, which occupies a place parallel to that filled by God in traditional religious persons." *Id.*
[94] *Id.* at ¶ 136.
[95] *Id.* at ¶ 137.
[96] *Seeger*, 380 U.S. at 163; *Welsh*, 398 U.S. at 339.
[97] *Lemon*, 403 U.S. at 613.
[98] *Id.* at 615.

affordable health care for this class of individuals. The analysis becomes complicated with regard to the relationship between the government and religious entities, for whether or not Socialism and Marxism are regarded as "religion" determines whether the government is imposing religion upon a class of individuals. Ultimately, the court's inclusion or exclusion of Socialism and Marxism in the definition of "religion" is determinative of the PPACA's ability to withstand the Lemon Establishment Clause test.[99]

This analysis presents further problems with construing Socialism or Marxism as "religion," for defining these as "religion" could essentially lead to an entanglement of government and religion with any law. If Socialism is construed as religion, any time that a law or social welfare program is implemented, there would be potential for the values promoted to be construed as imposing religion on members of already established religions. Furthermore, such a broad reading of religion could have the potential for allowing individuals to assert individual beliefs as religion, warranting protection from entanglement with government religion.

C. Religious Freedom Reformation Act Jurisprudence and Analysis

The plaintiffs' claim that the PPACA's individual mandate violates RFRA will face significant challenges in succeeding under the "compelling interest" test set forth in *Gonzalez v. O Centro Espirita Beneficente Uniao Do Vegetal*.[100] RFRA states that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," except where the government action "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest."[101] In *Gonzales*, the Supreme Court applied the "compelling interest" test set forth by the act, and laid out the framework for RFRA analysis.[102] The PPACA's ability to withstand the "compelling interest" test will ultimately turn on the persuasion of the

[99] *Id.* at 612-13.
[100] Gonzalez v. O Centro Espirita Beneficente Uniao Do Vegetal, 546 U.S. 418, 424 (2006). In Gonzales, members of a religious sect with origins in the Amazon challenged the government's prohibition against consumption of a sacramental tea that contained a hallucinogen banned under the Controlled Substances Act. *Id.* at 423. The Court rejected the government's argument that uniform application of the act was a compelling interest, and found that a religious exception to the prohibition was appropriate. *Id.* at 439.
[101] Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(a)-(b) (2010).
[102] *Gonzales*, 546 U.S. at 424.

government's argument under the test, and on the plaintiffs' ability to convince the court that the act substantially burdens their exercise of religion.

In *Gonzales*, Chief Justice Roberts applied the "compelling interest" test set forth by RFRA, and pronounced guiding principles for the determination of what qualifies as a compelling interest.[103] The government asserted that the compelling interest for the Controlled Substances Act was to prevent the use of drugs with "a high potential for abuse" and with no medically beneficial purpose.[104] In defending the means for procuring this interest, the government further argued that the act would be unable to function properly if religious exemptions were carved out because the public would read such exemptions as an indication that drug use is not harmful.[105] The Court rejected the government's argument related to the means because an exception to the act had already been long-standing for the use of another hallucinogenic drug, peyote, for religious ceremonial use.[106] In defining the reach of the holding, Chief Justice Roberts stated, "[we] do not doubt that there may be instances in which a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA," which indicated that the Court does not foreclose on uniform application as being an acceptable means for procuring a compelling interest; however, uniformity was not a compelling interest in this case.[107]

Facing a burden similar to that of the government in *Gonzales,* in *PeopleV.US v. Obama*, the government must persuade the court that the PPACA's individual mandate serves a compelling interest and is the least restrictive means for serving that interest. The precise purpose of the individual mandate has been heavily debated recently in light of two United States District Court decisions. In *Thomas More Law Ctr. v. Obama*, Judge George Steeh of the Eastern District of Michigan denied plaintiffs' request for an injunction against the federal government's implementation of the PPACA, finding that contrary to the plaintiffs' claims that Congress lacked the authority to pass the bill, the PPACA addresses crucial economic

[103] *Id.*
[104] *Id.* at 430.
[105] *Id.*
[106] *Id.* at 433. Chief Justice Roberts indicated that the government's argument that uniform application was the least restrictive means for enforcing a compelling interest was severely undercut by the act's peyote exception. *Id.* at 434. He noted that "[t]he peyote exception . . . has been in place since the outset of the Controlled Substances Act, and there is no evidence that it has 'undercut' the Government's ability to enforce the ban on peyote use by non-Indians." *Id.* at 434-35.
[107] *Id.* at 436.

regulations regarding health care and is within Congress' legislative powers.[108] Coming to a different conclusion, in *Florida v. United States Dep't of Health and Human Servs.*, Judge Roger Vinson allowed plaintiffs' claims that the PPACA's individual mandate and annual shared responsibility payment are unconstitutional to proceed to a trial finding that "the line between Constitutional and extra constitutional government" may have been crossed with regard to Congressional authority.[109] These recent decisions could prove to be persuasive in the District Court's analysis of the "compelling interest" served by the individual mandate and annual shared responsibility payment. However, it is unclear which decision will weigh more heavily on the court's analysis.

The greatest challenge to the government's success in arguing that uniform application of the individual mandate and annual shared responsibility payment serve a compelling interest may be the fact that, like the Controlled Substances Act discussed in *Gonzales*, the PPACA already has religious exemptions. The government is likely to argue that the compelling interest served by the PPACA is the provision of affordable health care for all U.S. citizens and residents. The more problematic argument lies in the government's assertion that the PPACA's uniform individual mandate and annual shared responsibility payment are the least restrictive means for achieving this purpose, particularly in light of the religious and financial exceptions that have already been carved out of the act. The fact that there are already exceptions to the individual mandate and annual shared responsibility payment leaves the act susceptible to a finding that the means in place are not the least restrictive means for achieving the government's interest.

The second issue for consideration under RFRA analysis is the definition of what constitutes a "religious exercise" under the protections of RFRA. While the *Gonzales* Court did not rule on the nature of what is a protected religious practice or belief, federal courts have repeatedly adhered to the Supreme Court's analysis in *Wisconsin v. Yoder*.[110] In *Yoder*, Chief Justice Burger, writing for the majority, analyzed whether or not the Amish's belief concerning

[108] Thomas More Law Ctr. v. Obama, 720 F. Supp. 2d 882, 893-94 (E.D. Mich. 2010). In his analysis of Congress's exercise of power, Judge George Steeh observed that the "[PPACA's] minimum coverage provision, which addresses economic decisions regarding health care services that everyone eventually, and inevitably, will need, is a reasonable means of effectuating Congress's goal." *Id.* at 893.

[109] Florida v. U.S. Dep't. of Health and Human Servs., 716 F. Supp. 2d 1120,1164 (N.D. Fla. 2010).

[110] Wisconsin v. Yoder, 406 U.S. 205, 216 (1972) (finding that Wisconsin's compulsory schooling laws unduly burdened a group of Amish individuals by forcing them to send their children to school after eighth grade because the laws violated their religion's belief that children of such age should remain "aloof of the world"). *See also* Quaring v. Peterson, 728 F.2d 1128, 1124 (8th Cir. 1984); Africa v. Pennsylvania, 662 F.2d 1025, 1034-35 (3d Cir. 1981); Malnak v. Yogi, 592 F.2d 197, 210 (3d Cir. 1979).

education garnered RFRA protection by assessing whether the belief was, "one of deep religious conviction, shared by an organized group, and intimately related to daily living."[111] Finding that the belief satisfied all three criteria, Burger justified such an extensive analysis by reasoning that liberty would be undercut if individuals were allowed to use secular beliefs to construct standards of conduct in order to assert religious claims.[112]

The plaintiffs here may face significant difficulties in persuading the court that the PPACA's individual mandate and annual shared responsibility payment significantly burden their exercise of religion because their beliefs do not satisfy the *Yoder* criteria.[113] The plaintiffs assert that under the PPACA, "[t]hey are forced to either join a health insurance system that contradicts the tenets of their faith or pay substantial penalties for following the tenets of the their faith."[114] However, unlike the Amish Respondents in *Yoder*, the plaintiffs' stated beliefs against abortion and Socialist health care are individual beliefs that follow from their individual religious convictions, rather than from organized religious tenants. Regardless of whether or not their respective faiths object to abortion on the whole, plaintiffs' beliefs against abortion are not "related to [their] daily living."[115] Furthermore, the act does not interfere with the plaintiffs' beliefs to the extent that the Wisconsin statute interfered with the Amish's religious tenet regarding upper-level education. While the Amish's belief is central to their religion and way of life, the plaintiffs' individual beliefs about abortion are not so closely intertwined with their religion and lifestyle. The parallels between the plaintiffs' individual beliefs and those of the organized Amish religion are lacking, and could prove to be detrimental to the plaintiffs' claim.

The plaintiffs of the *PeopleV.US v. Obama* class action face substantial challenges in adjudicating their assertions that the PPACA violates the Free Exercise Clause and Establishment Clause of the First Amendment, and the protections guaranteed by RFRA.[116] Under contemporary Free Exercise Clause jurisprudence, the plaintiffs' claim will likely fail because the PPACA is not aimed at curtailing religious exercise, and because the government will not likely have to assert a compelling interest for enacting the law. With regard to the plaintiffs' Establishment Clause claim, the merit of their assertion will be largely dependent upon

[111] *Yoder*, 406 U.S. at 216.
[112] *Id.* at 215-16.
[113] *Id.* at 216.
[114] Compl. at ¶ 227.
[115] *Id.*
[116] PeopleV.US v. Obama, No. 2:10-cv-01477 (D. Nev. filed Aug. 31, 2010).

the Court's interpretation of Socialism or Marxism as a system of either religious or secular beliefs. Lastly, the plaintiffs' will face great challenges in asserting that the exercise of their religion is substantially burdened by the PPACA, to the extent the RFRA provides them with protection because their beliefs regarding abortion are not central to their everyday lives.

V. CONCLUSION

The success of the *PeopleV.US v. Obama* is unclear in the face of varying legal interpretation of the concept of "religion" and numerous other pending lawsuits challenging the constitutionality of the act. The nation is emotionally charged and divided on the passing and implementation of the PPACA. While the purpose and goals of the act are quite valorous, the means to achieve these goals are constitutionally questionable. In light of the numerous challenges to the PPACA on a number of constitutional grounds, it is unlikely that the act will be able to withstand repeated judicial scrutiny.

With regard to the religious claims of the plaintiffs of the *PeopleV.US v. Obama* class action, it is unlikely that these claims will succeed.[117] If courts begin to hold that legislation having an incidental effect on the exercise of religion is unconstitutional, then virtually any law or regulation will be vulnerable to judicial scrutiny. Additionally, if courts assert that religion is a broad concept comprised of any set of beliefs, then individuals will be able to easily assert claims of religious violation and claims that a law or regulation establishes religion. Ultimately, if the plaintiffs in this suit are granted relief on their religious claims, the whole legislative and judicial process will be put at risk for challenges and a litany of litigation.

In conclusion, while the PPACA may ultimately fail for violating some constitutional guarantees, the act is unlikely to fail on the religious challenges set forth by the plaintiffs in this class action. To find their religious claims meritorious would set the stage for chaos in the legislature and the judiciary.

[117] *Id.*