

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Civil Docket No. 11-2303

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Nicholas E. Purpura, *pro se*
Donald R. Laster Jr. *pro se*
et al. (listed on separate of Complaint)

Plaintiffs

**AFFIDAVIT IN SUPPORT
OF ORDER TO SHOW CAUSE
FOR A RESTRAINING ORDER
DUE TO
EXTRODINARY CIRCUMSTANCES
THAT REQUIRE EMERGENCY RELIEF**

VIOLATION Title 28 U.S.C. 1331
& CIVIL RIGHTS

Request For Declaratory Judgment
Individually & in their Official Capacity
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;
KATHLEEN SEBELIUS, in her official capacity
Individually & in their Official Capacity as the
Secretary of the United States, Department of Health
And Human Services;
UNITED STATES DEPARTMENT OF THE TREASURY;
TIMOTHY F. GEITHNER, in his official capacity as the
Secretary of the United States Department of the Treasury;
UNITED STATES DEPARTMENT OF LABOR; and HILDA
L. SOLIS, in her official capacity as Secretary of the United States
Department of Labor,

Defendants.

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“Justice will only exist where those not affected by injustice are filled with the same amount of indignation as those offended.”

Plato (c427-347 BC)

1. Under the authority of Article 3, Section 1, Congress has vested the District Courts with *“Original jurisdiction of all civil actions arising under the Constitution, laws...”*. Article 3 of the Constitution provides, *“the judicial Power shall extend to all Cases, in Law and Equity, arising under ..., the Laws of the United States ...”*: the Supreme Law of the Land the United States Constitution.

PRELIMINARY STATEMENT

2. From the onset, Petitioners allege no legal argument exists to prevent the said forth relief request herein granting Petitioners request for a temporary restraining order on any further enforcement or implementation of “H.R.3590” until this action is fully adjudicated.
3. It is and has been customary judicial procedure for the Courts to be governed by statutory direction especially concerning procedural due process. The Federal Rules Civil Procedure (FRCP) are unambiguous especially Rule 8(d) concerning forfeiture.
4. It is inarguable Defendants failed to respond, as required by law, to the original Petition, only submitting procedurally infirm requests for extensions of time, after Petitioners submitted a Motion for Summary Judgment more than 80 days after serving Defendants (DOJ) with the original Petition. Defendants, even with their infirm responses, failed to address Counts 5, 6, 7, 11, 12, 13, and 14 of the original petition thereby, by law, admitted to each said averment set forth in the Petition. It must also be noted Defendants failed to adequately or otherwise answer any of the other nine (9) allegations with specificity and particularity that would satisfy the FRCP.
5. The current appeal before this Circuit Court is whether the District Court denied Petitioners their Constitutional Rights? The District Court erred in its assumption that Petitioners where without ‘standing’ to challenge the validity or the unconstitutionality of “H.R.3590”.
6. Thought the District Court was mistaken for numerous reasons. The recent unanimous (9-0) decision rendered on June 16, 2011 in *Bond v. United States* (09-1227) held individuals have the constitutional right to sue when laws are unconstitutional. Most relevant any citizen may sue the government to say that a law infringes on the reserved powers of the States, and so violates the Constitution. In short, the Supreme Court decision renders the District Court’s ruling using standing as the basis for the denial to litigate is/was then and now legally insignificant and void.
7. When the federal government passes a law in an area that is the State’s business only that harms individual liberty. So *any person* who has lost any liberty under that law may sue to get it back said Justice Anthony Kennedy, writing for the court:

“The Framers concluded that allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments

themselves, and second by protecting the people, from whom all governmental powers are derived.”

“By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake.”

“An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate.”

“That claim need not depend on the vicarious assertion of a State’s constitutional interests, even if a State’s constitutional interests are also implicated.”

8. Justice Ginsberg with Justice Breyer concurring writing separately stated: *“In short, ‘beyond the power Congress,’ for any reason, is “no law at all.”*
9. In the matter of *Purpura v Sebelius* the government was petitioned for grievances based upon Amendment 1, as well as Amendment 10. No argument based upon positive law exists to deny any sovereign natural born Citizen the right and authority to petition their government concerning a violation of their Constitutional protected rights. As clearly expressed by Justice Ginsburg in her concurring opinion of *Bond v. United States* (09-1227) states one does not have to be a directly involved party to challenge the constitutionality of a law:

“And that is so even where the constitutional provision that would render the conviction void is directed at protecting a party not before the Court. Our decisions concerning criminal laws infected with discrimination are illustrative. The Court must entertain the objection—and reverse the conviction—even if the right to equal treatment resides in someone other than the defendant.”

10. “H.R. 3590” criminalizes various actions or rather non-actions of citizens and residents of the United States of America in violation of the U.S. Constitution.
11. Petitioners’ Petition contains 15-Counts citing 19 violations of the U.S Constitution and existing statutory laws. As sovereign citizens of the United States and the State of New Jersey, as well as citizens that swore an oath to the Constitution of the United States, as so stated in Article 6, we the Petitioners, are bound by Oath to challenge the unconstitutionality of “H.R.3590” as is this Honorable Court to protect the Constitution against all those that would violate it.

CONSTITUTIONAL AND STATUTORY
Deprivation of Articles, Amendments and Statutes

12. *We the Petitioners* (Plaintiffs) request this Honorable Court issue injunction relief for a Temporary Restraining Order requiring emergency relief. The claim of irreparable injury, perhaps the single most important prerequisite for issuance of a preliminary injunction, is no longer potential; it is taking place as this Court reads this Show Cause Order for Relief. Since on September 24, 2010 the commencement of select sections of the “Act” have been and continue to be unconstitutionally implemented.
13. The question before this Honorable Court is whether the people of the State of New Jersey Constitutional rights have been and are being infringed upon based upon misapplication and/or a blatant abuse of authority not granted to the Legislature or Executive branch of government of the United States associated with the Senate originated “H.R.3590”.
14. Petitioners submit this Show Cause Order for Relief requesting emergency relief due to extraordinary circumstances, since again subsequent to September 24, 2010, individual sections of the Senate originated “H.R. 3590” (hereafter the “Act”) had not commenced prior to judicial review by this or any other Court of these United States. Nor has any legislative body or Court ruled on whether said “Act” conforms to the Supreme Law of the Land, the Constitution of the United States. The Defendants must prove that the “Act” does not violate the United States Constitution.

Please Take Judicial Notice: In the matter at bar, the Court is duty bound to consider that Defendants have thus far failed to address the Petition as required by the Fed. R. Civ. P. thereby forfeiting any rights they might have had.

15. Profoundly important, no citizen should be manipulated and be forced, by politically powerful individuals who created a privileged class, to unilaterally forgo fundamental liberties, set forth in the Constitution, including violations of four (4) major statutes.
16. The Senate originated “Act”, “H.R. 3590”, strips citizens of assets and alters the current legal policies related to healthcare insurance as well as fundamental freedoms protected by the U.S. Constitution. As it stands, it is inarguable Petitioners by *positive law* as well

as *natural law* are being denied their Constitutional Rights prior to any judicial review addressing the questionable validity of the healthcare “Act”. Further implementation of the “Act” prior to adjudication is tantamount to rendering the Constitution irrelevant. In short, it puts the cart before the horse or closes the barn door after the horses are out.

17. It is inarguable the District Court failed in its fiduciary duty to uphold the Constitution and adhere to the Fed. R. Civ. P. from the inception of the Petitioners’ Petition.

18. One of the threshold arguments before this Honorable Court is whether the “Act” has any validity at all since Defendants failed to answer the original Petition, and then failed to adequately answer nine (9) of the 15-Counts, and gave no answer to six (6) Counts, after being illicitly being allowed to answer by the District Court, therefore by statutory law admitted to the averments set forth in Plaintiffs’ Petition.

19. Most importantly, whether Mr. Barack Hessian Obama II was Constitutionally authorized to sign the “Act” into law, since by his own admission his father was a foreign national and thus fails to qualify to hold the office of President of the United States, see Article 2, Section 1, Paragraph 5 of the United States Constitution which states:

“No person except a natural born Citizen, or Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the office of President;”

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

20. The U.S. Constitution’s Amendment 5, says:

*... nor be deprived of life, liberty, **or property, without due process of law**; nor shall private property be taken for public use, without just compensation.*

21. The U.S. Constitution Amendment, Article 14, says:

*...nor shall any State deprive any person of life, liberty, or **property without due process of law**; nor deny any person within its jurisdiction the equal protection of the laws.*

22. Article 3, Section 2 extends the jurisdiction to cases arising under the U.S. Constitution, pursuant to Title 42 U.S.C. 1983 of the Federal Code, for violations of certain protections guaranteed by Amendments 5, 6, 14, etc.. Under the “*color of the law*”, as individuals and/or in their official capacity, Defendants associated in and with the Federal

Government, an enterprise, whether intentionally or mistakenly violated the Natural, Constitutional and Civil Rights of the citizens of the State of New Jersey and Nation with the passage of Senate originated “H.R. 3590”, the “Act”.

23. As a threshold matter, as outlined on page 5 of Plaintiffs’ Petition, relating to the Constitutional challenges whether: Article 1, Section 7, Paragraph 1; Section 8, Paragraphs 1, 3, 12, 14, and 15; Section 9, Paragraphs 4 and 5; Article 2, Section 1, Paragraph. 5: Article 6; Amendments 1, 4, 5, 13, 14, 16, to include violations of the “*Posse Comitatus*” Act, Anti-Trust laws; and Title VII were blatantly violated by passage of said legislation?
24. Plaintiffs’ Petition unmistakably demonstrates how the Supreme Law of the Land, the U.S. Constitution, both Articles and Amendments, were violated. Specific and explicit fundamental guaranteed Constitutional rights are succinctly spelled out in Petitioners’ Petition that were violated by the “Act”. In the matter at bar, the Legislative and Executive branch behaved as if “*We the people*” Petitioners have no Natural, Constitutional, or Civil Rights, effectively erasing the Articles of the Constitution, Bill of Rights and other Amendments, reminiscent of the “Jim Crow” days.
25. The compelling reason to grant this “Restraining Order” is simple, further implementation of the “Act”, the Senate originated “H.R. 3590”, is in direct conflict with and not limited to legislative “*prior policy*” and legal “*precedent*” rendered by all Circuit Courts and the Supreme Court of this United States. If said “Act” is allowed to proceed further prior to judicial review, then openly, the Petitioners will be deprived of their Natural, Constitutional, and Civil Rights to “*equal protection and treatment*” (not limited to) as prescribed by law prior to being afforded a “*full and fair hearing.*”
26. The entire action as alleged by Petitioners spells out the danger of the soft tyranny being instituted by the legislative branch of government that is controlled by one politically powerful, party that unilaterally erases every citizens Constitutional Rights under the “*color of law*” by passage of the Senate originated (unconstitutional) “Act”.

27. Thereafter, said “Act” institutes punitive punishment and/or retribution upon any citizen who has the audacity to refuse to comply with unlawful provisions inserted by legislative fiat, tantamount to open political corruption, that will cost the Petitioners, of not only New Jersey, but the entire Nation, over-all in the hundreds of billions of dollars in additional taxes, void judicial review.
28. Of paramount importance is the unprecedented sections of the “Act” that renders the Judicial branch of our government totally irrelevant **as was clearly articulated in Count 12 of the Petition which they failed to answer. A clear acknowledgment that the averment is true!** As well as the blatant violation of Amendment 5 erasing the “*due process*” provision of the Amendment.
29. Petitioners have yet to have an opportunity to address the relevant legal questions before the court prior to a “*pre-trial,*” or “*evidentiary hearing*” at the District Court and/or *oral argument*. No record exists submitted by Defendants. The only record in existence is that of the Petitioners’ pleadings, that sets forth a genuine issue of fact, warranting the granting of Petitioners request for this Restraining Order.
30. The fundamental requisite of “*due process of law*” is the opportunity to be heard.” See, *Grannis v. Ordean*, 234 U.S. 385, 394, *Milliken v. Meyer*, 311 U.S. 467; *Priest v. Las Vegas*, 232 U.S.604; *Roller v. Holly*, 176 U.S. 398:

*An elementary and fundamental requirement of due process in any proceeding which is accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action **and afford them an opportunity to present their objections.***

Please Take Special Judicial Notice: As this Honorable Court is aware, at the present no less than 27-States have been granted permission to adjudicate their petitions on the validity of the Senate originated “H.R. 3590” the “Act” based upon the “commerce clause” and Amendment 10. Unlike those complaints, Petitioners’ Petition before this Honorable Circuit Court of the State of New Jersey contains 15 separate Counts that demonstrate the “Act” is unconstitutional! Most relevant, Petitioners set forth the same argument but not limited to, the suit presented by the Attorneys General of those States. If *arguendo* Petitioners are to be successful in only one Count, based upon the alleged unconstitutionality of the “Act” that creates harm to Petitioners by the “Act’s” unconstitutional implementation the entire “Act” becomes “*null and void.*” Since its inarguable the Senate originated “H.R. 3590” and the legislation failed to include a

severability clause! That in-of-itself demonstrates the substantial likely-hood of success based upon the merits set forth within Petition.

31. Unmistakably, the Petition specifically demonstrates each unconstitutional mandate inserted within the “Act” finds no basis in law, reason, logic or prior public policy. Consequently equity and justice is/was non-existent if said “Act” is allowed to be implemented prior to judicial review on the Constitutional questions presented. It will and is causing irreparable damage. Those involved in the passage of this legislation acted repeatedly in:

- 1) Absence of *subject-matter jurisdiction*;
- 2) Violated statutes;
- 3) Prior policy;
- 4) Rules of procedure;
- 5) Precedent;
- 6) Procedural “*due process*” and “*equal protection*” as set forth in the Constitution to include a blatant disregard for prior “legal precedent” held by Supreme Court of these United States.

32. Because of Congressional negligence, Petitioners invoked their right to federal interdiction under Amendment 1 of the U.S. Constitution and the *FRCP*. This Circuit Court of the United States has before it irrefutable evidence of continual and repeated deprivation of federally guaranteed Natural, Constitutional, and Civil Rights by Defendants’ implementation of this “Act.

33. It is the civic duty of this Honorable Court in the “*interest of substantial justice*” to grant this Stay at least until Defendants can demonstrate to the Court that Petitioners are either mistaken or that said “Act” will have no adverse effect on Petitioners and/or the general public (See, *Bond v United States* 09-1227) based upon the valid challenges of the constitutionality of the broad statutory scheme which the “Act” entails.

34. The “Act” as it stands explicitly deprives “*We the People*” of the State of New Jersey, and the Nation, of significant property and liberty interest (Amendment 10 and other Amendments) void procedural “*due process*” (Amendment 5), and “*equal protection*” (Amendment 14) repugnant to the Constitution prior to review by this Honorable Court. And the fundamental rights of Petitioners to present arguments and to examine or cross examine each denial by the Defendants.

35. The Supreme Court of the United States held, in *Goldberg v. Kelly*, 397 U.S. 245,2721, 299:

...that for a full and fair hearing to have occurred, the courts must demonstrate compliance with elementary legal rules of evidence, and must “state reasons for their determination” and, the courts must indicate what evidence was relied on.

36. Any denial of a STAY and/or to expedite a trial or any further protracting of this action is tantamount to cruel and inhuman treatment and the shedding of the Petitioners’, as well as the general public’s, Natural, Constitutional, and Civil Rights. Surely it is inarguable that, by law and by Supreme Court precedent, any violation of the U.S. Constitution, the Federal Court is authorized and compelled to act.

37. Whether the issue at bar is a bill, act, or legislative mandate, if it violates the Constitution it must rendered *null and void*. As such, the people cannot “seek relief” from any other court, since no order exists to appeal from that addresses a single Constitutional or civil rights violation set forth!

38. Any denial of this TRO will cause Petitioners to suffer injuries by implementation of the Act prior to being afforded the opportunity to present evidence or oral argument to establish the impropriety from a standpoint of justice and law. Again, even *arguendo* Defendants can miraculously demonstrate to this Court that Petitioners are incorrect, which they are required to do by the rules of procedure, it is imperative that the Court review the validity of the “Act”.

39. Petitioners contend, no adverse harm would be afforded Defendants if said Stay were granted. Surely the Department of Justice with its army of 100’s of judicial experts is capable of presenting an affirmative defense, if they believe one exists, and as required pursuant to FRCP 8(b) & (d) and 12(b). By law, Constitutional claims pursuant to *inter alia*, Title 28 U.S. Code 1331 mandate an affirmative reply or suffer forfeiture. [Which by law, Defendants already have in the Court below].

40. Petitioners believe in the principles and laws upon which our Nation was founded. Upon entering military we swore an oath to defend the Constitution against all enemies foreign and domestic. The individuals involved in the drafting of this “Act” are comprised of

powerful political circles that transcend party lines. They've arrogantly demonstrated they are a law unto themselves and are by all logic, enemies of our Constitutional system of government (a Republic), therefore creating irreparable harm endangering Petitioners and all citizens. Each of us, including all judicial appointees, are bound by said oath even after being Honorably Discharged from their duties to always protect the Republic and the Supreme Law of the Land, the United States Constitution!

In Conclusion

41. One need not be an attorney, judge, or law clerk to comprehend an injustice. Petitioners realizes expediting review of this action and/or the granting of an immediate Restraining Order may not be the usual practice of the Court when the Defendants are U.S. governmental agencies, but under these extraordinary circumstances this request for a Stay is Constitutionally warranted and necessary to protect Petitioners and the public as a whole. Especially since Defendants failed to answer the original Petition, failed to answer six (6) Counts in their entirety and failed to adequately or otherwise answer nine (9) Counts of the Motion for Summary Judgment for Default.

42. WHEREFORE, Petitioners pray this Honorable Court grant a Temporary Restraining Order until Defendant can demonstrate why a permanent Stay should not be granted until adjudication of the Constitutional challenges presented. Petitioners et. al. have a legally protectable and tangible interest that is and not just limited to Petitioners as citizens of this, a contractual Constitutional Republic, that has a very real harm that could indeed affect everyone in these United States!

Petitioners also request this Honorable Court grant sufficient time to Petitioners acting *pro se* to reply to any objections or opposition papers submitted by Defendants. Though no need exists to deny this relief based upon the record before this Court.

Respectfully submitted,

Nicholas E. Purpura,
pro se,

Donald R. Laster Jr.
pro se.

Date: June __, 2011