UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

----------x Civil Docket No. 11-2303

Nicholas E. Purpura, *pro se*
Donald R. Laster Jr. *pro se*
et al.

Plaintiffs/Appellants

MOTION FOR ORAL ARGUMENT BEFORE AN EN BANC COURT IN THE INTEREST OF SUBSTANTIAL JUSTICE

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,

Respondents/Defendants

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STATEMENT OF FACT

In the "interest of substantial justice" Appellants request that oral argument[1] be allowed, to establish a record, should it become necessary, to take this matter up on appeal or certiorari to the Supreme Court of the United States. Thus far it has become evident that a "*full and fair*" proceeding is nearly impossible, if the prior actions of the Court are any example of jurisprudence in action. Like the District Court, this Circuit Court of Appeals first denies that the facts are factual, and the law is what it says it is. Thereafter dismisses just about all of Petitioners' very concrete narrative as "speculation and conjecture".

[1] See *Gannis 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*, 1576 U.S. 398 which held, in short, 'due process of law" is the opportunity to be present, and the opportunity to present objections.

True arguments are presented in written briefs. That being said, the seriousness of this Petition mandates oral argument to allow each of the Appellate judges to ask questions based on their review of the record below and the submitted briefs.

Petitioners constitutional rights, by ways and means of provisions set forth in "H.R.3590", which truly shocks the conscience, deprive Petitioners of *due process* under the Amendment 5, along with 18 additional violation of the Constitution that demonstrate with deliberate indifference to the vast potential for loss of life, injury, and deprivation of rights, acted, failed to act, and conspired, in a variety of ways, based on evident knowledge that was set to occur at incremental intervals, which were designed and intended to, and did, facilitate, enable and aid and abet the erasing guaranteed protections set forth in the Constitution and statutes. Which is a ghastly betrayal of the United States Constitution and Country by Defendants assigned to carry out draconian provisions in the "Act" "H.R.3590".

On August 10, 2011 Appellants received notification that an *en banc* Court denied Appellants' Motion to Recall and Vacate Judge Vanaskie's Order of June 28, 2011, and Judge Greenaway's Order of August 1, 2011 without explanation or reasoning. This violates Supreme Court precedent that requires that an explanation for said decision for "*due process*" to be properly served.

Please Take Judicial Notice: Shockingly, the Court of Appeals allowed Title 28 Section 455 of the United States Code to be abrogated. It is without argument Judges Vanaskie and Judge Greenaway violated that statute, therefore placing themselves above the United States Code and becoming a law unto themselves, by authoring decisions and Orders single-handedly and without proper *subject-matter jurisdiction*. The Rules for Judicial Conduct unambiguously state: "*Any judge is disqualified from participating in any proceeding under these Rules if said Judge has a financial interest in the outcome*"

What is more alarming, Judge Greenaway's misapplication of rules and precedent in his illegal decision and Order dated August 1, 2011, **openly intimates that his final decision is pre-determined,** saying:

> **"*The appellants have failed to meet their burden of showing that they are likely to succeed on the merits of their appeal…"*** *or that thy will be irreparably injured absent an injunction. Greenaway goes on to cite* Republic of Philippines v. Westinghouse Elec. Corp., 949 F.2 653, 658 (3d Cir. 1991).

It must also be noted the application of the above precedent has no bearing or similarity to the issue at bar. Judge Greenaway's motives or misunderstanding the law or the issues at bar before the Court is frightening.

The facts were clearly alleged in the Petition were/are more than sufficient to properly support their charges against the Defendants at the pleading stage, however horrifying the charges are. Further, the assertion that the Petitioners "*will not succeed on the merits*" is frivolous. Judge Greenaway, like the District Court, effectively fails to take into consideration the Order issued the District Court that dismissed the Petition was "*an abuse of discretion*" beyond the 'four corners' of the Petition.

Inarguable Appellants submitted a 15-Count Petition that listed 19 proven violations of the United States Constitution and 4 statutes set forth in "H.R.3590", yet to be contradicted, denied, or contested.

More to the point: Appellees/Defendants failed to present any argument on 5, 6, 7, 12, 13, and 14 Counts, thereby, by law, automatically forfeiting[2], **that is if *FRCP* 8(b) and (8(d) haven't been revoked**.

It is incumbent upon this Court to recognize Defendants failure to answer any of the remaining Nine (9) counts with any specificity or particularity. Combined with the failure to reply to Six (6) Counts, in-of-itself assures Appellants of prevailing in any honest Court in the United States. Yet, Judge Greenaway preposterously says:

> *"**The appellants have failed to meet their burden of showing that they are likely to succeed on the merits of their appeal"***

More disconcerting, the only issue before this Third Circuit is whether Appellants had standing. **The District Court dismissed the Petition, claiming "lack of subject matter jurisdiction" pursuant to Fed. R. Civ. P. 12(b)** to come before the District Court." See, Order dated Judge Freda L. Wolfson; see Appendix (A-27).

[2] See, Supporting Case Law, (A-231) *Gracedale Sports & Entertainment Inc. v. Ticket Inlet, LLC; Saldana v. Riddle; Ponce v. Sheahan: Farrell v. Pike; and, S. Ct. precedent, Neitzke v. Williams,*

Judge Wolfson chose to abrogate Rule 12 (b) (1) and Supreme Court precedent ignoring the fact that 12(b) is valid **"*only if there is no federal question at issue*."** A Constitutional challenge automatically grants "standing and jurisdiction" that mandates adjudication to name just one of many reasons Appellants would prevail on appeal before an impartial judiciary. The facts and record explicitly show that Judge Wolfson by her own admission failed/refused to address the merits. Again, proves Judge Greenaway's (sitting illegally) decision is pre-determined.

As far as prevailing on the merits Judge Greenaway appears to have no interest in the merits or the United States Constitution. His primary motive for remaining on the panel obviously is to protect his position on the Court.

Judge Greenaway knows, or should know full well, that Defendants failure to answer Count 6 admits by their silence that Mr. Obama was/is ineligible to sign "H.R.3590" into law. The result of the failure to answer in-of-itself, by law, mandated a default on this single Count [along with the remaining 14-Counts]. Such a result would rightfully mean Mr. Obama was ineligible to appoint Judge Vanaskie and Judge Greenaway to the Third Circuit Court of Appeals.

Shockingly, the *en banc* panel that refused to vacate Judge Greenaway's prior Order should also have recognized his violation of rule of law, as well as the Judicial Conduct Rules, to include the Court's own Local Appellate Rules Procedure. In the second paragraph Judge Greenaway says:

> "*The appellants' motion to vacate the order granting the government an extension of time to file a response brief is denied. We are satisfied that the government has Shown "good cause" for its request. See 3d Cir. L.A.R. 31.4."*

Who are *we?* He himself authored the Order. Clearly, Judge Greenaway has no regard for the *FRCP,* the *FRAP* or the *L.A.R*., or is in need of a reading comprehension course. The current Rule dated August 1, 2011 has not been rescinded according to the updated version of the L.A.R; see, Rule 31.4:

> *"A Party's first request for an extension of time to file a brief must set forth good cause.* ***Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient****."*

Also relevant, the Clerk of the Court is/was prohibited from issuing an extension of time for 30-days. The rule says:

> "*A first request for an extension of 14-days or less may be made by telephone or in writing.*"

Judge Greenaway incorporates in the same paragraph:

> "*Appellants' motion for default of appeal and order for default of appeal and order for declaratory relief is also denied*". [without reasoning].

Lastly, Judge Greenaway says:

> "*The appellants' motion for entry of default is denied*."

At law, it is customary for the Clerk to enter a Motion for Entry of Default" if an affidavit demonstrates the default against the party that failed to plead or otherwise defend. See. Rule 55. It is without argument that Defendants failed to answer Counts 5, 6, 7, 12, 13, and 14. Therefore it is/was incumbent upon the Defendants to contest the Motion for Entry of Default, not Judge Greenaway! Judge Greenaway ruled on every motion without any hearings, nor did he set forth the required explanation of the basis of his reasoning on each Motion contained in his (illegal) Order.

Incontrovertible evidence abounds that the District Court and Department of Justice, acting in connivance, chose to manufacture a fraudulent 'standing' argument by twisting existing Supreme Court precedent instead of following the law and/or proper judicial procedure throughout the proceedings. Not a single ruling was based upon the law, facts, or proper judicial procedure; all were found to be non-existent.

We respectfully remind this Court of the words of Supreme Court Justice Antonin Scalia, concerning the Doctrine of Standing as an Essential Element of Separation of Power, 17, *Suffolk U. L. Rev. 881, 894 (1983):*

> "[*W]hen an individual who is the very object of a law's requirement or prohibition seeks to challenge it, he always has standing*."

Obviously, "H.R. 3590" directly and specifically affects each of us. Thus we have standing and by all existing precedent will prevail if proper judicial "*due process*" is observed. We would also remind the Court of the Supreme Court's *per curium*, i.e. unanimous (9-0) ruling in "*Bond v United States*" 09-1127, as well as the recent ruling from the Sixth Circuit, "*Thomas More Law Center v Obama*" 10-2388, that reinforces that Appellants "*We the People*" have always had standing to challenge "H.R. 3590" and all issues related to this unconstitutional bill/law. If proper judicial procedure, due process and the law was followed Petitioners would have been issued an Order in their favor.

Unfortunately, procedurally infirm behavioral patterns existed in this matter that prayerfully are behind us. The previous alleged violation of Petitioners constitutional rights, by ways and means which truly shock the conscience, thus far has deprived us of proper procedural "*due process*" mandated under the Fifth Amendment along with injuries arising from "Act" "H.R.3590" itself.

Appellants believe this is a valid request that this Court set forth a date for Oral argument to establish a record that has thus far has been denied by the District Court. It will also allow those sitting on the bench an opportunity to question the parties concerning each and every Count that will affect every Americans way of life. Surely, Appellees shouldn't object or fear arguing against *pro se* litigants.

"*We the People*" ask for the sake of our nation this Court adheres to *Black Letter Law,* proper judicial procedures, and most importantly, the U.S. Constitution? We know that there are men of honor and integrity sitting in the Third Circuit that will followed the law, and their Oath to uphold the Constitution even if it were distasteful or repugnant to him/her, let them step forward now.

Thomas Aquinas quoted Augustine who stated:

> "*A good judge does nothing according to his private opinion, but pronounces sentence according to the law and the right*."

Thus far, the two Judges that set down rulings in this matter give new meaning to the Greek myth of Diogenes; Appellants are carrying a lantern through the Circuit Court in search of an Honest Judge. The implication is that there is little hope of finding any especially in the dire political situation that appear to be governing the Court.

It has also become necessary that Appellants request an *en banc* Court along with oral argument, and again, request the removal of Judge Vanaskie and Judge Greenaway as required by Title 28, Section 455 from adjudicating on any further on the matter of *Sebelius v. Purpura*, as required by the Judicial Conduct Rules!

We pray as a body an *En banc* court put an end to the disgraceful behavior that has thus far taken place for the integrity of the Court, and judiciary as a whole.

WHEREFORE, Appellants request Oral Argument before an *en banc* Court on the matter of *Purpura v. Sebelius*; and the removal of Judges Vanaskie and Greenaway from sitting on any panel

Respectfully submitted,

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Nicholas E, Purpura Donald R Laster Jr. August 10, 2011

Cc: Clerk of the Court
Dana Kaersvang