United States District Court
District of New Jersey

----------x Civil Docket No.3:10-CV-04814-GEB-DEA

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

Plaintiffs

AMENDED MOTION FOR DEFAULT SUMMARY JUDGMENT

v.

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.
----------x

Thomas Aquinas citing Augustine concerning the duties of judge's;

> "*in these earthy laws, though men judge about them, when they are making them, when once they are established and passed, the judges may judge no longer of them, but according to them*."

1. "*We the people*" (Plaintiffs) presented on September 20, 2010 a petition that was served, docketed and accepted by the Court and Defendants that qualifies for an immediate Default Summary Judgment based upon the threshold matter addressing Constitutional challenges that demonstrate "H.R. 3590" violates the United States Constitution. More importantly said "Act" "H.R. 3590" blatantly violates the U.S. Constitution. At no time since September 20, 2010 following the electronic mailing to Defendants and followed by documents forwarded by the

U.S. Postal Service's "registered and certified" return receipt service, did Defendant bother to reply as required by the *FRCP*. Yet, on October 19, 2010 Defendants counsels acknowledge receipt and accepted service and so stated: "*they will demonstrate in sequent briefing that each of the fifteen counts of plaintiffs' complaint is meritless*."

2. That being said, Defendants attorneys at the Department of Justice (hereafter DOJ) have repeatedly violated the intent of the statutes as set forth by the legislature. By law, the DOJ was required to set forth a reply within 60-days. Failing to do so mandates this Court to grant to "*We the People*" Plaintiffs a Summary Judgment pursuant to *FRCP* 56 (a) –(b)

3. "*We the "people*" Plaintiffs come before this Court in compliance with the *FRCP* requesting declaratory relief, in the form of a Summary Judgment. The *FRCP* 8(b) & (d); 9; and, 12(b) require an affirmative reply or Defendants suffer a forfeiture.

4. The *FRCP* is unambiguous:

"*We the people*" were at all time in compliance with Rule 8(a). Defendants failed to adhere to Rule 8(b) denying any and all averments upon which the people relied in their 15-Count Petition. Defendants failed to comply with Rule 8 that requires an affirmative defense, or even present a <u>general denial</u>. Clearly, Defendants lack of denial deems the "*Peoples*"" allegations to be admitted as fact and an admission of wrongful behavior. The "*People*" Plaintiffs also say, Defendants violated Rule 9 that warrants a Summary Judgment in their favor.

5. Rule 9 does not intentionally abrogate Rule 8(d) that requires a response with particularity as both Rules must be read in harmony with one another. Clearly as written a failure to do so <u>is deemed to have admitted all averments</u>. Surely the action at bar challenges numerous violations of the United States Constitution quintessence as a "special" matter that would mandate a reply consistent with Rule 9. It is incontrovertible that not only intentional fraud was implemented by the House of Representatives and the Senate in the conveyance of "H.R. 3590", but, the entire "Act" violates the Constitution of these United States.

<u>Statement of Genuine Issues not address by Defendants</u>:

6. COUNT 1: It is indisputable the U.S. Senate rejected the House Resolution 3200 known as the "*Patient Protection and Affordable Care*" in its entirety. Thereafter, the Senate originated its version of a "*Patient Protection and Affordable Care*" titled S. 1796. The only problem with said legislation being the Senate's bill contained "revenue raising" provisions for which the Senate lacked Constitutional authority, thereafter forwarding said legislation to the House of Representatives.

7. The Senate, in their rush to pass "healthcare" legislation and to give the impression that the legislation to be voted upon was created by the House of Representatives, resorted to an intentional coverup in conveyance of the legislation.

8. The Senate resurrected House Bill H.R. 3590 properly titled the "*Service Members Home Ownership Tax Act of 2009*." Thereafter they discarded the entire contents of that "Act" and replaced the contents with the Senate's originated S 1796 stealthfully giving the impression that the House created the Revenue raising "Act." To cover this up the Senate re-titled "H.R. 3590" changing the name to the "*Patient Protection and Affordable Care*" all for one purpose, to obtain a "*House of Representatives numerical designation*." This in-of-itself constitutes fraud or at the least a "*high crime and misdemeanor*" that demands removal from office forthwith on all parties committing this deceit.

9. "*We the people*" draw the courts attention to Civ.-3:10-cv-00091-RV-EMT, Senior Judge Vinson presiding; when discussing the history and taxes of H.R. 3590 (see, Memo/Order p.13) the Hon. Senior Judge Vinson unmistakably held:

> "*...that on October 13, 2009, the Senate Finance Committee passed the bill titled America's Healthy Future Act" (S1796) A precursor to the Act, this bill contained an individual mandate and accompanying penalty. In section titled "Excise Tax on Individuals Without Essential Healthcare Benefits Coverage" the penalty was called "tax." See section 1301 (If an applicable individual fails to [obtain required insurance] there is hereby imposed a tax*.)"

10. As visibly demonstrated in "particularity" in the "*Peoples*" Plaintiffs Count 1, Defendants remain unable to refute the fact that the entire "Act" originated in the Senate, and as a Tax Revenue Raising Bill for which there was no Constitutional authority. No need exists to elaborate further.

11. COUNT 2: Was/Is simple. The DOJ has argued without success in the District Courts of Florida and Virginia that the "Commerce Clause" grants the federal government the Constitutional right to impose a mandate that all individuals are required to purchase "Healthcare Insurance."

12. The terminology of Article 1, Section 8, paragraph 3 of the U.S. Constitution grants authority to regulate, not dictate. The word "dictate" is not to be found anywhere in the Constitution or any governmental document, outside of "servitude" and that too is a violation of the U.S. Constitution outside of incarcerated criminals. Under this "Act" H.R. 3590, the government in essence is employing "extortion" under the color of law by threatening the public; "either you buy the product or suffer consequences." No Constitutional authority exists that would constitute breathing of Gods air as an act of "*commerce*" whether interstate or intrastate....

13. In 1995, the Supreme Court held in *US v Lopez*, and *US v Morrison* the extent of Congressional authority over State rights and restrictions on Congressional authority. H.R. 3590 contradicts both these rulings.

14. Unless the DOJ can demonstrate with "particularity" that Congress repealed the Constitution, Articles, and Amendments, the central government is forbidden to "dictate" that the "people" purchase products. This unconstitutional Act could be titled a "legislative deconstruction of the Constitution" titled H.R. 3590 which has now determined breathing constitutes as an act of "commerce."

15. Those in Congress and on the judiciary have come to believe the Constitution is a "living document"* instead of reading it according to the words set forth therein. As a reminder for this Court, the Constitution is a contract written and agreed upon by the Sovereign States that limited the central government from interfering with both the individual and State rights. "*We the people*" say: No political party, Congressional servants or sitting judges have the authority to distort the meaning of our Constitution to serve political ideologies regardless of the specific welfare they believe constitutes "general welfare." Such "fluid" interpretations have been gradually tearing apart the Republic!

Please Take Judicial Notice: The framers of the Constitution made clear, in Article 5 of the Constitution; "*The Congress, whenever two thirds of both Houses shall deem it necessary, shall purpose Amendments to this Constitution….*" clearly this provision would have not been inserted in the contract by the States that created the Constitution if they believe it was a living document that progressive traitors would have the dumb down masses believe.

16. COUNT 3: Congress under this "Act' created a paramilitary Corps formed without Constitutional authority under direct control of the President. In short, Mr. Obama's illegally established a "civilian security force" which is in essence is an additional Constitutional military force that abrogates the existing "U.S. Public Health Service Commissioned Corps" which has been in existence for 6-decades. This force is made up of Commissioned Corps of Doctors, nurses, physicians' associates, and other "allied healthcare providers" that could respond to any health-care emergency.

17. Let, there be no misunderstanding, even *arguendo* Defendants had replied as mandated by law, and attempted claim such a force was authorized under the "Implied Powers" doctrine would be moot. Since "Implied" powers are those that, [while the constitution does not grant them] are "necessary and proper for carrying into execution" the powers that the Constitution does grant.

18. "*We the People*" Plaintiffs, say the Constitution is the Supreme law of the land, and is written in simplified terms so that all who read it know specially the limitations that were place on the Federal Government that were allowed by the contract that created the central government.

19. What is also glaring is the un-constitutional provision that allows for the President to activate troops without a declaration of war, institute a "draft" without Congressional approval, and to "violate" the *Posse Comitatus*" Act, that strictly forbids the use of the American military in civilian law enforcement, regardless if it's a medical national emergency without the consent of the governor of a State. This abrogates the "*Posse Comitatus*" Act.

20. The notion of the President issuing a Direct Order calling up his Corps under the guise of a "National Medical Emergency" may sound good, but without an act of Congress should

frighten every American that he could activate and deploy troops in any State of his choosing. This is tantamount to invoking Marshall law.

21. This so-called Medical "Corps" that "HR 3590" created is a Civilian Defense Corp reminiscent of Adolf Hitler's Brown shirts. Following the Reichstag's (equivalent to our legislature) granting of broad powers, Hitler began to create individual Corps. True the U.S. Constitution allows for multiple Armies, but all have to follow the Constitutional prescription. To elaborate further is unnecessary, since the Constitution restricts funding for any Army etc. to two-years, not four as the provision in the Act sets forth.

22. COUNT 4: Nowhere does the Constitution allow H.R. 3590 "*Patients Protection and Affordable Care Act*" to levy a Direct Tax upon individuals as a penalty. Nor, can the "Act" be considered Constitutional in light of Amendment 10, which it violates. (Also see Count 14) Therefore, the 'individual mandate" is an unapportioned capitation tax.

23. H.R. 3590 as written allows a tax on incomes without apportionment. Article 1, Section 9 Clause 4 reads: "*No capitation, or direct, tax shall be laid, unless in proportion to census or enumerated herein before direction to be taken*." Capitation taxes are not taxes on incomes but taxes on individuals and entities, discriminately devoid of proportionality to various States regardless of population. This in-of-itself renders the "Act" null and void" based upon the Constitution. This provision in "H.R. 3590" also violates Amendment 1 as it gives preferential treatment to various religious organizations. And, also violates Amendment 14 that will be addressed below. Clearly even though Honorable Senior Judge, Vinson is allowing this issue to go to trial, "*We the people*" say: to protract this issue of the Constitutionality at trial is questionable use of the taxpayers' money.

24. Regardless of any other argument set forth in this Count, that any revenue raising legislation must be originated in the House of Representatives, not the Senate is inarguably clear. Article 1, Section 7, reads: "*All bills raising revenue shall originate in the House of Representatives.*" "*We the people*" have demonstrated the unconstitutionality of this "Act" in just the four Counts listed above.

25. COUNT 5: There is no need to elaborate on Count 5, since the Constitution strictly forbids a tax or duty to be laid upon articles exported from State to State. Unless the DOJ can demonstrate otherwise, H.R. 3590 violates Article 1, Section 9, paragraph 5 & 6 of the Supreme Law of the Land. We draw your attention to the United States Constitution. Unlike Count 1, in which the "*People*" argue that the Senate lacks authority to create such an 'Act," under Article 1, Section 9, Patagraph 1, in Count 5, even the House of Representatives is barred from instituting a Tax on interstate devices exported from State to State.

COUNT 6: The Court has been fully briefed on the definition on what constitutes a "*natural born citizen*" as set forth in the United States' Constitution. Also set forth in "*We the Peoples"*" Petition is Supreme Court precedent supporting the "*Peoples*"" argument that has yet to be refuted. If any precedent exists that countervails *Venus* and *Elg*, surely the DOJ would have presented it. Clearly, Defendant has failed as required by the *FRCP* to reply with specificity that Mr. Obama qualifies as a "*natural born citizen*" and is/was eligible to sign "H.R. 3590" "*Patient Protection and Affordable Care*" into law. Article 2, Section 1, paragraph 5 is unambiguous: "*No person except a natural born citizen, or a citizen of the United States at the time of adoption of this constitution, shall be eligible to the Office of President*" Therefore, once again Summary Judgment is warranted, that is if the Constitution of this United States' is to have meaning.

26. COUNT 7: Once again, H.R. 3590 "*Patient Protection and Affordable Care*" exceeds the authority vested in Amendment 16 by imposing an extra tax based upon "gross income" upon which no economic activity has taken place. In essence the "Act" is double taxing the same income. The "Act" in-of-itself exceeds the general power to tax as set forth in Count 2, and the same argument made in Count 5 applies. One could rightly argue such a draconian tax constitutes "excessive fines" under Amendment 8, of the Constitution. How can this "Act" grant the general government precedent to tax income as often as it sees fit, if the law prevents the general government from taxing the same income again and again in different matters. Defendants have failed to dispute the "*Peoples"* arguments with any denial much less with specificity as required by the *FRCP*.

27. COUNT 8: The DOJ (Defendants counsels) have refused/failed to demonstrate for this Court how "H.R. 3590" does not render the "*search and seizure*" provisions set forth by

Amendment 4 irrelevant; since the "Act" allows the central government access to an individual's private records to include bank records devoid of any court order. Even in cases of fraud, federal inspectors are required to obtain warrants. Section 1128J of the "Act" provides warrantless "*searches and seizures*." The DOJ has failed to demonstrate for the Court what authority exists for the Inspector General's office to have access to any medical record without a Court order. Nor have Defendants' counsels demonstrated how this "Act" does not violate the "HIPAA (HIPAA and other acronyms)" statute that requires he first obtain written permission from the party whose records will become part of the "Integrated Data Repository."

28. Notwithstanding the above argument, the DOJ has failed to address with "particularity" and "specificity," how "H.R. 3590" does not abrogate prior legislation know as the "HIPAA" statute, could be considered a violation of a citizens civil rights.

29. COUNT 9: The DOJ has failed to specifically refute with particularity how "H.R. 3590" does not relegate a citizen to the status of criminal for refusing to purchase Health insurance. Nor have the Defendants' counsels explained how "H.R. 3590" does not subject "*We the People*" to involuntary servitude [violation of Amendment 13] by forcing them to purchase Health Insurance under the threat of fines and/or seizure of property. Is this not "extortion" under the "*color of law?*"

30. And, most importantly, the Defendants have failed/refused to identify under what Article or Section of the Constitution authority exists enabling the general government, without "*due processs,*" [Amendment 5] to legally confiscate ones property in a "*taking*" devoid of a trial by jury. Since the DOJ has failed to address these allegations the *FRCP* require a Summary Judgment be issued immediately rendering H.R.3590 "*null and void*."

31. COUNT 10: Defendants have failed to explain or justify under what provision of the United States Constitution Congress is authorized to legally exempt themselves and members of selected employees and/or organizations from participating in the "Act." Or justify why select religious groups are exempt, while members of other sects are penalized for refusing to participate or comply with the "Act." This Court, must question what Constitutional authority

exists that would bar a citizen his guaranteed right to "*due process*" (Amendment 5) in a "*taking*" for non-compliance in this discriminatory "Act." This is arbitrary and capricious.

32. No response explains with specificity and/or particularity how "H.R. 3590" doesn't violate the "*equal treatment*" statute by the granting of special exemptions or funding to select States. This violates Article 4, Section 2, of the Constitution that reads "*The citizens of each State shall be entitled to all the Privileges and Immunities of the Citizens in several States*." and/or the Amendment 14. Clearly, every Constitutional challenge that has gone unanswered warrants a Summary Judgment. "*We the People*" remind this Court the Defendants have ignored without excuse *FRCP* 8(b) (d) Rule 9.

33. COUNT 11: Defendants failed to specifically demonstrate under what constitutional authority Congress is enabled to unconditionally grant special exemptions to various religious sects without violating Amendment 1, related to the respecting (meaning "regarding" or "concerning") of an established religion. This is an arbitrary and unconstitutional "Act."

34. If Defendants could miraculously argue the "people" were incorrect concerning the religious question (Amendment 1) put before the Court this, which they failed to do, it stands to reason such "precedent" would surely thereafter condone the enactment of religious law (example Shiri'a). It is indisputable, the "Act" establishes a pre4cedent that allows special privileges and exceptions for religious groups that could result in their religious law succeeding Federal, State and Local law and the United States Constitution. Therefore, as an example, could not an Islamic Sect insist on Shiri'a law superceeding the U.S. Constitution under the same precedent as applied under the exemptions set forth in the "Act?"

35. No need to elaborate, exemption from the mandate to purchase "health insurance" without penalty discriminates, but more importantly, violates Amendment 1, by respecting and regarding one religious sect over another. This Court is mandated to issue a Summary Judgment rendering "H.R. 3590" "*null and void.*"

36. COUNT 12: Defendants, by law, were required to prove to this Court pursuant to the *FRCP* specifically and with particularity how "H.R.3590" is constitutionally legal. Also, the

question still exists whether the "Act" violates the Amendment 5 and the Anti-Trust laws established by the legislature of this United States. "*We the people*" Plaintiff argue, "H.R. 3590" renders the judiciary irrelevant since no judicial review (in no less than 8-sections) exists for those being punished for refusing to comply with the mandates set forth in "H.R. 3590". This is a denial of individual rights.

37. Nowhere have Defendants demonstrated how this bill as written does not force insurance companies out of business and force employers to drop healthcare benefits for their employees due to unnecessary inflated costs and unreasonable mandates rendering risk management impossible. Because this has been taking place and because of the prohibitive costs, the Department of Health and Human Services is granting exceptions to scores of select Corporations and Unions. Defendents have yet to show how the Act does not become even more discriminatory. This is an arbitrary and capricious "Act" that is forbidden by the Constitution.

38. Clearly, the government was attempting to stealthfully force all citizens into a single payer healthcare system, a government monopoly. Nor have Defendants demonstrated with particularity how "H.R. 3590" is not a "governmental extortion scheme," containing various discriminatory taxes and fines for various groups or businesses based on the number of employees that violates "equal treatment."

39. Worse yet, the "Act" gives the government the authority to seize property without "*due process*" that violates Amendment 5. Again, a Summary Judgment is mandated immediately!

40. COUNT 13: Defendants have failed to answer with specificity how "H.R. 3590" does not violate Article 4, Section 2, Paragraph 1, that "*The Citizens of each State shall be entitled to all the privilege and Immunities of Citizens in several States"* Nor have the Defendants explained how the "act" does not violate Title VII of the civil rights law?

41. By law preferential treatment based upon "color" or "ethnicity" is discriminatory. Nor have defendants refuted the Supreme Court precedent that supported "*We the peoples"*" allegation. No explanation has been presented by Defendants that explains how "H.R. 3590" does not violate Amendment 14. Count 13 speaks for itself. If Defendants had a defense it's nowhere to be found. Therefore, Defendants violated the *FRCP* and qualifies for an immediate

Summary Judgment in favor of "*We the people*" Plaintiff in this matter. [An explanation on the political bribery to select States to buy votes was also in order, since "*special exemptions and funding*" violates Article 4, Section 2, paragraph 1 of the Constitution].

42. COUNT 14: "*We the people*" respectfully request this Court pay "special" attention to Article 6, paragraph 3 of the Constitution that reads: "*The Senators, and Representatives ...and executive and judicial Officers, shall be bound by the Oath of Affirmation, to support the Constitution*."

43. It is undisputed that "H.R. 3590" completely violates this section of the Constitution of these United States. All persons serving in an official capacity or employed in the service of the general government are required to swear an oath to uphold the U.S. Constitution and to obey it. Regardless of prejudices or personal opinions.

44. Every allegation set forth in the "*Peoples*'" Petition not legally proven incorrect with specificity and particularity by defendants mandates the Court to issue a Summary Judgment. Even if only one allegation is true and violates any part of the U.S. Constitution this Court is mandated to render "H.R. 3590" "*null and void*." To do otherwise is to commit a "*high crime and misdemeanor*."

The Court in *Murbury v Madison* concerning oath of office, held:

> "*... it is apparent, that the framers of the constitution contemplated [oath, my emphasis] that the instrument as a rule of government of courts, as well as of the legislature. Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner to their conduct in the office and character. How immoral to impose it on them, if they were to be used as the instrument, and the knowing instruments for violating what they swore to support.*
>
> *The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on the subject. It is in these words: "I do solemnly swear, that I will administer justice, without respect to persons, and do equal right to the rich and poor; and that I will faithfully and impartially discharge all the duties incumbent on me as ----, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States, Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that Constitution forms no rule for his government? If it is closed upon him, and cannot be inspected by him? If such a real state of things, this is worse than solemn mockery. To prescribe, or to take an oath, becomes equally a crime*."

45. COUNT 15: Defendants have failed to address with specificity how "H.R. 3590" does not violate Art.1, Sec.8 and Amendment 10. The general government has only those powers that were granted by the Sovereign States of the Union. Clearly, neither Article 1, Section 8, nor any other Section of the U.S. Constitution grants Congress the authority to "dictate" to anyone in this United States to purchase a product. Nor does the U.S. Constitution gives the general government authority to command the States to supply a product to its citizens, its employees or contractors.

46. Nowhere does Article 1, Section 8, Paragraph 1 grant Congress authority to intrude into the realm of State authority by dictating that any product be purchased by the people. "United States v Butler, 297 U.S. 1 (1936)" prohibits the type of activities being promulgated by the "Act". The "Act" levies taxes specifically to supply a product by taxing others. Even under the guise of "general welfare" it would still be arguable that the "Act" constitutes "specific" welfare as held in U.S. v Butler.

47. No Congressional authority exists to force States to implement or create "Exchanges," to place taxes on inferior and/or superior health care plans, or to implement the other provisions of the "Act." The "Act" applies to products and services that constitute specific welfare and is therefore unconstitutional. Again, on these facts alone a Default Summary Judgment is warranted.

In Conclusion

Thomas Aquinas quoting Augustine:

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

"*We the People*" remind the Court; *Marbury v. Madison,* held:

> *"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that the law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument."*

WHEREFORE, "*We the People*" Plaintiffs say; since no severance clause was inserted into "*Patient Protection and Affordable Care,*" accordingly this Court must declare "H.R. 3590"

"*null and void*" on the evidence presented and not disputed. Defendants were required by *FRCP* to reply within 60-days, they failed. The reason the Court and the "*People*" have not heard from the Defendants is simple, no defense exists for this unconstitutional act. Let Defendants appeal to the Circuit Court based on the record now before this Court, if they can. No justifiable legal excuse exists to deny the "*People*" said relief.

We anxiously await the Court's Order.

Respectfully submitted,

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