United States
District of New Jersey

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

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

Plaintiffs

v.

KATHLEEN SEBELIUS, et al.,

Defendants.

Motion Date scheduled by the Court
January 18, 2011

REPLY AFFIDAVIT IN OPPOSITION TO DEFENDANTS ANTICIPATED MOTION FOR DISMISSAL OF THE PEOPLE'S MOTION FOR A SUMMARY JUDGMENT THAT MUST BE DENIED ON THE MERITS AND LAW

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

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

Plaintiffs

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.

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REPLY AFFIDAVIT IN OPPOSITION DEFENDANTS ANTICIPATED MOTION FOR DISMISSAL OF THE PEOPLE'S MOTION FOR A SUMMARY JUDGMENT THAT MUST BE DENIED ON THE MERITS AND LAW

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STATEMENT OF FACT

The "*People*" on January 3, 2011 replied to Defendants' second Motion for a Stay, submitted by Defendants who requested an enlargement of time until January 31, 2011 to submit their Reply to the "*People's*" Summary Judgment for Default. The "*People's*" Reply Motion in Opposition also included a request for immediate forfeiture for failure to answer the Summary Judgment for Default in compliance with the *FRCP*. [This is the second Motion Defendants failed to Reply to in a timely fashion].

Pursuant to reading the "*People's"* reply filed and submitted on January 3, 2011 to the Defendants' second request for a Stay, submitted December 23, 2010 and served on the "*People*"

December 30, 2010, again, realizing it would be impossible to refute the "*People's*" argument in opposition, and, prior to the Court ruling on said 2nd Motion for Stay, Defendants, in panic mode, submitted a procedurally infirm third request for a Stay. This request too was untimely in that it was filed prior to the Court to ruling upon the pending second request for a Stay. In addition, by failing to submit the required "Motion for an Enlargement of Time," was in total contradiction of the *FRCP*.

Please Take Judicial Notice: Defendants reply to the Summary Judgment for Default was due no later than January 3, 2011 based upon an automatic Stay previously granted by the Court on December 20, 2010 that mandated by statute the "*People*" to be served January 3, 2011, See document 19, Court file.

To the "*People's*" shock and dismay, despite the Court not adjudicating the Defendants Motion still pending before the Court on Defendants' request for a Stay to their second request, on January 4, 2011, the same day the "*People*" were served by Defendants with a letter, **not a proper motion for an enlargement of time** the Court granted the Defendants until January 17, 2011 to answer the "*People's*" Motion for a Summary Judgment for Default totally disregarding "*People's*" reply in opposition.

The Court blatantly ignored the *FRCP* that mandates a Motion must be presented for "*excusable neglect*", and ignored the fact the Defendants were again in violation of the FRCP that required Defendants to reply to the *"People's'"* Summary Judgment no later than January 3, 2011 according to their prior Stay.

In a clear violation of the "*People's*" legal right to proper "*due process*", the Court denied the "*People*" the right to object or reply to the improper use of a letter which is/was procedurally infirm in violation of the FRCP in granting the extension of time.

Note: This 3rd time, Defendants requested a Stay, this time blaming the two days of scheduled holidays, as a "justifiable excuse" warranted an extension of time thereby avoiding any proper Motion for an extension of time as required by statute. Coincidently, just a couple of hours following the service of the "*People's*" Reply to their second Motion for an extension of time (that was impossible to refute). The Court completely ignored the fact that Defendants had just come off an extension of time, in which they, again failed to answer the "*People's*" Summary Judgment. Approximately an hour later granted Defendants until January 17, 2011 to reply. Ignoring Defendants had over three months to answer the petition. Yet, even with an extension

of time Defendants failed to timely reply to any of the Constitutional issues identified in each of the 15 Counts of the Petition or Summary Judgment for Default.

Rule 6; "***a party's failure to act within the designated period deprives the District Court of its power of enlargement without demonstrating excusable neglect.***"

Please Take Judicial Notice: The "*People*" had previously request Your Honor recuse herself for what the "*People*" perceived to be bias behavior concerning the Courts action related to two Motions presented for TRO's. It must be noted, On December 7, 2010, *see*, Document 15, Her Honor replied:

> "This Court is in receipt of another letter by Plaintiffs, pro se, dated December 2, 2010, in which Plaintiffs, once again, make an informal request that I recuse myself in this matter. The Court will not respond to an informal request for recusal and, more importantly, this Court notes that despite Plaintiffs' baseless accusations to the contrary, there is, and has been, no bias or perception of bias for or against any of the parties in this matter. ***The Court is simply following the rules and procedures established for the orderly determination of all matters that come before this and all Federal Courts.*** [our emphasis].

The Court thereafter reiterated that it calendared the hearing on all motions and scheduled them for January 18, 2011, on submission only. Denying the "*People*" an opportunity to object to Defendants arguments and create a Court record of the proceedings.

It is without argument the "*People*" are being denied proper "*due process*". No legal justification existed to have granted additional time void a proper Motion. Nor does justification exist for the Court to deny the "*People*" their Constitutional right to object or reply.

More troubling to the "*People*" than the unprecedented extension of time for the Defendants, is the Court's enabling Defendants to answer the Summary Judgment for Default by Defendants baseless request the Court Dismiss the *"People's"* Petition **based upon an anticipated Motion to dismiss**. **Especially after failing to respond in a timely fashion to both the Petition and the Summary Judgment for Default in violation of the *FRCP*.**

The Courts "preferential treatment" based upon an **anticipated** Motion, is unprecedented in American judices prudence and questionable to say the least, since no Motions exits in the Court record, outside of the "*People's*", since Defendants never presented or answered any of the "*People's*" Motions nor presented any of their own.

The Court would be remiss to ignore the Circuit Court in Parker v U.S. held: "*[W]hen a party brings a motion under [FRCP] 12, all defense then available to the party and which may be brought by Rule 12 motions must be raised in the motion or be lost.*" No timely, or otherwise, motion has ever been submitted.

Instead, the Court is allowing Defendants to respond and prove *something* which they have failed to do throughout numerous motion practices related to the *"People's"* Petition on an anticipated Motion supposedly to be filed before the Court adjudicates the issues that should take precedent.

Absolutely no responsive pleading by Defendants exists as required by law. As the Court is aware, if omitted from a motion or if no motion were made under Rule 12, or included in a responsive pleading, no excuse existed for the Court to grant preferential treatment to Constitutional challengers that have gone unanswered or to allow Defendants to proceed in violation of the *FRCP*.

Based upon Defendants prior papers, Defendants indicated they will ask for a dismissal under Rule 12 and also claimed in their vacuous argument that "*judicial economy*" justifies postponing a hearing on the "*People's*" Motions, that their untimely phantom motion[s] to dismiss show the need to put the matter to rest. Ignoring the fact that the "People" have precedent on two legal Motions before the Court that by law take precedence. Though, Defendants have a legal right to argue anything they want, but to request the Court to hear their motion before addressing the "*People's*" motion that contain Constitutional challenges, defies reason, logic and common sense.

Does this Court or the Defendants really believe it's a waste of the Courts time and resources to dismiss the "*People's*" Petition, on what they believe could be a technicality. As if the "*People*" would not re-file.

Defendants' attorneys searching for a technicality to Plaintiffs' Service:

Ethan P. Davis, Esq, requested on December 14, 2010 that *pro se* representative send a paper copy of the original brief to the DOJ New Jersey Division so that there would be no problems

arising concerning service. Mr. Davis assured Plaintiff that the case would proceed and not to worry - "*just sent them a copy*."

Thereafter, we find on page 4 a note in their second Stay to the court concerning proper service. Clearly the "*People*" are dealing with unethical and devious individuals who will stoop to every underhanded tactic available, since they are unable to answer the "*People's*" Complaint. Is this not unbecoming behavior for an officer of the Court?

It's time to put the service argument to rest:

Civ. RULE 5.2 ELECTRONIC SERVICE AND FILING DOCUMENTS

(1) Papers served and filed by electronic means in accordance with procedures promulgated by the Court are, for purposes of Federal Rule of Civil Procedure, served and filed in compliance with the local civil and criminal rules of the District of New Jersey.
(2) Clearly service by electronic transmission was accepted and relied upon by Plaintiffs and defendants and deemed complete upon transmission. See Rule 5(b)(2)(D) See also Rule 5(b)(2)(D) advisory committee note 2001 amendments
(3) Defendants received and so acknowledge and also were served with a signed hard copy that was accepted – by USPS register mail return receipt;
(4) Clearly the rules in the DNJ clearly state an individual or official does not need to be served twice;
(5) What is also being discounted in their argument is without dispute that the Department of Health and Human Services etc. had at the time of the signing of "H.R. 3590" established a special legal division established to accept all legal arguments against the "Act" in question.

Therefore we have acceptance, next we have acknowledgment and performance:

(1) On October 19, 2010 Defendants' counsel, in a document submitted to this Court, Defendants' counsel acknowledged in writing and so stated they would reply to the original filing. See, October 19, 2010 Letter that was substituted for a reply to our TRO in which Defendant say:

> "*Defendants will demonstrate in subsequent briefing that each of the fifteen counts of plaintiffs' complaint is meritless."*

We have **Acceptance, Acknowledgment and Performance** therefore it is without argument the "*People's*" Complaint is ratified and legally must proceed.

Clearly, Defendants' counsels were intentionally avoided any claims or notification that a defect in service was an issue in contention while each proceeding was taking place. At all times Defendants' Counsels were accepting service and responding to each motion as if validly signed, served, and acted upon. The "*People*" are aware that counsel is only practicing law for a short period of time, but surely he and those assisting at the DOJ are familiar with the "*Doctrine of Laches*," and "*estoppel*," especially when attempting to use a technicality after the fact.

Clearly, this is a delaying tactic and a waste of judicial resources as well as the Court's time to protract adjudication of an unconstitutional piece of legislation. And, do Defendants think they are exempt from addressing Constitutional challenges that violate the rights of the "*People*"? That in-of-itself would be an injustice to all Americans.

The "*People*" remind this Court two learned jurist Judge Vinson; who stated this "Act" was created in the Senate which supports the "*People's*" Count 1, and, Judge Hudson held: "H.R. 3590": "*is neither within the letter nor the spirit of the Constitution,"*

Please Take *Special* Judicial Notice: *Let it be known the "People" reserve all their rights. Since the "People" have been repeatedly denied their Constitutional right to Reply to the Defendants unorthodox motion practices and the coming "anticipated" untimely motion*. [emphasis added]

The "*People*" are submitting this "Reply Brief in Opposition" based upon contemplated arguments that Defendants may submit. The "*People*" would be remiss not to submit a contemplated argument in advance since the Court has continually denied the "*People*" opportunity to reply to two requests for TRO that legally are still outstanding since the Court ruled upon them without proper "*due process*." And, also based its decisions on two vacuous letters prior to the "*People*" ever being properly served with a reply motion.

This Court has ignored the "*People's*" Opposition to the second request for an extension of time, disallowed the "*people*" to object or put forward a reply to their third untimely request for an extension of time to reply. By telephone the "*People*" requested a mere 24-hours to respond to a legally infirm letter upon which this Court acted within hours granting yet another unprecedented extension of time. That once again allows Defendants to response to the "*People's*" Summary Judgment for Default. This being said, can this Court understand the reasoning for the "*People*" to believe this Court may be bias.

Based upon the following facts and law, no Motion to Dismiss the "*People's*" complaint on a technicality can legally or morally be accepted, nor can be considered by this Court, regardless of the unprecedented granting of an extension of time to answer the "*People's*" Summary

Judgment for Default without a proper request for an enlargement of time based upon "*excusable neglect*".

The "*People*" can only believe, based upon Defendants prior writings, they are depending on this Court **to cover up their negligence and ignore the Constitutional challenges** presented by the "*People*" without ever having an oral argument or a record if needed on appeal.

Before this District Court are Constitutional challenges, unlike any actions that have been submitted in other Districts throughout these United States related to "H.R.3590". No Petition is more comprehensive and spell out the violations of the Articles of the U.S. Constitution, its Amendments thereto, as well statutes, concerning "H.R. 3590" that has a profound effect on all Americans and the Constitutional Republic as a whole. These issues at bar have a profound effect on every American. No excuse existed or exists for failure to reply to each and every Count. See, "*Bell v. Hood*," the Supreme Court 327 U.S. 678, 66 S.Ct. 773 90 L.Ed. 939:

> "*Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alerted to adjust their remedies so as to grant the necessary relief."*

Again, it is clear, Defendants are attempting to use this Court to cover up their failure to address the Constitutional issues, as well as issues concerning Constitutional law. In the **"***People's*" Petition. Defendants make note of a baseless so-called deficiency in service, ignoring the fact, even if this was the case (which it is not) they waived any rights they may have had.

Defendants are expecting the Court to use any technicality to avoid addressing the core issues, Constitutional violations! Defendants knew full well they were required to address the "*People's*" Petition before December 2010, and the Summary Judgment by December 20, 2010 and following their first Stay no later than January 3, 2011.

Legally, unable to do so, they waited intending to use a technicality in the future, as a stalling ploy against two *pro se* Plaintiffs with their anticipated Motion to dismiss. But to be valid under *FRCP* Rule 12, Defendants should not have acknowledged they were served, accepted said service, and acted upon said service in performance, which is clearly a waiver of rights to act.

Defendants allege, in their one (1) page procedurally infirm letter, that the so-called technical deficiencies are justifiable to force the Court to dismiss the action after more than three (3) months without once answering any of the "*People's*" (Plaintiffs') 15 Count Petition. Nor presenting any proper motions to the Court based upon procedural defects in the *"People's"* Petition. Ignoring the fact that they stated in writing they would answer each and every Count.

Defendants appear to be grasping at any excuse they can find to delay or prevent a hearing on the Constitutional Challenges raised in the initial Petition and/or "Summary Judgment for Default" going so far as to claim two regularly scheduled and known holidays warranted the Court to grant them preferential treatment and granted a third Stay that usurps the *FRCP*.

The "*People*" remind the Court, that as far back as October 19, 2010 Defendants' counsel, in document 8, submitted to this Court, acknowledged in writing and so stated they would reply to the original filing. See, October 19, 2010 Letter that was substituted for a reply to our TRO in which Defendants stated:

> "*Defendants will demonstrate in subsequent briefing that each of the fifteen counts of plaintiffs' complaint is meritless."*

It is without dispute Defendants **Accepted, Acknowledged, and Performed, therefore waived any and all rights to request a dismissal on any technicality based upon service**. It is without argument the "*People's*" Petition is ratified and legally must proceed and be granted the "Summary for Judgment Default" for the failure of the Defendants to respond.

"*Doctrine of Laches*"" is based upon maxim that equity aids the vigilant and not those who slumber on their rights. If there be an doubt, its defined as neglect to assert right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as a bar in court of equity. *Wooded Shores Property Owners Ass'n, Inc. v. Mathews*, 37 Ill.App. 34d 334, 345 N.E.2d 186, 189. The neglect for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law, should have been done. *Lake Development enterprises, Inc. v. Kojetinsky, Mo.App*., 410 S.W.2d 361, 367.

"*Estoppel* simply states that a party is prevented by his own acts from claiming a right to detriment of the other party who was entitled to rely on such conduct and has acted accordingly. See *Graham v. Asbury*, 112 Ariz. 184, 540 P.2d 656, 658. An estoppel arises when one is

concluded and forbidden by law to speak against his own act or deed. Laches' estoppel by a failure to do something which should be done or to claim or enforce a right at the proper time. *Hutchinson v. Keny, C.C.A.N.C.*, F2d 254, 256. A neglect to do something which one should do, or to seek to enforce a right at a proper time.

Therefore, legally Defendants are without remedy in law since they violated equitable estoppel. The doctrine is unambiguous, a person may be concluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had. *Mitchell v. McIntee*, 15, 15 Or.App. 85514 P.2d1357, 1359. **The effect of voluntary conduct of a party whereby he is precluded from asserting rights against another who has justifiably relied upon such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct**. *American Bank & Trust Co. v. Trinity Universal Ins. Co.*, 251 La. 455, 205 So.2d 35, 40. It is universally agreed upon in United States Courts that a dismissal is disfavored.

Defendants make the ludicrous claim they will prove in their later *anticipated* Motion that we all are still awaiting, that Plaintiffs are without standing is preposterous, when the "*People's*" argument not only mirrors the arguments of the Attorney Generals of more than 20-States concerning Amendment 10, to quote the learned reporter Terry Hurlbut: "*The only other lawsuit of which this Examiner is aware, that comes close to raising this reserved-powers issue, is Cuccinelli v Sebelius, the one in Virginia*."

Defendants make these conclusionary statements as if they were fact, devoid addressing a single Constitutional challenge set forth in the Petition and/or Summary Judgment that demonstrates the U.S. Constitution has not been usurped, Defendants habitually fail to recite any "*material evidence*" needed to prove Plaintiffs would not prevail at trial. Nor have Defendants presented any memorandum of law to point to a single citation to support their conclusionary argument.

The question the "*People*" must ask; will the Court require the Defendants to address the Constitutionality or unconstitutionality of said Fifteen Counts set forth in the "*People's*" original Petition and Summary Judgment for Default as required by Rule 8(b) & 8(d).

Oral Argument Requested:

The fact that this Court has seen fit to grant an extension of time until January 17, 2011, and has decided to rule on submission rather than oral argument, as it has repeatedly done now on every motion presented, deprives the "*People*" of a Court record.

The Court has re-calendared the Summary Judgment Motion for Default for January 18, 2011. Under such extenuating circumstances, unprecedented, and questionable motion practices over the course of these proceedings, the "*People*" respectfully request the Court to grant Oral argument to afford the "*People*" an opportunity to be present and to present objections if necessary to Defendants arguments in the "*interest of substantial justice*."

Any denial of oral argument, will once again allow Defendants to present a vague or ambiguous pleading based upon unsubstantiated conclusionary facts and law. Without oral argument this Court will be unable to make a proper finding and conclusion based upon existing law.

The "*People's*" request is warranted since Defendants have shown a propensity to omit, distort, and misapply legal precedent throughout these proceedings. Plaintiffs are aware that under the Rules oral argument is not required, but in view of the complexity of the matter and based upon Defendants misleading, dubious, and unorthodox motion practices without conducting an "oral argument" would surely deprive all parties of a record. And for that reason a complete record is not only needed, but required.

The "*People*" are aware the Court must consider the pleadings and affidavits in light most favorable to Plaintiffs, *Compuseve*, 89 F3d 1262. That being said, in such a serious case as this that effects all Americans dismissal is appropriate *only if all the specific facts which Plaintiff…alleges collectively fail to state a prima facie case for jurisdiction*.

Defendants thus far have failed to present any argument much less a *prima facie case* to justify protracting the matter further. In fact, Defendants claim they will reply at some unknown time in the future. At no time demonstrating *"excusable neglect"* in any filing – infirm or otherwise.

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***.

[Surely, a Motion for Summary Judgment for Default qualifies concerning finality].

The "*People*" overwhelmingly fulfilled their burden of proof by a preponderance of fact, evidence and law of blatant violations of the supreme law of the land, the U.S. Constitution; to again, quote Judge Hudson; the Act; "*is neither within the letter nor the spirit of the Constitution*,"

It is without argument "H.R. 3590" violates Articles and Amendments of the Constitution, to include established statutory legislation that must be considered by the Court. *See United States v Local 560, International Brotherhood of teamsters*, No. 82-689, slip op (D.N.J.) *Hirsch v. Enright Mfg.*, 577 F Supp. 339 (D.N.J.). *Farmers Bank of State of Delaware v. Bell Mortgage Co*., 452 F. Supp. 1278, *See also Herman and McClean v. Huddleston*, 10-3 S. Court 682.

Respectfully, any denial of oral argument will again allow Defendants to continue to present a vague and ambiguous response, based upon unfounded technicalities, unsubstantiated conclusionary fact, and law, in absence of a plausible legal theory. Instead of the required specific responsive pleading, that is mandated, *see, FRCP* 8(b) and (d).

All one has to do is address Count 1, that demonstrates the "Act" reeks of fraudulent conveyance, and is illegal as found by Judge Vinson (FLA.) who stated the "Act" originated in the Senate, to say the least considering the numerous other unconstitutional and discriminatory violations throughout the Petition.

It is inarguable the Court would be unable to make a proper finding and conclusion based upon submission of conclusionary papers on submission since Defendants have thus far shown a propensity to omit, distort, and misapply legal precedent, as was blatantly evident in their prior

arguments (twice in their opposition papers) to the "*People's*" Show Cause Order[s] for a TRO saying nothing of the amateurish requests for not one, but three separate requests for a Stay on two occasions absent any cogent argument in a proper Motion to support "*excusable neglect*."

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.

Plaintiffs' are *pro se,* our opposition is the entire DOJ consisting of scores, if not hundreds of attorneys associated with Petitions throughout the nation concerning "H.R.3590". If no crimes or violations were committed as alleged, why should such a mighty force of Defendants' counsels fear arguing before the Court against two *pro se* litigants. Is it possible they and the Court fear a factual record where adjudication on the issues can be more accurately accomplished after a factual record is developed. The issue now before the Court is "Credibility Findings".

In absence of any factual denial, nothing exists to support a dismissal. This District Court clearly would error in considering Defendants' affidavits, or their untimely motion to dismiss, since they utterly failed answer a single allegation, or address matters of policy, reason, principle, and general prevailing fact especially without the court's holding a "evidentiary hearing." *See,* Fed. Rules Civ. Proc. Rule 12(b)(2), 28 U.S.C.A.

This Court, *in the interest of justice* must immediately defer from even considering ruling on submission. Legal sufficiency of proper "*due process*" mandates adjudication on issues can be more accurately accomplished after a factual record is developed *See*, Flue-Cured Tobacco Co-op Stabilization Corp v. United States EPA, 857 F. Supp 2137, 1145.

The Courts generally use the "*clear and convincing evidence standard*" in civil actions involving allegations of fraud (*see*, Count 1) or some other quasi-criminal wrongdoings by Defendants, as well as in civil actions initiated by the government that ***"threaten the individual involved with 'a significant deprivation of liberty'**** as set forth by numerous provisions attached to "H.R.3590". See, Santosky, 102 S. Ct. at 1396, quoting Adding, 441 U.S. at 425, 426, 99 S.Ct. at 1808, 1809.

Defendants counsels **utterly fail to address whether the episodes** committed by Defendants are functions normally performed. Instead, Defendants expect to have this Court act in connivance,

and the reliance upon unsupported procedural ploys and technicalities as set forth in Defendants' anticipated and infirm Motion for Dismissal as the basis for said Dismissal.

Again, Plaintiffs' are *pro se,* representatives of the "*People*" who under Amendment 1, have the Constitutional right to Petition the government for grievances before the judiciary concerning any unconstitutional "Act". If the "*People's*"" Petition is meritless as Defendants counsels' allege and no crime or violations were committed why the fear of a record of the proceedings?

*Note: The wrongful use of threatening… or fear of economic harm ….to surrender a federally protected rights constitutes extortion within the meaning of 18 U.S.C. 1951(b)(2) *United States v. Sweeney,* 262 F2d 272 (3rd Cir. 1959) *United States v. Kenny,* 462 F2. 1205 (**3d Cir**.) *cert. denied,* 409 U.S. 914, 93 S.Ct. 234. 34 L.Ed.2d 176 (1972) *United States v. Provenzano*, 334F.2d 678 (**3rd Cir**.) *cert. denied* 379 U.S. 212, 80 S. Ct. 270, 4 L.Ed.2d 544 *fear or wrongfully threaten economic lose also satisfies Hobbs Act).* Such intimation violates Supreme Court precedent**,** *Also see***,** *Mathges v. Eldridge*, 424 US 319 344: "*The rules "minimize substantively unfair treatment or mistake, deprivation by enabling a person to contest the basis upon which a state proposes to deprive them of protected interest."* See, *Cary v. Piphus*, 435 US 259: "*Procedural due process rules are meant to protect persons not, from deprivation, but to contest from the mistake or justified deprivation of life, liberty or property.*

The Honorable Judge Hudson stated concerning H.R.3590: "*is neither within the letter nor the spirit of the Constitution,"* But his ruling decision would not be the last we have heard on the matter. The same can be said concerning this action before this District Court. Thank you in advance for your consideration.

Clearly, what is one to conclude, but that the Defendants are depending on this Court to prevent their failures from embarrassing them since it is their multiple failures to act that must, in the *interest of justice*, require Defendants to take an appeal of the *"People's"* Petition and "Summary Judgment for Default". Had Defendants acted upon the *"People's"* Petition as required by the *FRCP* in the proper time frame the Court would not be being asked to continue to cover up for the Defendants and the issue at bar, "H.R. 3590". Their problem is obvious; no defense exists!

Please Take Judicial Notice: It is with the utmost concern and trepidation that the *"People",* because of the seriousness of the Constitutional challenges before this Court; that effect all Americans and the Republic. Make note of the following issues: The integrity of the Judiciary in the actions of this Court in granting the last three (3) orders issued by the Court in contradiction to proper Judicial Procedures and in violations of the *FCRP* gives the appearance that the Court is acting in connivance and collusion with the Defendants in the "*obstruction*" of justice and proper *"due process"*. We truly pray we are wrong.

By established precedent, when passing on motions to dismiss, the Court must take as true the well-pleaded allegations of a complaint. *Scheuer v.Rhodes,* 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed. 2d 90,94 S. Ct. 1683, *Bower v Federal Express Corp*. 96 F3 200, 203 *Misch v. The Community Mutual Ins Co. 896 DF*. Supp. 734, 738 Moreover, because Plaintiff is appearing *pro se* his pleadings will be held to a less stringent standard than formal pleadings drafted by a lawyer. *Haines v. Kerner*, 404 U.S. 519, 520, 30 L.Ed 2d 652, 92 S. Ct. 594.; *Lasher v. Shafer,*460 F2d 343 (**3d** Cir,1972).

Any "Dismissal" of the "*People's"* Summary action for Default is only appropriate, if it appears that no substantial Constitutional question is/was presented. Clearly, in the case at bar, numerous questions of law, related to the Constitution, statutes, and procedure, to include numerous violations of procedural "*due process*" and "*equal protection*" are at the forefront, that deserve oral argument in relationship to "H.R. 3590".

These legal questions concern "grave procedural error" and the abuse of legal authority by the Legislature of these United States, who wantonly violated their oath of office to uphold and to defend the Constitution of these United States. [the same sworn oath taken by every judge].

Defendants failed to address the "*People's*" Count 1, and the "*People's*" claim of fraud in conveyance of the "Act", or Count 13 concerning violation of Title VII, the denial of their Constitutional civil rights that are being denied by "H.R.3590" by failure to address these crucial Constitutional issues, to include each and every other Court, etc., etc., etc.

Here, the "*People's*" action can be analogized to *Ex parte Young*, concerning the Constitutional issues, if Defendants attempt to (we can only "anticipate", since the "*People*" are replying to an untimely "*Phantom Reply*" what will be forthcoming in their procedurally infirm Motion. Maybe they will attempt to argue the Amendment 11. Although an offshoot of the pending dispute involving the issue at bar, under the doctrine of *Ex parte Young*, 209 U.S. 123, the Supreme Court of the United States has held:

> "*relief against a state official in his/her official capacity to prevent future federal violations is not barred by the 11th Amendment. The Court reasoned that a state official who violated federal law is* "stripped of his official or representative character and therefore did not act for the State, but acted as an individual.*"*

The Supreme Court also held in Young:

> "***the court need only conduct a straight-forward inquiry into whether the complaint alleges an ongoing violation of federal law***."

This District Court is compelled by law, to determine whether those named in the Petition are now parties to an "*enterprise*" (the legislature) that passed "H.R. 3590" that intentionally denies Plaintiffs' et al., their Constitutional rights. Thus, this Court must return Plaintiffs, the "*People*" to the position and status held before the civil rights violations took place.

WHEREFORE, this District Court must not ignore Defendants are in violation of *FRCP* by wantonly failing to present an affirmative reply to the allegations in accordance with Rule 8 (b) and Rule 8(d).

On that basis alone this District Court should have issued a Summary Judgment on its own motion based upon the irrefutable evidence that conclusively proved the "*People*" Petition demonstrated that "H.R. 3590" is totally unconstitutional. Plaintiffs request the Court rule in favor of the "*People*" and let Defendants appeal on the record that now stands before this prayerfully Honorable Court.

Respectfully submitted,

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