United States
District of New Jersey

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NICHOLAS E. PURPURA,
DONALD R. LASTER JR. et al.,

Plaintiffs,

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

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v.

KATHLEEN SEBELIUS et al..,

Motion Date February 22, 2011

Defendants.

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PLAINTIFFS OPPOSITION TO DEFENDANTS "MEMORANDUM IN OPPOSITION TO PLAINTIFFS MOTION DEFAULT SUMMARY JUDGMENT and IN SUPPORT of DEFENDANTS" MOTION to DISMISS for LACK of JURISDICTION"

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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*
Plaintiffs' et al.

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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PLAINTIFFS OPPOSITION TO DEFENDANTS "MEMORANDUM IN OPPOSITION TO PLAINTIFFS MOTION DEFAULT SUMMARY JUDGMENT and IN SUPPORT of DEFENDANTS" MOTION to DISMISS for LACK of JURISDICTION"

Motion Date February 22, 2011

INTRODUCTION

Once again, Defendants are in violation of the *FRCP* and are in violation of the Court ORDER issued on January 4, 2011 (Document 23). This Court explicating stated in part:

"IT IS on this 4th day of January, 2011

ORDERED that Defendants' request for an extension of time until January 17, 2011 to respond to Plaintiffs' Motion for Summary Judgment is GRANTED."

An October 19, 2010 Letter that was substituted for a reply to the "*People's*" TRO in which Defendants stated:

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

Defendants failed to answer Counts 5, 6, 7, 12, 13, and 14 other than offering a conclusionary statement inconsistent with Rule 8(b). Defendants failed to submit any affirmative defense.
By law, Defendants were required to specifically answer each Count set forth with particularity or suffer a default, see, Rule 8(b) and 8(d). See Rule 8(b) see *Ponce v. Sheahan*, 1997 WL 798784 (N.D.Ill.1997) also *Farrell v. Pike* 342 F.Supp.2d 433, 40 - 41 (M.D.N.C.2004) & FRCP, Rule 8(d) "***the rules do not permit defendants to avoid responding***.

Therefore by law, the "*People*" Plaintiffs are entitled to an immediate ORDER issued by this Court for default by forfeiture due to Defendants failure to respond as required by law, Rule 8(b) and 8(d) of the *FRCP*, and in violation of this Court's Order filed on January 4th, 2011.

VIOLATION OF JANUARY 4, 2011 ORDER

Instead of answering the Constitution challenges set forth in the "*People's*" Petition and Motion for a Summary Judgment, Defendants resort to procedural ploys, conclusionary statements that that are not only without meaning, but blatantly misrepresent the multiple content set forth in the "*People's*" Petition and Motion for Summary Judgment for Default, distort the law, and include multiple misapplication of cases and of the legislative intent of the statutes.

Please Take Special Judicial Notice: In a duplicitous manner Defendants title their Motion to Dismiss: "Memorandum In Opposition to Plaintiffs' Motion for Default Summary Judgment and in Support of Defendants' Motion to Dismiss for Lack of Jurisdiction"

Let the record show, no "Motion to Dismiss for Lack of Jurisdiction" exists in the Court record that would warrant a memorandum in support. This chicanery is a backdoor attempt to argue a "phantom" pleading. Even if such a pleading would be valid (but it is not timely), or in compliance with the Courts Order of January 4, 2011, or even if anything suggesting a jurisdiction question existed, would not this automatically be waived, and thereby must be considered *de hors* the record, since the Court has nothing to refer too?

Fed. R. Civ. P. 12(h) (3). A Federal court has *subject-matter jurisdiction* if a case brought before it raises a Federal question. Generally, a case brought pursuant to a federally enacted statute raises a Federal question. Likewise, in this action; a case alleging a violation of Article 1, Section 7, Paragraph 1; Article 1, Section 8, Paragraphs 3, 12, 14, and 15; Article 1, Section 9, Paragraph 4, and 5; and Article 1, Section 8; Article 2, Section 1, Paragraph 5 and Article 6 raises a Federal question.

In addition' violations of Amendments 1, 4, 5, 9, 10, 13, 14, and 16, the "*Posse Comitatus*" Act, Title VII, and the Sherman Anti-Trust Laws, are present. These Federal questions are pursuant to Title 28 *U.S.C.* s 1331 that grants Federal District Courts original jurisdiction over "*all civil actions arising under the Constitution, laws of the United States*."

Andrew B. Burns said it best:

> "*The language in each article of the Constitution shall be constructed to mean what that language was generally understood to mean in the United States during the period in which the enabling ratification of that article took place*."

In Short, the U.S. Constitution, as the Supreme law of the land, takes precedent and supersedes any statute, legislation, or technicality. Amendment 1, grants all citizens the Right to Petition their government for grievances. The Court is required to address all Constitutional challenges; no excuse exists. To do otherwise would make a mockery of the Constitution and bring into question the integrity of our judiciary.

Please Take Special Judicial Notice: The question arises, are we a Constitutional Republic, or are we a government of men and not law? From the beginning the Supreme Court of these United States made clear: "…*the people are sovereign in our constitutional Republic*"[1] see *Chisholm v. Georgia,* 2 U.S. (2Dall.) 419 (1793). This has not changed! *Marbury v. Madison*, 1 Cranch 163 (1803), makes clear **to deny standing is to close the court house doors to a litigant who seeks justice under rule of law**.

In the case at bar, Petitioners' in this quasi' 'class action' allege Defendants associated with the passage of "H.R.3590" and those with enforcement of said "Act" repeatedly violate the "*People's*" rights under both *42 U.S.C. s 1983, 42 U.S.C.A. 1985 and 18 U.S.C. s 1961 ET. seq.* (RICO). Because *42* U.S.C. 1983 and RICO are Federal laws, though the "*People"* have not presented these charges in this Petition, "*People"* reserve the right to do so at a later date if it becomes necessary against any that conspire or attempt to circumvent the Constitution of these United States.

In "*Bell v. Hood*," the Supreme Court 327 U.S. 678, 66 S. Ct. 773 90 L.Ed. 939 held:

> "*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."*

[1] Amendment 9 provides: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

NATURE OF ACTION

This quasi' 'class action' is neither unusual nor unique; questioning of constitutionality concerning legislation arose in the 1930's and our federal courts halted President Franklin D Roosevelt's Administration's unconstitutional behavior. Supreme Court, the Hon. Justice, George Sutherland (1922-1938):

> "*Was one of the 'Four Horsemen' who resisted the economic and social legislation of Roosevelt and the Seventy-Third Congress. The National Industrial Recovery Act was ruled unconstitutional in 1935, and the Agricultural Adjustment Act in 1936.* ***Federal judges by 1936 had issued some 1,600 injunctions to restrain federal officials from carrying out various congressional acts***."

Subsequent to the unconstitutional activity of the Seventy-Third Congress, like the past, this past Hundred and Eleventh Congress, Legislators and Judiciary have remained silent, failing to halt repeated usurpation of the Constitution. These violations once again are before our third branch of government, the judiciary, the bulwark established to protect the "*People*" and Republic. The Nation waits to see whether we are still truly a Constitutional Republic under the "*Rule of Law*".

"*We the People*" Petitioners are in our legal Constitutional right to bring forth this action based upon unconstitutional acts by Defendants that are charged with implementation of "H.R. 3590". Once again, it is the duty of the judiciary to enjoin this legislation as did the federal courts that stopped FDR, 1600-times, demonstrating jurisprudence when unconstitutional legislation was proposed by administering "*substantive due process.*"

JURISDICTION ARGUMENT

Unlike any argument ever presented to our Federal Judiciary, this "action" while akin to a 'class action' but clearly not a "Class Action" as Defendants readily admit, consists of no less than 199-plus individual to include the leadership of numerous Tea Party groups and has been growing daily is unique.(There are too many to list) *Pro se[s]* are merely acting as spoke persons for the group. Again, the "*People*" believe Defendants are attempting to search for a technicality to dismiss the action. *Pro se* spoke persons are well aware that a *pro se* are restricted from arguing a "class action lawsuit".

No precedent exists to justifiably deny this Petition or Summary Judgment for Default on any jurisdictional claim. Jurisdiction is established by the U.S. Constitution's Article 3[2], Section 2, and Amendment 1 supersedes any legislation, statutes, of rules of procedure established thereafter, other than a Constitutional Amendment.

This Petition breaks new ground in "*American Jurisprudence."* This legislation "H.R. 3590" is not only repugnant to the Constitution, not withstanding its invalidity, but if allowed to remain law will have a devastating effect on every citizen of the State of New Jersey and those throughout these United States.

The question before this Court does "H.R. 3590" constitute a rule as operative without judicial review? It is emphatically, the province and duty of this judiciary to review what the law is, when it concerns the "*General Welfare*". The very essence of civil liberty is the right of every citizen to be heard.

Defendants make the ludicrous claim the "*People*" Plaintiffs are without standing to either institute this action or represent others that lend their signatures to the Petition. Defendants counsel ridiculously assert: "*Federal courts sit to decide cases and controversies, not to resolve disagreements on policy or politics*." As if this were a "public issue for debate," nor are we requesting the government to listen to our views. This is anything but the preceeding, this is an unconstitutional law that requires adjudication.

Before this Court is a controversy over the constitutionality of "H.R. 3590" and the specific provisions in said "Act". Defendants claim, without presenting any material evidence, facts, or law, that "H.R. 3590" is lawful under the U.S. Constitution. Plaintiffs allege, presenting specific violations, that "H.R. 3590" is unlawful under the U.S. Constitution. Thus an actual controversy does exists.

[2] The question of standing will also be addressed in relationship to whether Article III renders standing to enforce Article II, concerning Mr. Obama's authorization to sign "H.R.3590 into law. This will be addressed below with unprecedented supported attached in Exhibit 5 as an additional argument for standing that involves the question of the meaning of "natural born citizen" not properly presented in prior litigations in which this Petition demonstrates immediate dangers and injury (deprivation of liberty, safety, security, and protections' of no less than 10 Amendments.

Undoubtedly Defendants counsels are totally unfamiliar with the Articles set forth in the Constitution and Amendments attached thereto. Amendment 1, explicitly states in part;

"…,*and to petition the Government for a redress of grievance*."

Pursuant to its duty (Court) to shape the jurisdiction the lower Federal courts, under Article 3, Section 1, and Article 1, Section 8, Paragraph 9, Congress has vested the District courts with "*Original jurisdiction of all civil actions arising under the Constitution, laws….*"

Furthermore, the "*People*" Plaintiffs' draw the Courts attention to Article III, Section 2, of the U.S. Constitution:`

> "*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under [its] authority [and] to controversies to which the United States shall be a party*."

District Courts shall have jurisdiction to prevent and restrain violations of *the Tenth Amendment.* The principle is that the jurisdiction of the federal courts or legislature would seem to be fundamental. The federal court is the bulwark of a limited Constitution against legislative encroachment. The U.S. Supreme Court in *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.***

STATEMENT OF FACT

Due to the serious nature of this action, and distortion of the truth, Defendants counsel present in their convoluted "Introduction" to the Court in their Opposition papers and throughout. The "*People*" Plaintiffs'[3] will present an analytical examination of Defendants Opposition Memorandum.

[3] New Webster's Dictionary defines Plaintiffs as person who brings a suit before tribunal; the person who complains in any litigation; opposed to *defendan*t. Clearly, Mr. Purpura and Mr. Laster are more than one person, clearly are two people acting together. People is defined as "the persons of any particular group, company, or number;" Defendants make note of the fact that 199 people, excluding groups, are Petitioning their government pursuant to their first amendment right. [There are untold numbers requesting to be added as Plaintiffs].

Messrs. Purpura and Laster *pro se* are not representing all the people, but are in fact spokespersons and part of a group of "*People*" petitioning their government for multiple grievances (that will surely affect all Citizens as the Court will recognize) created by an unconstitutional bill generated by Congress, as is their legal and Constitutional right.

Plaintiffs have been served on January 19, 2011 with Defendants Opposition to the Petition and Summary Judgment. In Defendants responses to the "*People's*" Petition and Summary Judgment defense counsels co-mingle words taken out of context set forth in the 15 specific and detailed 'Counts' in order to belittle and misrepresent facts set forth before this Court in that which reeks of sophistry, if not outright diatribe. Thus begins the analytical examination of Defendants Opposition Memorandum.

Defendants Distorted & Duplicitous "Background Statement":

Page 2, Def. Opposition: Defendants reference a letter that her Honor wrote to Plaintiffs dated December 7, 2010, citing *Elizabeth Teachers Union. AFT Local 733 Elizabeth Bd. of Educ*. (citation omitted) There seems to be some confusion, as *pro se[s]* we were somehow practicing law, by being spokespersons for ourselves and others citizens and Tea Party groups. The case referred to deals with a corporation and partnership and therefore said case is of no moment in this action. At no time are Plaintiffs practicing law, nor are those listed in the Petition representing any Corporation, nor are *pro se*[s] being compensated.

Clarification: Page 3, Defendants in a vial attempt to try to tweak Her Honor, Defendants remind Her Honor that Plaintiffs requested she recuse herself. Please Your Honor, at no time stop short; we wouldn't want Defendants counsels to break their nose.

Clarification & Fact: The "*People*" make no apologies, for the request. At the time the "*People*" perceived preferential treatment was being granted to the DOJ, especially in light of the disregard for 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."* pertaining to the two TRO's and Defendants requests for Stay[s] that also failed to comply with the *FRCP*. Nor were the "*People*" given an opportunity to reply to anything Defendants submitted. Thankfully, Your Honor, thereafter in her letter (Document 15), assured the "*People*": *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." We take Her Honor at her word.

COUNTER ARGUMENT

Point I (page 4): Defendants counsel proffer the inane argument that the "*People*" Plaintiffs lack "*subject-matter jurisdiction*" as if this Court lacks the authority to hear and decided the matter failing to acknowledge that Rule 12(b)(1) states: ***"…only if there is no federal question at issue,…***" The "*People*" Plaintiffs set forth violations of their Constitutional rights. Clearly injury in fact is present under Article III that mandates adjudication.

Defendants foolishly insult this District Court by arguing that: "*No plaintiffs – pro se or not – can invoke the power of an Article III*." Yet, Defendants failed to present this Court with any substantive challenge to the factual merits cited in each of the 15 Counts that cite constitutional violations set forth throughout the Petition that would prohibit federal jurisdiction to warrant dismissal.

The "*People*" stand on Article III, Section 2 that says in relevant part:

> "*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under [its] authority [and] to controversies to which the United States shall be a party*."

Defendants would also have this Court ignore "*Fed. R. Civ. P.* 12(h) (3*).* A Federal court has *subject-matter jurisdiction* if a case brought before it raises a Federal question. Generally, a case brought pursuant to a federally enacted statute raises a Federal question. Likewise, in this action; a case alleging a violation of Article 1, Section 7, Paragraph 1; Section 8, Paragraphs 3, 12, 14, and 15; Section 9, Paragraph 4 and 5; Article 2, Section 1, Paragraph 5; Article 1, Section 8 and Article 6. Clearly, Amendment 1 grants this Court "*subject matter jurisdiction*" since it is the "*People's*" right to Petition their government.

It must also be noted; if Defendants truly had a valid argument (which they do not) concerning standing, the time is long gone for raising the issue. Defendants have been litigating since October and at no time presented any motions requesting a dismissal.

In fact, Defendants superciliously stated they would be answering the Petition and prove the 15-counts meritless in subsequent briefings (Document 8) therefore waiving any right to raise this issue at this time. They've failed to do so.

Please Note: Case Studies submitted by Defendants have no bearing on the issue, outside of supporting the "*People*" in a number of their authorities, example *Citizens United* footnote 3. See Exhibit 2, (p.9) for analysis of all Defendants Authorities cited.

The Standing Issue:

Defendants attempt to equate this Petition by citing authorities previously before the District and Third Circuit that failed to properly address this single issue, of Mr. Obama's eligibility.[4] Unlike those prior actions, the "*People's*" Petition demonstrates standing due to no less than 16 additional Constitutional protections that have been violated that more than satisfy Article III standing[5]. Including Count 6 which addresses Mr. Obama's eligibility to sign bills into law.

Unlike previous Petition challenging Mr. Obama's eligibility, Defendants do not require Mr. Obama produce any documentation of his citizenship. Plaintiffs will prove Mr. Obama is ineligible based upon the Constitution, the Supreme law of the land supported by ample Supreme Court precedent not addressed or before the Courts previously.

In addition to the right of the "*People*" to Petition their government against Defendants under Amendment 5, "*due process.*" The Supreme Court emphasized the importance of standing and jurisdiction, See *Valley Forge Christian College v. Americans United for Separation of Church and state, Inc*., 454 U.S. 464, 470 (1982) held: because of the "unusually broad and novel view of standing" to litigate a substantive [constitutional] question in federal courts adopted by the Court of Appeals. *Massachusetts v. EPA*, 549 U.S. 497, 227 S. Ct.1438 1447 (2007). That being said:

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[4] Mr. Obama signed this unconstitutional "act" into law, and is currently exercising executive power. and will continue to do so until the Supreme Court addresses his Constitutional eligibility to hold office. Hence, the "*People*" are without judicial protection against the violations in the many provisions of 'H.R.350" Clearly the Petitioners are/will suffer injury of fact.

[5] Why the Courts must take jurisdiction of this Petition in which standing was found, See *Flast v. Cohen*, 392 U.S.83 (1968); *United States v. SCRAP D*., 410 U.S. 614 (1973) *Japan Whaling Ass'n v. American Cetacean Soc*., 478 U.S. 221, 230-231 (1986) *Federal Election Commission v. Akins*, 524 U.S. 11 25 (1998) and again, *Massachusetts v. EPA*., (citation omitted)

The Court is required to apply standing in this action, to do otherwise would deny the Petitioners "*due process*" and their right to maintain their constitutional rights in a court of law. S*ee* Cohens *v Virginia*, 19 U.S. 264 (1821). To do otherwise would be to nullify the Constitution of these United States.

Point II (page 4-8): (Standing) Grasping at straws, Defendants counsel make the ridiculous argument saying: "*Federal courts sit to decide cases and controversies, not to resolve disagreements on policy or politics*." They go on to say: To establish standing:

> "[a] *plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by request for relief*...."[6]

Defendants blather words to the effect that Plaintiffs assert only "generalized grievance" instead of alleging particular facts that demonstrate a present, concrete injury, … not demonstrating how the act affects themselves, saying:

> "*One of the central provisions that the plaintiffs challenge the requirement that non-exempt individuals maintain a minimum, level of health insurance coverage or pay a penalty - does not take effect until January 1, 2014*."

Thereafter jabber about the benefits of healthcare with hypothetical scenario's concerning healthcare and coverage not relevant to the issue at bar, the violations of the "*People's*" Constitutional guaranteed protections, which is the issue at bar.

First, and foremost the "*People*" are not requesting this District Court to decide mere controversies, or to resolve disagreements on policy or politics! This Court has the sworn duty to protect the rights as set forth in the Constitution and Amendment attached thereto. See, Article III, Section 2, and Amendment 1.[7] Before this Court are serious violations of the U.S. Constitution. There's nothing abstract about constitutional violations.

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[6] Both Plaintiffs are personally effected by the "Act" Mr. Purpura is 68 years of age and loses "Medicare Advantage; whether he chooses or not to use it, privacy of his medical records; a violation of Amendment 4; Mr. Laster is handicapped and will now be tax on medical devices that cross State lines, and will suffer the restrictions to certain drugs, to that might not meet the cost accounting decision by government bureaucrat.

[7] Defendants cite *Citizens United v. FEC*., 130 S,Ct 876 (2010) No. 08-205 based upon Amendment 1 – this citation supports Plaintiffs throughout the litigation, *Citizens United* has asserted a claim that the FEC has violated its First Amendment right to free speech. All concede that this claim is properly before us. And [10] "'[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise

As far as the personal injury argument, any violation of the Constitution is an immediate personal injury every citizen of this United States. Even more so to those of us that swore the oath before God to uphold the Constitution against all enemies foreign and domestic? Both Messer. Purpura and Laster are held to that oath, as is Her Honor.

Defendants go on to misled the Court implying said harm does not take effect until January 1, 2014,[8] expecting the Court to disregard prior precedent recently held by the federal Courts in Florida and Virginia attempting to have this Court believe not just Plaintiffs, but all citizens are not immediately being affected by this unconstitutional "Act." Defendants conveniently ignore or take out of context authorities, "An injury in fact' is 'an invasion of a legally protected interest which is concrete and particularized and (b) actual or imminent, no conjectural, *see*, *Lujan v. Defenders of Wildlife*,[9] 504 U.S. 555.560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992), *Granite State Outdoor Advertising Inc. v. City of Clearwater*, 351 F.3d 1112, 1116 (11th Cir. 2003), *ACLU of Florida, Inc, v. Miami-Dade County School Bd*. 557 F.3d 1177, 11945 (11th Cir 2003) and other cases where the same fallacious argument was made and rejected by the Court.

The Supreme Court in *Lujan, supra,* aids the Plaintiffs'. Clearly the "*People*" adequately satisfied the constitutional requirements. It is inarguable Petitioners injury is concrete. "H.R. 3590" violates not only Articles 1,2,3,4,5, and 6 of the Constitution, to include Amendments 1,4,5,8,9,10,13, to include statutes set forth throughout the Petition which is threat to life ,liberty safety, security, and property which is neither conjectural or hypothetical. The Constitution recognizes these rights that require this Court to protect the people from such abuses.

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arguments they made below.'" *Lebron*, supra, at 379, 115 S. Ct. 961, 130 L. Ed. 2d 902 (quoting *Yee v. Escondido*, 503 U.S. 519, 534, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992); alteration in original). Citizens United's argument that Austin should be overruled is "not a new claim." *Lebron*, 513 U.S., at 379, 115 S. Ct. 961, 130 L. Ed. 2d 902. Rather, it is--at most--"a new argument to support what has been [a] consistent claim: that [the FEC] did not accord [*Citizens United*] the rights it was obliged to provide by the First Amendment." Ibid.

[8] Hon. Roger Vinson noted that Defendants conceded "that an injury does not have to occur immediately. See, Def. Memo. at 27 Order and Memorandum October 14, 2010 Case 3:10-cv- 00091.[does not prevent federal litigation or standing now]. The question the Court is obligated to ask; why are Defendants arguing differently before this court; saying the injury must be immediate, if you admitted to another federal court just the opposite?

[9] Defendants are quick to theorize and conclude that Plaintiffs only "generalized grievances", interestingly referencing *Lujan v. Defendants of Wildlife,* (citation omitted) as a standing matter, saying nothing of substance. The fact is there is injury of fact, there's a connection throughout the Petition due to the provisions of the "Act" [conduct]. And surely any honest and learned Court will be redressed by a favorable decision.

Above and below, Petitioners demonstrated these injuries are particularized [*Defendants have failed to respond with specificity or particularity where Plaintiffs' are mistaken*] and by federal law and established precedent the "*People*" are therefore the objects of the constitutional protections personally and are entitled to these rights and protections.

If the "Act" doesn't have an immediate effect on the public, let Defendants explain at oral argument why the Department of Health & Human Services as of December 3, 2010 granted 222 waivers of the annual limits requirements of PHS Act 2711. *See*, Exhibit 3, and it has been reported as of November 14, 2010 that more than 1500 HC waivers are expected to be approved within six months. (It would appear an "*equal treatment*" argument exists). The numbers at last count exceeds 700 waivers.

Defendants fallaciously claim the "Act" does not take effect until 2014. Are they trying to tell this Court that provisions of the "Act" are not being implementation as this litigation is taking place? Or that every citizen of every State who will suffer financial harm by unwarranted increases in their taxes and insurance premiums for the continuing implementation of the Act, are not or will not be affected by the following:

The creation of no less than 160 agencies and/or bureaucracies, not accountable to the public. The current (bill) plan costs no less than $2.5 trillion and counting. (This does not account for the costs of these new bureaucracies, salaries, medical, retirement, buildings, and maintenance) Prior to any passage of this Draconian legislation, Defendants without a voter referendum as it is written, will not put the "*general welfare*" of the people of New Jersey and this United States in financial peril during an economic downturn. Neither Congress nor the Senate can explain the necessity for the creation of these new federal bureaucracies;
Federal employees are drafting regulation that will impact every American citizen;
Insurance premiums are skyrocketing out of control and effect every State, individual, and business as a result of the unconstitutional mandates in the "Act";
The IRS is preparing/or currently hiring and training IRS agents to enforce this "Act" prior to the Courts rendering a decision on the constitutionality of the Act" itself?

Furthermore, Defendants unsuccessfully put forth this same frivolous argument before the Honorable Chief Judge Roger Vinson concerning immediate harm and the excuse that the "Act" does not go into effect until 2014 **that were flatly rejected** (also footnote (p.10)). The law is clear concerning injury, see *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed.2d 895 (1979) expressly held:

"[P]laintiffs here have alleged when and in what manner the alleged injuries are likely g within a certain number of days, weeks, or months."

The Honorable Roger Vinson, Senior United States District Judge went on to note that Defendants conceded; "***that an injury does not have to occur immediately***" Def. Memo. at 27. ORDER AND MEMORANDUM OPINION, October 14th 2010 , Case 3:10-cv-00091-RV-EMT held:

"Standing depends on the probability of harm, not its temporal proximity. When When injury… is likely in the future, the fact that [the complained of harm] may be deferred does not prevent federal litigation now."

Judge Vinson cited: *Village of Bensenville v. FAA*, 376 F.3d 114 (D.C. Cir 2004) in which Plaintiffs in that action challenged a harm scheduled to be imposed **thirteen years** in the future, saying; (*see* complete reasoning Order & Memorandum at 33-35):

"District Court of Columbia Circuit held that, despite the significant time gap, there was an "impending threat of injury" to plaintiffs that was "sufficiently real to constitute injury-in-fact and afforded constitutional standing""

As Judge Vinson stated in short, citing, *Babbitt, supra 442 U.S .at 298*,:

"to challenge the individual mandate, the individual plaintiffs need not show that their anticipated injury is absolutely certain to occur despite the "vagaries" of life: they need merely establish "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement."

Note: Plaintiff *pro se* is 68-years of age many are 65 plus that signed on to this Petition. More on point, Judge Vinson cites *Pierce v. Society of Sisters*, 268 U.S. 510, 450, 45 S. Ct 571, 69 L. Ed.2d 1070 (1925) that held:

"….the Supreme Court found that it had standing to consider the challenge, notwithstanding the universe of possibilities that could have occurred between the filing of the suit and the law going into effect years later. The Court concluded that it was appropriate to consider the challenges because the complained of injury "was present and very real, not a mere possibility in the remote future," and because the [p]revention of injury by lawful action is well recognized function of courts of equity." Id. at 536"

Note: Case studies submitted by Defendants are without merit and moot. See Exhibit 2 for complete breakdown and analysis.

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Point III (page 8-9): (Plaintiffs' For "Default Summary Judgment" Should Also Be Denied):

Defendants open their argument citing *FRCP* 12(a)(2), in an attempt to create an issue concerning service, Defendants go so far as to mislead the Court in a statement of outright dishonesty saying on page 9, "*Even assuming that the December 15 mailing to the U.S.*

Attorney's Office – which did not include a summons – constitutes proper service ...." Unable to refute the Constitutional violations Defendants counsels in searching for a technicality to Plaintiffs' Service resort to entrapment:

1. Mr. 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, Mr. Paul J. Fishman 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*." [Unless Mr. Davis wants to state under oath that he didn't say that the case would proceed, "don't worry." Mr. Davis is aware there's a penalty to be paid for perjury.] Plaintiff complied. See attached letter (Exhibit 4), which self explanatory.

Thereafter, in their "Opposition Motion to the Summary Judgment for Default" we see these unethical devious individuals attempt to use an underhanded tactic; claiming they received service on December 15, 2010. Obviously, unable to answer the Constitutional violations set forth in the "*People's*" Petition, as will be shown below.

More disturbing, the U.S. District Attorney for New Jersey, Mr. Paul J. Fishman, Esq., is listed on no less than six (6) Court Documents along with Mr. Ethan P. Davis, Esq. et al. as Attorney of Record, on their Notice of Appearance, *see*, Document 7 and 8, October 19, 2010; Document 11, October 28, 2010, Documents 19, December 17, 2010, Document 20; December 23, 2010, and Document 23 January 3, 2011.

If the U.S District Attorney wasn't served why is his Notice of Appearance set forth on every document? If there were a problem in service; why was Mr. Fishman et al., answering motions for over 4-months? Surely, Defendants counsels acknowledged service, accepted service, and thereafter acted in performance of service, by established law ratifies the Petition.

It must also be noted and not denied, that the Department of Health and Human Service's had established a legal section to accept all Complaints related to "H.R. 3590." It is also without argument Defendants at no time submitted a Motion to Dismiss for improper service. This Court itself acknowledged "Proof of Service" Document 3.

In addition, 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. What is also telling, Mr. Ethan P. Davis, Esq & Mr. Paul J. Fishman on October 19, 2010 Defendants' counsel, in (Document 8) 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 improperly 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."*

It is without argument the Petition is ratified and legally must proceed. Clearly, Defendants' counsels intentionally avoided any claim 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 (Ethan P. Davis) 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*,"[10] and "*estoppel*,"[11] (See authorities in footnote)

[10] *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.

[11] "*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' estoppe*l by a failure to do something which should be done or to claim or enforce a right at the proper

Please Take Judicial Notice: Especially when attempting to use a technicality after the fact. Case studies are legion, that support the "*People*". 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 exists for the Court to ignore Constitutional challenges that have gone unanswered.

The Court would be remiss to ignore the Circuit Court in *Parker v U.S*. (citation omitted) 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. Defendants request to have the "*People's*" Petition dismissed under Rule 12 in a Petition that contain Constitutional challenges, defies reason, logic and common sense.

The "*People*" also request the Court address Rule 5.1 concerning Constitutional challenges to a statute. It is without argument that the Attorney General of the State of New Jersey accepted service and acted upon said service giving Notice of Appearance to this Court in Documents 3, 7, and 8. Most importantly, Rule 5.1 (d) "*A party's failure to file and serve the notice, or the Courts failure to certify,* ***does not forfeit a Constitutional claim or defense that is otherwise timely asserted***." Just a reminder, service was accepted by the Department of Health and Human Service "Special Legal Division" which was established to accept all challenges to the "Act" known as "H.R. 3590".

Defendants Arguments & Plaintiffs' Counter arguments:

The "*People*" *will now address each of Defendants baseless and convoluted arguments in rebuttal to the "People's*" allegations of Constitutional violations set forth in the Petition, starting on:

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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.

Page 9-10: Defendants make a feeble attempt to dispute **Count 1** claiming Plaintiffs: "*First, Count 1, should be dismissed because the ACA does not violate the Origination Clause*." This is out right dishonesty perpetrated upon this Court:

Fact: Defendants attempt to justify the "Act" and render the 'Revenue raising issue" moot claiming the Senate amends House bills by total "substitution"[12] all the time and this does not violate the origination clause citing *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143 (1911) that at its core is a substitution of one tax for another. Of course, carefully **omitted from Defendants' fallacious argument** is that in *Flint v. Stone Tracy Co.* is that the Senate was amending a House originate revenue raising bill – not a bill that was written, or originated, entirely by the Senate.

While the House of Representatives was originating H.R. 3200, the Senate and House leadership and Mr. Obama (behind closed doors) decided to use the S. 1796. But knowing the appearance of proper procedure was needed, with "*fraudulent intent*" by the Congressional leadership, they gutted totally an unrelated House Bill replacing everything with the Senate "originated" revenue raising bills, even going so far as to changing the title, just to get a House "numerical designation". In this case "3590." [One could rightfully argue a conspiracy took place that could be the subject in a "Civil RICO" claim].

The Defendants are knowingly deceiving this Court. They themselves requested the history of said "Act" be examined in Case 3:10-cv-00091-RV-EMT, specifically requesting Chief Judge Vinson to examine the origination history of the "Act" in question[13].

[12] Maybe Defendants can point to a provision in the Constitution, or Amendment that defines and/or grants exceptions to Article 1, Section 7, Paragraph 1. It would certainly be eye opening. No such provision exists, concerning "revenue bills" created or originated by the Senate.)

[13] Quoting Chief Judge Vinson from document 79: "To the extent there is statutory ambiguity on this issue, both sides ask that I look to the Act's legislative history to determine if Congress intended the penalty to be a tax. Ironically, they rely on the same piece of legislative history in making their respective arguments, to wit, the 157-page "technical Explanation" of the Act that was prepared by the Staff of the Joint Committee on Taxation on March 21, 2010 (the same day the House voted to approve and **accept the Senate bill** and two days before the bill was signed into law) (page 20) and 'While the above bills were being considered in the House the Senate was working on its healthcare reform bills as well. On October 13, 2009, the Senate Finance Committee passed a bill, "America's Healthy Future Act" (S. 1796). A precursor to the Act, …" (page 13). These are the bills that were called "H.R. 3590" – all Senate originated revenue raising bills which is prohibited by Article 1, Section 7, Paragraph 1.

More pertinent, if the House and Senate so readily use total substitution, let the Court be reminded that recently the Senate originated and passed a revenue raising Act S 510, which the House of Representatives rejected for its revenue raising provision that is restricted by Article 1, Section 7, Paragraph 1 of the U.S. Constitution.

Please Take Judicial Notice: Defendants argument related to Count 1, in a convoluted manner co-mingled various parts of the "*People's*" Petition in an attempt to dazzle and confuse this Court. Both the Petition and the Summary Judgment for Default outline various violations of the United States Constitution. Defendants fail to demonstrate to this Court where the authority exists to violate the Articles and Amendments of the Constitution throughout their Opposition Motion to Dismiss, both the Petition and Summary Judgment, or dispute each Count with other than conclusionary sophistry.

Page 10-12: (Commerce Clause, Plaintiffs' **Count 2**): As an argument Defendants ramble about the Insurance markets, minimum coverage easily falls into the commerce power, for it regulates economic decisions about how to pay for health services that have substantial effect on interstate commerce; pre-existing conditions; consumer protection; and a possibility of the collapse of the insurance industry and interstate markets[14]. Essentially parroting the fallacious justification for "H.R. 3590" which distorts *United States v. South-Eastern Underwriters Association* [15](322 U.S. 9 533 (1944)) findings which prohibits what "H.R. 3590" does, that in essence supports the "*People's*" Plaintiffs argument.

[14] It would appear that "the collapse of the insurance industry" is the desired result of "H.R. 3590" which has been to goal of the Progressive Establishment, one only has to refer to Cloward and Pivan's "*The Weight of the Poor: Toward a Guaranteed National Income," The Nation,* 1996, at all time failing to demonstrate the Constitutional authority to act under the Constitution.

[15] *United States v. South-Eastern Underwriters Association* (322 U.S. 9 533 (1944)) This is the case "H.R. 3590" uses to "justify" the individual mandate. Of course when one takes the time to read the case one finds it only says that if one is selling insurance products across State lines that is subject to regulation under the Constitution. In this case an insurance company was engaging in price-fixing, extortion, etc. From the case itself. A conspiracy to restrain interstate trade and commerce by fixing and maintaining arbitrary and noncompetitive premium rates on fire and allied lines of insurance, and a conspiracy to monopolize interstate trade and commerce in such lines of insurance, held violations of the Sherman Antitrust Act. P. 322 U. S. 553. The case in no way grants the General Government authority to force one to purchase a product – regardless of its effect on commerce "among the several States"

Defendants cite the "Necessary and Proper Clause"[16] saying: "*Congress has the power to enact a regulation of interstate commerce*, disregarding the bounds of the power authorized as explained in the footnote below.

No one is arguing the authority needed to make regulation effective for "commerce." Defendants cite *United States v. Wrightwood Dairy Co.*., (citation omitted) that is not applicable in the issue at bar. By their argument Defendants and those they are representing have now concluded that "breathing" constitutes an act of "commerce" or for that matter a mandate to purchase a product.

Most notable, Defendants go on to make the ludicrous claims: "*Finally, the minimum coverage provision also falls easily within Congress's independent authority to lay taxes and make expenditures for the "general welfare*." In their last five sentences they say: "*It is in the Internal Revenue Code. Its penalty operates as an addition to an individual's income tax liability on his annual return*…," and, how much revenue is projected annually. Do they mean through "extortion" because that is what the "Act" condones.

Facts & Law:

Nowhere, in Defendants' argument do they say what provision in the Constitution grants Congress the authority, nor do Defendants address how Plaintiffs are mistaken concerning the violation of Article 1, Section 8, Paragraph 3. Of course Congress is granted broad authority to regulate commerce in various forms. However:

- the grant of authority does not grant Congress the authority to dictate, order or force any person, company or state to engage in any form of commerce;
- Nor does the contract between the States that created the federal Government give Congress the authority to create vehicles of commerce;

Obviously, Defendants counsel did not read or comprehend Plaintiffs Count 2, pages 9- 11. It's apparent they are unfamiliar with the provision of the Constitution. Now, if case law is needed the "*People*" refer to *United States v. Lopez*, 515 U.S. 549, 115 S. Ct 1624, 131 L, Ed. 2d 626 (1995) also see, *U.S. v Morrison*, (citation omitted) the extent of Congressional authority over State rights and restrictions on Congressional authority. "H.R. 3590" contradicts both these

[16] Congress can only do things "necessary and proper" to execute the preceding 17-powers, and any other provisions found in a Constitutional amendment. Mandating the purchase of a product is non-existent.

rulings. The Court in the above cited authorities made clear that Congress had exceeded its Constitutional authority. In reaching their decision the court took various tests:

- the channels of interstate commerce.
- persons or things in interstate commerce or instruments of interstate commerce,[17]
- activities that have "a substantial relation to interstate commerce i.e. those activities that substantially affect interstate commerce.

Thereafter, the court concluded the statute did not "*substantially affect interstate commerce*", and went beyond the scope of the "*Commerce Clause*" and was an unconstitutional exercise of Congress's legislative power.

To further elaborate on what the "*General Welfare*" provision grants. For Defendants to argue it is within the authority granted to Congress is simply mixing oranges with apples. What the bill does in fact, is establish "*Specific Welfare*" for which no provision exists in the Constitution and which is clearly prohibited, *see*, *United States v Butler*, 297 U.S. 1 (1936) that prohibits the type of activities being promulgated by the "Act". "H.R. 3590" levies taxes, fines and fees specifically to supply a product to one specific group by taxing other specific groups. Even under the guise of the "*General Welfare*" clause it would still be arguable that the "Act" constitutes "*Specific Welfare*".

Please Take Judicial Notice: Both Judge Vinson (Fla.) and Hudson (Va.) the government's claim that the mandate to purchase of "Health Insurance" is based upon prior Supreme Court precedent. Judge Vinson wrote;" ***government claim is not even a close call***" following the DOJ's Motion to Dismiss. Judge Hudson was quoted as saying: "(***[n]o reported case from any federal appellate court***" has ever ruled that Congress' power "***included the regulation of a person's decision not to purchase a product.***" Even Judge Steeh (Michigan) who claimed the mandate is Constitutional, hedge his ruling by saying this case raises the "issue of first impression". He knew it was unconstitutional, but instead play the political game.

Lastly, the IRS intervention to force individuals into purchasing Healthcare Insurance is nothing less than extortion, Defendants say, "*It's a penalty operates as and additional individual's*

[17] The government in this action is claiming the purchase of a mandated product is somehow authorized by the power to regulate commerce among the states – Clearly it's neither commerce nor interstate. Didn't anyone explain to the defense that all purchases of heath insurance are intrastate and that, though ridiculous, it's illegal to purchase health insurance across state line. So the court must question Defendants to explain how this is regulation of interstate commerce, especially when the government is forcing someone to make a commercial transaction or suffer a penalty? And is this not 'extortion being perpetrated under the "color of law"?

income tax liability…. and will raise a projected $4 billion annually…" is nothing more than illegal intimidation. And, by established Supreme Court precedent is illegal.

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.*

In short, the government cannot legally justify anywhere in the Constitution or produce any precedent cited by the federal courts that a citizen can be made to purchase any good or service. As the Honorable Judge Henry E. Hudson, before the same defense counsel in this action; so aptly stated concerning "H.R. 3590":

"is neither within the letter nor the spirit of the Constitution,"

Plaintiffs have proven now in two Counts "H.R. 3590" violates provisions of the Constitution, which has not been denied or refuted by Defendants.

Page 12-13: (Ready Reserve Corps Plaintiffs' **Count 3**): In the words of Ronald Reagan; "*there you go again*". Defendants attempt to bamboozle the Court. Again, failing to address the violations of the Constitution, or the violation of the "*Posse Comitatus* "Act". Instead Defendants tell us of provisions in Article I, Section 8, paragraphs 12, 14, 15, 16. We all know what is allowed, that is not the issue at bar. It's what's not allowed that is before this court.

The problem with Defendants arguments are numerous; the Constitution nowhere grants to Congress the authority to create anything similar to the "Ready Reserve Corp" in PHSCC except as cited in Plaintiff's motions.

The United States Postal Service is authorized in Article 1, Section 8, Paragraph 7; Patent Office in Article 1, Section 8, Paragraph 8, the Circuit and District Courts in Article 1, Section 8, Paragraph 9; but the only place to raise the "Ready Reserve Corp" (a Corp or Army) is clearly in Article 1, Section 8, Paragraph 12. Just because it operates under a different set of Article 1, Section 8, Paragraph 14 laws versus the "regular Armed Forces" laws does not change its nature of being an "Army".

In short, Article 1, Section 8, Paragraph 12 reads: *The Congress shall have the power…to raise and support armies,* ***but no appropriation of money to that use shall be for a term longer than two years.***

No more needed be said. "H.R. 3590" *violates the Constitution's appropriation provision*. "H.R. 3590" funds the Ready Reserve Corp for **four or more years**. Again, funding is restricted to two years! What is it that defense counsel fails to understand?

Since Defendants failed to address the violations alleged concerning the "*Posse Comitatus* "Act" Plaintiffs' will demonstrate how "H.R. 3590" provision for Obama's Ready Reserve Corps is a violation of the "*Posse Comitatus*" Act since it clearly forbids the use of American military in civilian enforcement. The drafters of the "H.R. 3590" stealth-fully sidestepped relevant parts of the "*Posse Comitatus"* Act in restrictions; It allows to President to call up National Guard personnel without a "Declaration of War' place them in his private Corp, for so-called health issues; allows the President to deploy his Ready Reserve into any State without a specific request or permission of the Governor of said State. So much for State sovereignty.

It forces individuals into active duty, without an emergency declaration of war. The Act as written allows the executive branch to circumvent Congressional approval to implement a draft

and call up this Corp on what the President perceives to be a national emergency.[18] Notably, this Ready Reserve Corp, paramilitary Corps is under direct control of the President.

Plaintiff's would remind the Court of the Federal Government's is requirement by "statute" "*Posse Comitatus* Act' to wait for the Governors of a States to request the aid of federal troops. Example, Prior to Hurricane Katrina Mississippi and Alabama requested Federal help and troops, whereas Louisiana did not request federal aid until weeks later, after Hurricane Katrina hit the State, which caused unnecessary harm. A "National Medical Emergency" declared by the President would clearly be unauthorized without a governor's approval. "HR 3590" gives the President permission to act at his own prerogative, is a violation of the "*Posse Comitatus Act*" and the funding of this Corp is not within the bounds of Article 1, Section 8, Paragraph 15 in any event.

Page 13-14: (Capitation Tax, **Count 4**): Now Defendants revert back to the "*Commerce Clause*" and "general welfare" provisions to dazzle and confuse the court. Both these provision are of no moment.

Defendants again resort to fabricating what the Constitution allows failing to point to authorities to justify the provision for "Capitation" Tax set forth in "H.R.3590." Again, failing to address the Constitutional violations set forth in the "*People's*" Petition.

The fact is Article 1, Section 9, Paragraph 4, specifically states:

> "*No capitation or other direct, Tax shall be laid, unless in Proportion to the Census or Enumerated herein before directed to be taken*."

Clearly, a course in reading comprehension is in order for the attorneys at the DOJ. "H.R.3590" as written levies a tax on incomes without apportionment! "Capitation" taxes are not on incomes

[18] Most frightening this "Ready Reserve" Provision was inserted into the Bill 24-hours before passage, when coupled with Mr. Obama's utterance on July 2, 2008 stating: "**We cannot continue to rely on our military in order to achieve the national security objectives that we've set," he said. "We've got to have a civilian national security force that's just as powerful, just as strong, just as well-funded**." The question this Court must consider, and the People want to know, who are the "we" what is the objective? And why did Mr. Obama's stimulus package contain in excess of 2-billion dollars for Ameri-Corp? Clearly, the above unconstitutional "Ready Reserve Corp" is similar to the Corps instituted by one Adolf Hitler. Paranoid, No! Cautious yes, especially when Mr. Obama refuses to deploy troops on our borders which is clearly a danger to the general welfare of all Americans and a "National Security" issue.

but taxes on individuals, discriminately devoid of proportionality to various States regardless of population, automatically renders this "Act" null and void." Regardless, even if Defendants were able to conjure up some magical justification, the "*People*" again, refer to Count 1, of their Petition, concerning the authority of the Senate to create a revenue raising bill.

The "Act's" provision violates 'capitation' authority; *See* Sec. 10907 Judge Vinson: "*There is hereby imposed on any indoor tanning service a tax*". This shows beyond question that Congress knew how to impose a tax when it meant to do so. …" The tax is specifically laid on the person getting the service. Where's the apportionment? None!

Please Take Judicial Notice: Thus far four waivers have been granted gone to State governments. Massachusetts, New Jersey, Ohio, and Tennessee of the restricted annual limits on behalf of issuers of state-mandated policies if state law required the policies to be offered by the issuers prior to September 23, 2010. This does not change or invalidate any Count in the "*People's*" Petition which defense might argue. The fact is the immediate harm may be alleviated but the future harm is real and present. Whether within 3,4, years down the line. If there be any question in this courts mind, defense has previously argued this same point before Chief judge Roger Vinson who rejected Defendants motion to Dismiss, citing: *Babbit v. United Farm Workers Nat'l Union*; *Village of Bensenville v FAA*; *Babbit supra 442 at 298*; *Pierce v. Society of Sisters*, (citation omitted).

Special Judicial Notice Warranted: Defendants failed to respond to Counts 5, 6, and 7 *thereby forfeiting automatically*.

Though not necessary the "*People*" will demonstrate for this Court why Defendant were unable to dispute the Constitutional violation set forth in the "*People's*' arguments. The reason is uncomplicated, no legal defense existed, the "*People's*" facts and supporting law is irrefutable:

- **Count 5**: Defendants counsel claims these claims should be dismissed because they are baseless and largely incoherent, because plaintiffs lack standing to raise them as well. Sorry gentlemen, this is not the required response. *See*, case studies and rules below. Article 1, Section 9, Paragraph 3, 5 and 6 are explicit, "*No bill of attainder or ex post facto law shall be passed."* "*No tax or duty shall be laid on articles exported from any State" "No preference shall be given by any regulation of commerce or revenue to the ports of one State over another; Nor shall vessels bound to or from one State be obligated to enter, clear, or pay duties, in another*".

(i) though covered in other counts, "H.R.3590" declares a citizen guilty of a crime without a trial. And the idea of a "Bill of Attainder" is clearly hinted at since the fines imposed for not having the government mandated insurance result in fines automatically without a trial or conviction. This will be discussed further in Court 12, another Count that Defendants failed to answer, concerning violation of "*due process*" Amendment 5.

(ii) "Capitation" taxes are not taxes on incomes but are taxes on individuals and entities. In "H.R.3590" the federal government lays taxes on individuals not in proportion to state populations. Legally a capitation tax is: "An assessment levied by the government upon a person at a fixed rate regardless of income or worth. The "Act" lays a fixed rate against any individual who does not purchase healthcare insurance, and against any corporation who fails to provide it for its employees and executives is a "capitation" tax. The problem with this should be obvious: the federal government is required to lay such a tax in proportion to State populations. "HR 3590" places taxes on medical devices exported from the individual States clearly discriminates against the exports of the states that said devices are built in.

"H.R. 3590" places taxes on medical devices exported from the individual States clearly discriminates against the exports of the States that said devices are built in.

Count 6: The essence of the "*People's*" argument is the meaning of the "natural born Citizen clause." The "*People*" stand by their argument that Mr. Obama by our Constitution, the "Supreme Law of the Land" is not authorized to sign "H.R. 3590" into law. Let the "*People*" make clear to this Court, no political party by either popular vote or otherwise can define who is a "*Natural Born Citizen*". Our Nation is ruled by law, not men, nor majority rule. Only an honest judiciary can resolve this question. No case presented to our judiciary thus far exists that supports the fallacious claim Mr. Obama is exercising executive power within the meaning of the constitution.

At no time do the "*People*" suggest Mr. Obama is not a citizen of these United States. Nor are we proposing that he produce a birth certificate or any other document. What is

being submitted to this Court is not conjecture but fact supported by established law.[19] By law, Article II disqualifies Mr. Obama from occupying the office of the Presidency or grants him the authority to sign any into law "H.R.3590".

The "*People's*" allegation is supported by established Supreme Court precedent ***see*, Exhibit 5, that totally explains any questions this Court or any higher court might have on the matter. Case law, renders the argument *stare decisis***. By law, the "*People*" are entitled to a ruling on this issue as well as the others listed in the Petition. That being said, "***Stare decisis et non quieta movere***".

Count 7: Clearly Defendant are in need of a reading comprehension course, since they make no argument other than to say (page 17) that Plaintiffs: ("*alleging a violation of the Sixteenth Amendment because the ACA allegedly "tax[es] the same income multiple times" or "tax[es] income that does not exist*". Can this Court accept this as a responsive argument? We think not.

(i) What the "*People*" Plaintiffs alleged and proved, was that the provision in the "Senate originated bill" (illegal in-of-itself) exceeds the constitutional authority by attempting to levy taxes or fines based upon an individual's "gross income" for failure to comply with the federal governments mandate to purchase healthcare insurance;

(ii) At no time are the "*People*" Plaintiffs suggesting or questioning Amendment 16's validity. What we are alleging the provision in the "Act" puts a tax on 'gross income twice' including on (phantom) income that does not exist. It is inarguable, this results in double taxation on any income of the individual, corporation involved. This taxation imposes a second tax on account of something other than an economic activity. Thus imposing an extra tax (if it could be called that) on individuals who refuse to purchase health-insurance, based on gross income exceeds the provision set forth in Amendment 16.

[19] Federal Justice Richard Arnold, see *Anastasoff v United States*, 233 F3d 898 has held "declared that unpublished opinions are not precedent and are unconstitutional because the framers, in speaking of "judicial power" in Article III, would have had in mind the common law courts of the time, which consider themselves fully bound by their prior decisions." Also it must be noted no federal Court has does far adjudicated the matter of Mr. Obama authority to sign "bills" into law as a natural born citizen.

(iii) Though this Count need not be addressed since Defendants failed to respond this Court must address whether this individual mandate penalty is a tax or a fine. If it is a tax does the Senate have the authority to institute the provision? If it a fine, does it violate Amendment 8, that address "*Excessive… fines… shall not be imposed*." Notwithstanding Article 1, Section 9, paragraph 3; "No bill of attainder or *"ex post facto*" law shall be passed;

(iv) Therefore the Court is charged with duty to decide; if the penalty is a tax, then this court would apply, and would present an opportunity to clarify what constitutes "income"; how often the government may tax it; under the proper authority is granted by the Constitution. The question becomes; is it "double taxation?" Tax protestor have repeatedly argued the tax on dividends income on which the dividend payer, usually a regular 'Subchapter C' corporation or group, has previously listed as income on its own tax return;

(v) This court can readily see this unconstitutional "Act" has opened Pandora's Box but the court is charged with the task of undoing so many wrongs that require answer, to do any less would be a violation of "proper judicial procedure" if such legal questions were left undecided;

(vi) Of course the Court could just rule in the "*People's*" behalf since Defendants have violated Rule 8(b) and Rule 8(d) and let Defendants explain to the Circuit Court why, and let the Circuit Court deal with their failure to respond.

Regardless of the facts that support the "*People's*" argument, Defendants; counsels have failed to respond by law they forfeit, see Gracedale Sports & Entertainment Inc v. Ticket Inlet, LLC, 1999 WL 618991 (N.D. Ill. 1999) refusing to answer "legal conclusions: "flies in the face of the establishment doctrine that legal conclusions are a proper part of federal pleading, too which Rule 8(b) also compels a response"): Saldana v Riddle, 1998 WL373413 (N.D.Ill.1998) commenting that Rule 8(b) ***does not confer on any pleader a right of self-determination as to any allegation that the pleader believes does not require a response"***); Ponce v. Sheahan 1997 WL 798784 (N.D.Ill.1997) Rule 8(b) "***requires a defendant to respond to all allegations in a complaint" and creates no exception for so-called 'legal conclusions***"). see, also Farrell v. Pike 342 F. Supp.2d 433, 440-41 (M.D.N.C. 2004)(noting that "***the rules do not permit defendants to avoid responding complaints legal allegations).*** *See generally* Neitzke v. Williams, 490 U.S. 319, 324, 109 S. Ct. 1827, 1831, 104 L.Ed.2d 338 (1989) (observing that federal civil complaints "contain …both factual allegations and legal conclusions".

Page 14-15: (Def. resume argument to Amendment 4, & HIPAA" *People's*" **Count 8**):

Defendants again outright lie to the Court referencing the "*People's*" Petition page 22– #'s. 71-72) saying: "*ACA does not violate the Fourth Amendment or the Health Insurance Portability and Accounting Act, … nor does any such provision exist, that grants access to the General Government unconditionally authority to access and seize the private records of individuals' or allows the federal government to have direct, real-time access to all individual bank accounts for electronic transfer*.

The "*People*" reiterate "H.R. 3590" usurps Amendment 4, and HIPAA privacy protections, again demonstrating the DOJ is incapable of presenting the outright truth to the court! The "*People*" draw the Court's attention to the following provision set forth in "H.R. 3590" Section 1128J: Medicare and Medicaid Program Integrity Provisions (pp. 1687-1692ff). This section creates an "Integrated Data Repository" ….the Inspector General's Office will have access to any medical record that he deems necessary to investigate:

"Notwithstanding and in addition to any other provision of law", the Inspector General of the Department of Health and Human Services may, for purposes of protecting the integrity of the programs under titles XVIII and XIX, obtain information from any individual (including a beneficiary provided all applicable privacy protections are followed) or entity that:

(A) is a provider of medical or other items or services, supplier, grant recipient, contractor, or subcontractor; or
(B) directly or indirectly provides, orders, manufactures, distributes, arranges for, prescribes, suppliers, or receives medical or other items or services payable by Federal health care program (as defined in section 1128B(f))regardless of how the item or service is paid for, or to whom such payment is made."

The "*People*" reiterate: "***Notwithstanding and in addition to any other provision of law***"

It is important to note, as this Court is aware, even federal "inspectors general" prior to enactment of this unconstitutional legislation were required to obtain warrants prior to seizure of records. Section 1128J provides for warrantless searches and seizures. Amendment 4, protection no longer exists -- Now the People request this Court take special notice of the key phrases to follow and allow access to the peoples records and the usurpation of not only the HIPAA legislation but Amendment 4:

Defendants deceptively told this Court:

> *"... nor does any such provision exist, that grants access to the General Government unconditionally authority to access and seize the private records of individuals' or allows the federal government to have direct, real-time access to all individual bank accounts for electronic transfer".*

- Again, Defendants are incapable of being truthful. The "Act" gives the Federal Government access to your individual-bank account and financial records *See* Part 6 of the Act:

"H.R. 3590" gives the federal government specific access to individual bank accounts and medical records as provided by that individual's health plan. The government may monitor an individual's finances and medical records electronically, for the purposes of determining an individual's eligibility for certain programs under the bill. They may also monitor an individual's finances and medical records to ascertain whether that individual has health insurance and is making regular premium payments to an approved health insurance plan; this will allow the federal government to determine each individuals financial responsibilities with respect to penalties and fees prior to or at the point of care as outlined in the bill. This clause gives the government the ability to transfer funds electronically to or from an individual' bank account for the purposes of debiting his/her account for fees and penalties.

Page 15: (Violation of 5 and 13 Plaintiffs **Count 9**):

Defendants tell the Court: The ACA ("H.R. 3590") does not constitute a "*taking*"[20] in violation of the Fifth Amendment, nor does it impose involuntary servitude in violation of the Thirteenth Amendment …. "*Requiring money to be spent is not a taking of property*" Defendants' go on to say: (*"[T]he taking analysis is not an appropriate analysis for the constitutional evaluation of an obligation imposed by Congress merely to pay money."* And contrary to plaintiffs' view, requiring the purchase of a product is not equivalent to involuntary servitude.

[20] See, *Brodie v Connecticut*, S. Ct. 780, 401 U.S. (1972) "*that the hearing required by due process is subject to waiver, and is not fixed form does not affect its rot requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid government interest is at stake that justifies postponing the hearing until after the event."* [Clearly "H.R.3590" violates the Amendment 5,& 14 "under the color of law".

Please Take Judicial Notice: By law, Defendants were required to specifically answer each allegation with particularity or suffer a default. They failed to do so! The above preposterous argument is a self-serving and totally without merit. Respectfully, no reflection on this Honorable Court, but if the "*People*" appear to be sarcastic, we pray the Court will understand our frustration arguing against those that would shed our Constitution and eliminate our freedom based upon conclusionary nonsense.

It appears a refresher course in Constitutional law, 101 is in order for Defendants, since numerous other suits are pending. The "*People*" will explain in the simplest terms why 'H.R. 3590" violates Amendment 5, and 13. (See footnote 14).

"H.R.3590" mandates that every citizen purchase "Healthcare Insurance" under treat of penalty, for which no judicial review is permitted. Ref. "H.R.3590" (pp. 630, 653, 676, 680, 725, 738, 772, 831, 1013, 1415, 1679, and 2303) Amendment 5, in relevant part says:

> "*No person shall…be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation*."

If the government seizes property without "*due process*" we have what's called a "*taking*." Now a "*taking*" may be effected by **persuasion, enticement, or inducement**." It implies a transfer of a possession.[21] Said seizure could be a tax, fine, lien on property. By this unconstitutional "Act" a citizen is without recourse to challenge the "*taking*" or *seizure*. This is exactly what this unconstitutional "Act does. It is clearly extortion, it's illegal, see footnote below!

Depriving any citizen of property based upon gross income (excluding Amendment 16) by a "*taking*" in which no trial or appeal process is available to contest said seizure ignores the basic principle of constitutional law and normal established laws governing taxation.

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[21] 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 "Act" mandates citizens purchase a product, that product in question is insurance, the requirement is mandated for all those "breathing". Only slaves do as they are told, or those living under a totalitarian governments.

"H.R.3590" crosses the line and relegates honest citizens' to criminal status without "*due process*" if they fail to comply with the unconstitutional mandate to purchase health insurance, or for that matter any product. The government can only mandate criminals to adhere to demands, not free American citizens!

Obviously, Defendants counsel are unfamiliar with Amendment 13, or the meaning of the term "involuntary servitude" which was outlawed by law for general use, except for punishment of crimes, on December 18, 1865. This individual mandate violates Amendment 13 which in relevant part says:

> "*Neither Slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction*."

Involuntary Servitude and peonage is: "**A condition of compulsory service or labor performed by one person, against his will, for the benefit of another person** due to force, threats, intimidation or other similar means of coercion and compulsion directed against him".

Does not forcing Plaintiffs to buy a product, in this case health insurance, against ones will or be penalized to cover the cost for others without insurance? This clearly contradicts prior Supreme Court precedent held in *United States v Butler*, (citation omitted) which was held to be "specific welfare" and found to be unconstitutional.

Defendants mocked Plaintiffs to this Court in prior correspondence to Her Honor when it was alleged "H.R.3590" rendered the judiciary irrelevant, if the above isn't proof, what is? Any provision forbidding judicial review of a law flies in the face of separation of powers, and eliminates "*due process*" of law. The citizens of these United States are free, and no government official, whether in the legislature or executive branch can violate the Constitution by the enactment of any bill

In the *State of Florida et al. v. HHS et al*. the Honorable Roger Vinson, Senior United States District Judge, has already ruled that the penalty is a fine and not a tax. Clearly, being fined without "*due process*" violates the Constitution and it is without question, this District Court is obligated to render "H.R.3590" unconstitutional. Unless of course Defendants believe they can pay you off, which seems to be a practice of this administration. They sure showed America that in the passage of this unconstitutional abortion called "H.R.3590".

Page 15-16: (Violation of Amendment 14, Plaintiffs **Count 10**):

Defendant again have chosen to accuse Plaintiffs of setting forth conclusionary statements citing *FRCP* Rule 8 ignoring the issue at bar. One would wonder if the Defense took the time to read Rule 8 in its entirety. Here are some quick notes:

- Rule eight requires an Affirmative Defense in the form of a denial, in a responses pleading, the DOJ failed to do so;

- Rule 8(a) concerning Federal Jurisdiction, Plaintiff's identified each violation citing the Constitutional provisions and law that created the jurisdiction in accord with 28 USCA 1332:

- The "*People*" draw the Courts attention to the fact by the terms of: "Rule 8(b) offers the responsive pleader only three options: (1) admit, (2) deny, or (3) deemed deny, …" The Rules do not appear to approve or permit other types of responses, and choosing to answer in other ways is a dangerous practice. Because an averment in a pleading that is not properly denied is deemed to be admitted , failing to properly counter-plead could be catastrophic."

Defendants' assertion Plaintiffs failed to present a "*specific-enough claim*" calls for another lesson in Constitutional law. Amendment 14 in relevant part reads:

> "*No State shall…deny to any person within its jurisdiction the equal protection of the laws."*

Count 10, also states said exemptions violate Article 4, Section 2 of the Constitution that states:

> "*The citizens of each state shall be entitled to all the Privileges and Immunities of the Citizens in several states*."

Defendants without addressing the allegation set forth in the "*People's*" Petition claim "H.R. 3590"

> "*…does not grant special exemptions and treatment to select classes of citizens based upon religious and/or State of Residence in violation of the Fourteenth Amendment*".

Let's begin with Amendment 1, the U.S. Constitution prohibits Congress from making laws regarding religion (respecting one religion over another). "H.R. 3590" grants exemptions over provisions in the bill specifically exempting select religious sects from the mandate to purchase Healthcare Insurance without penalty.

Defendants expect this Court to ignore that provisions granted to select religious sects does not regard one religion over another, for example Muslims[22] and/or Amish etc.. We would note it also violates Amendment 14, "*Equal protection and treatment*".

It appears that Defendants are oblivious to the substance of the "*People's*" Count 10 and expect the Court to turn a blind eye to the facts and law. Plaintiffs draw the Courts attention to "Section 1402(g)" a provisions in the bill, that relate to the Internal Revenue Code (26 USC 1402(g)) That defines recognized religious sects and divisions" as those: (1) The tenets of which forbid an adherent to carry old-age, survivorship, disability, or health insurance, and: (2) That have existed continuously since 31 December 1950. (*Also, see,* Count 11 counter-argument to Defendants below.)

In short, Amish whose adherents eschew any technology invented approximately after 1850, Muslims that forbids insurance with the common understanding of the term receive the exemption.

The key to the violation of Amendment 14 is simple; if any citizen decides to act on faith and trust in God, and not any human insurer to mange either risks or crisis, this "Act" forbids that person from acting upon his own conscience. Yet, the "Act" grants special privileges to selected religious sects only. <u>The exemption is based not on individuals but on the sects</u>.

The act also makes no provision for any new sect that holds, that trusting a human institution, like insurance or the government to manage personal risk is sinful expression of lack of faith in Divine honor, providence, or authority, and would not receive the exemption. Clearly such discrimination violates Amendment 14. [Also see Count 13 for other violation of Amendment

[22] If Muslim sects are exempt due to Sharia law, it stands to reason that a precedent is being set that would allow Muslims to adhere to Sharia law rather than Constitutional law. Does that not violate "equal protection & treatment." This "Act" elevates the Muslim faith above Christianity and Judaism, and other religions including atheism. (atheism is a belief system which fundamentally is what every religion is).

14] What's more, the way the "Act" is written, no individual enjoys their full right to have judicial review, or appeal the provisions of the "Act" they are penalized void "*due process*" in violation of Amendment 5. [23]

Legal Note: S.D.N.Y. 1987. Equal protection rights may be violated by gross abuse of power, invidious discrimination, or fundamentally unfair procedures. U.S.C.A, Const. Amend. 14 see, *Dean Tarry Corp. V. Friedlander*, 650 F. Supp. 1544, affirmed 826 F.2d 210.

Additional violation of Amendment 14: Unions Obamacare SEIU promoted thereafter an estimated 45,000 workers represented by seven SEIU locals received waivers. At this moment there are a total of 182 unions 'waiver recipients.'

Total waivers granted to date:

- Employment-Based Coverage: 712 plans representing 97 percent of all waivers – were granted to health plans that are employment-related;
- Self-Insured Employer Plans Applicants: Employer-based health plans the waivers – 359.
- "Health Reimbursement Arrangements (HRAs): HRAs are employer-funded group health plans where employees are reimbursed tax-free for qualified medical expenses up to a maximum dollar amount for a coverage period. In total, HHS has approved 171 applications for waivers for HRAs;
- Sixteen waivers were granted to health insurers, which can apply for a waiver for multiple mini-med products sold to employers or individuals;
- Four waivers have gone to State governments. States may apply for a waiver of the restricted annual limits on behalf of issuers of state-mandated policies if state law required the policies to be offered by the issuers prior to September 23, 2010.
- Foundations (if their Obama cheerleaders) received waivers; "Robert Wood Johnson Foundation", whose board of trustees includes Obama health care czar Nancy-Ann DeParle.

[23] See Count 1, the Senate is prohibited from originating any revenue raising bills, Article 1, section 7, Paragraph 1. Posted April 8, 2010 Beginning January 1, 2013, Obama Care imposes a 3.8% Medicare tax on unearned income, including the sale of single family homes, townhouses, co-ops, condominiums, and even rental income.

In February 2010, 5.02 million homes were sold, according to the National Association of Realtors. On any given day, the sale of a house, townhome, condominium, co-op, or income from a rental property can push middle-income families over the $250,000 threshold and slam them with a new tax they can't afford.

This new Obama Care tax is the first time the government will apply a 3.8 percent tax on unearned income. This new tax on home sales and unearned income and other Medicare taxes raise taxes more than $210 billion to pay for Obama Care. The National Association of Realtors called this new Medicare tax on unearned income "destructive" and "ill-advised" and warned it would hurt job creation.

- Single-employer union plans that have received a waiver. In total, 182 collectively-bargained plans have received waivers.

Let Defendants explain to this court how these exceptions do not violate Amendment 14?

Special Notation Concerning Pattern of Questionable Illegal Activity: This Honorable Court must also consider the Chicago gangland tactics of blackmail and bribery that is taking or took place as reported by the news media to pass this illegal legislation by an "enterprise" [that surely makes a viable RICO claim when coupled with addition allegations listed throughout this petition]; (1) Louisiana Congresswomen Mary Landrieu changed her position on the issue in lieu of a $300,000,000.00 million dollars in federal earmark by the current administration; (2) it was widely reported that Senator Joe Lieberman, because of radicals that called for his wife's removal as Global Ambassador of the Susan Coleman Breast Foundation because of Senator Lieberman's objection of said legislation, who is now cowing to strong arm pressure. The radical activist group leader who allegedly dated Andy Stern the Union leader of SEIU pushing for "*Healthcare*" call for her removal; (3) Dr. Emanuel explained how this administration does business, I quote; "***Every favor to a constituency should be linked to support for the healthcare reform agenda, If the auto-makers want a bailout, then they and their suppliers have to agree to support and lobby for the administration's healthcare reform effort***;" and, (4) it was reported by three news media outlets at the time of this writing that Nebraska Senator, Ben Nelson that was first threatened by the administration that the "*Strategic Air Command Base*" in his home state of Nebraska will be shut down if he didn't vote with the Administration wishes. It was reported by WND, on December 17, 2009 that 20-Senators demand probe of Healthcare vote 'threat'. Nelson later voted for the bill after being bribed by Senator Harry Reid, with the promise that his State of Nebraska only, the federal government (meaning the taxpayers of the other 49 states) will cover the costs of Medicaid expansion. Maybe this Court can explain to Senator Reid and Nelson that the Federal government has no money except what they capture from the taxpayers in other states! Oh yes, and the 14th Amendment, mandates "*equal protection*" and there are numerous constitutional statutes and case studies related to "equal treatment".

In short, this is outright political corruption: This bill also creates a different set of payment regulations for different States. The White House and Congress illegally changed regulations for States forcing some States to bear the costs while others were bought off for their votes needed for passage of this unconstitutional "bill" in order for the federal government to acquire more control over the "*People*" not only Plaintiffs listed in this Petition, but all Americans.

Page 16: (Violation of Amendment 1, Plaintiffs **Count 11**):

Defendants claim 'H.R.3590 in a blanket statement does not violate the Establishment Clause listing citing four case studies, presenting no material evidence nor addressing the "*People's*" argument. Again, this is not a response!

Plaintiffs argument above should more than suffice, but for further edification on page 326 and page 2105 the bill grants "religious conscience exemptions" in a very specific unconstitutional way. So there be no doubt in this Courts mind that Amendment 1, has been violated the "*People*" will elaborate further. Amendment 1, says in relevant part:

> "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;…."*

It is without argument Amendment 1 prohibits Congress from writing any law that gives preferences to religious organizations, preference to people on the basis of membership in religious organizations or establishing an office religion. It is without argument from the language in the bill "preferential treatment" to individuals based upon their membership or participation in selected establishments of religion was granted. Amendment 1 prohibits this..

The Defense citied *Walz v Tax Comm'n of the City of New York*, 397 U.S. 664, 669 (1970) misapplying the content therein. This citation is not a general religious exception but clearly a provision, respecting an established of religion. It does not apply to all religious groups as constitutional religious exemption do. Of course a property law does not offend the Establishment Clause. If the defense had read the ruling properly they would have realized this case: Judge Harlan made clear:

- Neutrality in application requires an "equal protection" mode analysis; [nowhere do we find neutrality in "H.R. 3590'] .

- Judge Harlan also stated the: "*Two requirements frequently articulated and applied in our case for achieving this goal are "neutrality" and 'voluntarism." E.g. see Abington School District v Schempp, 374 U.S. 203 305 (1963) (concurring opinion of Mr. Justice Goldberg); 374 U.S. 203,305 (1963) (concurring justice Goldberg); Engel v Vitale, 370 U.S. 421 ((1962). "…Government must neither legislate to accord benefits that favor religion over non-religion, nor sponsor a particular sect, nor try to encourage participation in or abnegation of religion. Mr. Justice Goldberg's concurring opinion in [p695] Abington, which I joined, set forth these principles*":

  "*The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and non-religious beliefs*."

Any law must apply with equal force to everyone. "H.R. 3590" abridges Plaintiffs' rights in direct violation Amendment 1 & 14. In essence, "H.R.3590" does in essence favors and respects

one religion over another failing to prescribe a standard for such privileged exemptions. Therefore if one is not a member of the favored religion that individual is subject to a penalty for failure to comply with the provision of the "Act" and of without "*due process*" (Amendment 5, violation) or any appeal process. That is clearly an overextension of any clause set forth in the Constitution. Nor may any individual decide for himself that participation in such a program is a sin.

So it can be determine the Muslims and Amish might qualify, or not; this law now puts the Social Security Administration in the position of determining which sect qualify and which do not. But there is one certainty, if any Christian or Jewish sect decides to come to the understanding of the fundamentals of faith, that may now decide that purchasing life or health insurance was a sin, they would not be eligible, strictly on account of the time limit. Therefore it can be argued that this "Act" regards/respects one religious sect over another violating not only Amendment 1, but also Amendment 5 and 14.

In *Walz v Tax Comm'n of City of New York*, if Defendants read Justice Burger's opinion they would have recognized a Tax exemption of a non-profit religious entity is not establishment. Giving special exemptions from a law not available to everyone else is! Thereafter, Justice Brennan was clear; granting a church an exemption based on a non-profit concept is not the same as giving special consideration based upon membership; one is establishment, the other is not.

A review of the provision set forth in the "Act" states:

> "(A) RELIGIOUS CONSCIENCE EXEMPTION.-Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient protection and Affordable Care Act which certifies that such individual is –(i) ***a member of a recognize religious sect or division*** thereof which is described in section 1402(g)(1), and (ii) an adherent of established tenets or teaching of such sect or division as described in such section." *Also see* Section 1402(g)* quoted above Count 10)." [emphasis added]

The above sections describe a religious opt-out from Social Security; "H.R. 3590" now incorporates the same exemption, and vests the Commissioner of Social Security (or the Secretary of Health and Human Services; the statute does not make clear) the authority to give exemptions to favored religious sects.

Please Take Special Judicial Notice: The Kicker: In *Droz v. Comm*. IRS, Case #48 F.3d 1120 (9th Cir.) held, on appeal from the U.S. Tax Court, that no individual or group could claim an exemption that did not meet the rather stringent requirements for such exemptions. Specifically, *no one group may establish a new cult having no-insurance rule, nor may any minister, pastor, rabbi, or similar clergy member, even if he determines* that a close read of the Bible or the Jewish *Midrash* or *Talmud* forbids an adherent to buy conventional insurance, may act on such determination. The reason: all exempt religious sects or divisions must "ha[ve] been in existence at all times since December 31, 1950."

Plaintiffs draw the Court's attention to the provisions in question that are in the bill, that relate to the Internal Revenue Code (26 USC 1402(g)) That defines recognized religious sects and divisions." The Supreme Court denied *certiorari* in the *Droz* case to examine Section 1402(g)(1)(A) through (E) critically, and threw out that section on Amendment 1, grounds; But that case remains ripe for review, because the concept of *stare decisis* would not apply.

The consequence of this challenge will not only effect the issue at bar, "HR 3590" provisions. But will also draw in the Internal Revenue Code, which is further reaching, and would force a fundamental re-examination of the tax code, and any public insurance system that restricts people from opting out for any reason or no reason, just as individuals may opt into, or out of, any private insurance plan for any reason or no reason.

Please Take Special Judicial Notice: **Defendants failed to respond to Counts 12, 13, and 14 *thereby forfeiting automatically***.

Therefore it is unnecessary to reiterate the violations, the "*People*" but the "*People*" will for the Court's benefit show the reasoning for their failure to reply. The reason is uncomplicated, no legal defense existed, the "*People's*" facts and supporting law was/is irrefutable:

- **Count 12**: Defendants as an argument tell this Court in 7-words: "*alleging a violation of the anti-trust laws*." We can't make this up, in truth your Honor that's the entire argument. One would have to believe they were either drinking or on drugs when they answered this Petition?

The "*People*" alleged in Count 12 "*Violation of the Anti-Trust laws that resulted in violation of Amendment 5 of the U.S. Constitution*"

The "*People*" say any provision excluding judicial review of a law makes a mockery of the separation of powers, and removes the protection of "*due process*" of law guaranteed by Amendment 5.

(i) "HR 3590" contains the following language; "*There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of [any of various procedures described earlier*]. The "*People*" ask this Court to take serious notice of these sections in which no judicial review is allowed.[24]

1) Value-based incentive payments to hospitals p.630;
2) Deciding which physicians might be truly said to have participated in treatment of any given patient p.653;
3) Value-based payments and assessments of quality of care p.676;
4) The handing of nosocomial (hospital-acquired) infection cases p.680;
5) Cost-effectiveness modeling p.725;
6) Quality-of-care and payment determinations involving accountable Care Organizations (ACOs). p.738 (This provision also cuts out 44 USC 35, having to do with federal policy coordination;
7) Diagnosis-related group (DRG)-related payments and payments for hospital readmission p.772
8) Reimbursements to hospitals for "uncompensated care" for which the patient, for whatever reason, cannot pay p.831;
9) Direct proposal by the President to Congress concerning changes in reimbursement rate p.1013;
10) Identification of primary-care physicians, as distinct from specialists p.1415;
11) Determinations of the need for more hospitals p. 1512.

The next two provisions are declared not subject to judicial review nor administrative review;

1. Moratoriums on the enrollment of new providers under Medicare and/or Medicare p.1679;
2. Determinations of "high-need cures" p.2303."

Each of the above involves price fixing, the federal government will decide just who is entitled to payment." This 'price fixing" erects explicit barriers. All without judicial review.

Which brings us to the how Congress enabled the government to violate the anti-trust[25] laws. The "act" exempts the federal government from the Anti-trust laws by allowing the federal

[24] It is important for this court to recognize the provision set forth in the 11 examples cited are nothing less than death panels which has been a worry to many senior citizens and those with serious injuries or diseases. A read speaks for itself. It is important to also note, prior to enactment of this unconstitutional "Act" "HR 3590" inserted into the stimulus bill, was in excess of a billion dollars to cover the costs of personal chosen by Mr. Obama himself who will oversee the "death panels". We believe of the 15-men chosen only two are physicians- the rest are bureaucrats that will decided just what care you will be entitled to and whether its cost effective by government standards. Mr. Obama and his Congressional lackeys like Adolf Hitler have their own "*Angles of Death*".

government to create a monopoly by price fixing that will force out of business all private entities related to healthcare.[26] Rationing or denial of treatment is clearly "***reckless endangerment***!"

Enough said in rebuttal to Defendants 7-word Opposition and Motion to Dismiss. What we have within this legislation is nothing less than a grand "extortion scheme" for which no judicial review is allowed that allows the federal government to violate not only Amendment 5, the anti-trust laws, but clearly violates Amendment 14, concerning "equal protection & treatment."

The "*People*" believe one example will suffice: "any business whose payroll exceeds $400,000.00, that does not offer the "*public option*" will be forced to incur an 8-percent tax on that payroll. Those with payrolls of $250-400 thousand who fail to offer the public option, must pay 2-6-percent tax on payroll. Any employer with 50 or more workers would pay $2,000. per worker if they fail to offer health insurance. These disproportional tax penalties clearly violate "*equal treatment*" and, of course no judicial review is permitted.

Legal Note: The Guarantee of "*equal protection*" under the Fifth Amendment is not a source of substantial rights or liberties but, rather, *a right to be free from invidious discrimination in statutory classifications and other governmental activity. U.S.CA. Const. Amend. 5.* Harris v McRae, 100 S.Ct. 2671, 448 U.S. 297, 65 L.Ed.2d 784, rehearing denied 101 S. Ct. 39, 448 U.S. 917 L.Ed.2d 1180.

Those in the Obama administration and the previous legislature government believe they have the unbridle power to shred the Constitution, resort to extortion and have the American business community submit to totalitarian strong arm tactics. The Legislature that voted for this "Act" make the Russian, Italian, Chinese and Armenian Mafia look like kindergarten children. The

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[25] Can Defendants name one Corporation in these United States that is granted the right to "price fix"? What makes these even more outrageous "No judicial review is permitted, so much for separation of powers. The government by force all provides of medical care, insurance out of business, multiple providers are already ceasing to do business, others are seeking waivers.

[26] The federal government stealthily inserted this provision to not only create an all powerful government 'single-payer system which neither the Senate nor House of Representatives contemplated or agreed upon a single government provision. There after the federal government will have total control over 1/6th the American economy. Not a single State that entered into the contract to form a federal government ever intended that the Federal government would control the people, exactly the opposite was formulated to halt any opportunity to control the "*People*" of these United States.

"*People*" will deal further concerning the Congress' behavior in Count 14, another Count of Defendants failure to respond as required by the *FRCP*.

- **Count 13**: Defendants enlarged their argument in rebuttal to the "*People's*" Count 13 in this argument they make an astute argument containing a total of 20-words that require the "*People*" repeat them: "(*alleging a violation of Equal Protection Clause based on allegedly unconstitutional student loan program and the tax on tanning salons*): [What this argument means is a mystery responses that defies understanding.

The "*People*" alleged and conclusively prove beyond any reasonable doubt that "HR 3590" violates Title VII and Amendment 14:

(1) Amendment 14 in relevant part says:

> "*No State shall… deny to any person within its jurisdiction the equal protection of the laws."*

(2) "HR 3590" Title V Sections 5201 and 5202 includes a provision dealing with federal funded student loans. Section 10908 State loans, now here's the violation of Title VII of the Civil Rights legislation. The provision set forth in the "Act" specifically maneuver's loan monies to 'historically black and minority colleges to the tune of 2.55 billion dollars." Unlawfully, the creators of this legislation and those that supposedly read and enacted this decided they were above the laws that guarantee "*equal protection & treatment*" for all citizens and made the decision that members of racial and ethnic minorities are somehow underserved because in their small minds members of these groups are unable (clearly an insult to their intelligence) to become doctors, nurses, or professional technicians. It is inarguable granting loans based upon race is "reverse discrimination" The Supreme Court has held this is unlawful, *see*, *Regents U. Cal. v. Bakke,*438 US 265, (1978)

(3) More recently, the high Court in *Ricci et al. DeStefano*, (citation omitted) (in which Judge Sotomayor was reversed) in the case of the New Haven, Ct. that passed over several higher scoring firefighters for promotion because they were of the wrong race. (White or Hispanic rather than Black). [One could say the hypocrites that initiated this provision are attempting to put a divide between the races].

(4) The (Tanning salon discriminatory taxation.*) First and foremost the 10-percent tax violates the "*capitation*" provision of the Constitution by taxing not all those in a State equally, but instead selected individuals for a service, not the Tanning Salon! Therefore the Tax discriminates against those with light skin.

*Note: That provision also violates Article 4, section 2, Paragraph 1:

"*The Citizens of each State shall be entitled to all privileges and immunities of the Citizens in several States."*

- **Count 14**: Defendants failed to reply outside of repeating a total of 9-words in rebuttal to the "*People's*" allegation by saying: "(*alleging a violation of the Oath of Office Clause*): Well they did read some of what we said, which makes no logical sense to just repeat 9-words contained in the Count. Though unnecessary, the "*People*" feel compelled to demonstrate just how nonsensical defense counsels are to believe the court would not recognize that those who voted for this monstrous legislation are either incompetent as their attorneys who haven't an inkling of what the Constitution says:

(1) Article 6, paragraph 3 reads:

> "*The Senators and Representatives… and executive and judicial Officers, shall be bound by their Oath of Affirmation, to support the Constitution*"

(2) As demonstrated above in the previous 13-counts, the Constitution of these United States has been unquestionably violated. Let anyone refute that each legislator that voted for this bill did not violate their oath to uphold the Constitution, or that they are not guilty of dereliction of their fiduciary duty to scrutinize the "Act";

(3) Each Representative of the "*People*" are charged with the duty to securitize every "Act" so that it complies with the Constitution. Instead, the speaker of the House, Nancy Pelosi had the audacity to publicly say: "*We have to pass the "bill" to find out what was in it"*! When asked by a reporter does it comply with the Constitution she relies with words to the effect; "*Constitution, are you serious, are you serious*". Well Ms. Speaker, "*We the People*" are serious! And then we have another buffoon, Congressmen John Conyers saying on television: "*I love these members who get up and say 'read the bill'. What good is Reading the bill if it's 1000 pages* [actual size of bill is 2075 pages, my emphasis] *and you don't have two days and two lawyers to find out what it means after you read the bill*." Senator Thomas Carper (D-DE): *Carper described the type of language the actual text of the bill would finally be drafted in as "arcane," "confusing," "hard stuff to understand," and "incomprehensible." He likened it to the "gibberish" used in credit card disclosure forms.* Are these statement not outright dereliction of their fiduciary duty"?

The "*People*" remind this Court, the above constitutes "***high crimes and misdemeanors***" which are impeachable offense, though not an incarceration offense. [Which is too bad].

Article V, Section 3, of the Constitution that states in part; "*…The Senators and Representatives before mentioned, and Members of several State Legislatures, and all executive and judicial; Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;…."*

The Court would be derelict to ignore *Marbury 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*."

Did Defendants respond to these prior three Counts? No! They are in default - it's as simple as that. See, *Gracedale Sports & Entertainment Inc v. Ticket Inlet, LLC*, 1999 WL 618991 (N.D.Ill. 1999) refusing to answer "legal conclusions: "flies in the face of the establishment doctrine that legal conclusions are a proper part of federal pleading, too which Rule 8(b) also compels a response"): *Saldana v Riddle*, 1998 WL373413 (N.D.Ill.1998) commenting that Rule 8(b) ***does not confer on any pleader a right of self-determination as to any allegation that the pleader believes does not require a response*"**); *Ponce v. Sheahan* 1997 WL 798784 (N.D.Ill.1997) Rule 8(b) "***requires a defendant to respond to all allegations in a complaint" and creates no exception for so-called 'legal conclusions***"). see, also *Farrell v. Pike* 342 F. Supp.2d 433, 440-41 (M.D.N.C. 2004) (noting that "***the rules do not permit defendants to avoid responding complaints legal allegations).*** *See generally Neitzke v. Williams,* 490 U.S. 319, 324, 109 S. Ct. 1827, 1831, 104 L.Ed.2d 338 (1989) (observing that federal civil complaints "contain …both factual allegations and legal conclusions".

Page 16-17: (Violation of Amendment 10, Plaintiffs **Count 15**):

James Madison, the architect of the Constitution words:

> "*The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the state government are numerous and indefinite*;"

Defendants make the preposterous statement as an argument to the "*People's*" Count 15 saying:

- "*contrary to the allegations in Count XV, the ACA does not violate the Tenth Amendment. The ACA is a proper exercise of Congress's commerce power and, independently, its authority under the General Welfare Clause…."If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of the power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has conferred on Congress*"

Defendants, *quoting out of context*, from New York v. United States, 505 U.S. 144 (1992) ignore the fundamental difference between the situation in *New York v. United States* and create the above statement that is a complete distortion of Article 1, Section 8, and Amendment 10 to include the meaning of "*General Welfare*". Obliviously Defendants counsel have no comprehension of the English language. By law, the Tenth Amendment grants every state and the people the power and authority to declare any appropriation, regulation, or taxation null and void if said legislation violates the main body of the Constitution, or if said legislation violates the powers reserved to the states respectively according to the Tenth Amendment.

In addition the case cited by Defendants *New York v U.S.* the court found "*taking title*" to the nuclear waste, which is analogous to the forcing a State to create an "insurance exchange", the Court found to be inconsistent with the Constitution, and in violation the Amendment 10.

The Court would be remiss to ignore that the State of Virginia, in *Cuccinelli v. Sebelius*, No. 3:10-cv-91-RV/Emt, upheld that: the "*commerce clause*" does not give the federal government the authority to require states to establish an "*insurance exchange*," This mandate exceeds the enumerated powers of Congress and thus infringes upon powers properly reserved to the States by the and the "*People*" See Amendment 10, the key word "*People*". Since it is inarguable the "*People*" bear the cost of implementation.

Note: The New Jersey Senate has recently failed to pass a measure creating the first "council" for the implementation of the new law

It appears the defense has no idea the purpose of Amendment 10, and what are the Federal government's limitations within the meaning as written. The Constitution, Federalist papers, and utterances of the framers, unambiguously placed limitations on the federal government. The "*general welfare*" clause gave the federal government authority to raise funds exclusively for

"*national defense,*" "*the protection of property*," "*the advancement and regulation of interstate commerce*," and the daily operation of government. Mandating a citizen purchase healthcare insurance for the act of "breathing" does not constitute an act of commerce.

The Act mandates all residents of New Jersey and sister States to acquire healthcare insurance under penalty of law. The Act alters the prior federal-state relationship and voluntary "contract" to the detriment of the States with respect to prior Medical programs. The Act forces States to create insurance exchanges through which individuals must purchase healthcare insurance. Each mandate set forth under the provisions of the Act force the "People" of New Jersey (Plaintiffs) to incur financial hardship void federal assistance.

Especially relevant, "HR3590" mandates an "appropriation," conveniently exempting itself from providing the necessary funding or recourses to administer this requirement, leaving the costs to be passed on to the citizens of the State of New Jersey. In Machiavellian fashion, the act in essence mandates involuntary servitude to the general government by requiring: (1) the State to provide oversight of the newly created insurance markets; (2) to include inter alia, instituting regulation, consumer protections, rate reviews, solvency, and reserve fund requirements to include premium taxes.

The act converts what had been a voluntary federal state partnership into a compulsory top-down "command and control" federal program in which the State no longer enjoys Amendment 10 protections. Total discretion of the state is removed, in derogation of the core Constitutional principle of federalism upon which this Nation was founded. In short, the Act exceeds the vested powers granted by the constitution, violates Article 1, section 8, and Amendment 10 incorporated therein.

The Act contains untold numbers of unfunded mandates that will financially burden the "*People*" Plaintiffs of the State of New Jersey and our States ability to operate significantly.

Nowhere does the Constitution grant authority for "*specific welfare*." The Supreme Court delineated between "*General Welfare*" and "*Specific Welfare*" in "*United States v Butler*, 297 U.S. 1 (1936)" which prohibits the type of activities being promulgated by the "Act". The "Act" levies taxes specifically to supply a product by taxing others. The Exchanges, taxes on inferior

and superior health care plans and the other provisions of the "Act" are clearly intended to engage in "*specific welfare*" and not "general welfare" as authorized by the U.S. Constitution.

"H.R.3590' as written and based upon and the facts presented demonstrates Congressional representatives have acted beyond the powers delegated to Congress by Article 1, Section 8 and Amendment 1. The Supreme Court has held; *Flast v. Cohen*, 88, S. Ct, at 1954, 392 U.S. at 102 "allows petition of the government for redress of grievances".

In the matter at bar, these are not "generalized grievances" shared by a large group. This case deals with individual rights for which the court is compelled to adjudicate, that also affect the large group that have signed on.

In the second part of Defendants farcical argument, they say:

- "*To the extent plaintiffs challenge the ACA's expansion of Medicaid eligibility in 2014 a burden on New Jersey, an individual plaintiff lacks standing to raise this sort of anti-commandeering challenge; such claims may be advanced only by a State itself*."

Again, the "*People*" are required to give Defendants a refresher course Constitutional law 101, Amendment 10 is unambiguous:

> "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectfully*, ***or to the people***."

In *Cuccinelli v. Sebelius*, the court upheld Virginia's challenge, both as to standing on its merits, It is important to note the DOJ fails to address the unnecessary extra tax burden that every citizen of any given State would have to bear, to pay the extra taxes that the States would have to impose in order to fund the expanded Medicaid benefits adequately. More importantly it is the sworn duty of this Court to protect the Constitution of these United States.

I'm reminded of the words of Alexander Hamilton:

> "*This Honorable Court must not enable defendants to substitute their will to that of their constituents – the courts are obligated to be an intermediate body between the people and the legislators in order, among other things to keep the latter within the limits assigned to their authority, the intention of the people to the intention of their agents (defendants) the people are superior to both legislators and the court*."

CONCLUSION

Defendants condescending hubris knows no bounds, telling this District Court it has no jurisdiction to address Constitutional violations. In Defendants conclusion they says:

> "*If these plaintiffs having standing to challenge any provision of ACA, so would any of more than 285 million American citizens. This action presents the paradigm of generalized grievance, which this Court does not have jurisdiction to adjudicate.*"

The "*People*" say: every citizen 307,006,550 (U.S. Census Bureau as of 2009) of these United States has a Constitutional right to Petition their government. It would behoove Defendant's counsel[s] to read the Constitution, Amendment 1, that supersedes any subsequent statute written by Congress or rule established by the judiciary, the right to Petition their government; and the judiciary is charged with protecting the Constitution and the rights of the "*People*" of this Constitutional Republic. *See*, Article III, Section 2, of the U.S. Constitution:

> "*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under [its] authority [and] to controversies to which the United States shall be a party*."

The "*People's*" petition can be analogized to *Ex parte Young*, 209 U.S. 123, although an offshoot of the pending dispute involving the issue at bar, under the doctrine of *Ex parte Young*, the Supreme Court of the United States has held:

> "*relief against a state official in his/her official capacity to prevent future federal violations…. 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 went on to say:

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

It is without argument the "*People*" overwhelmingly fulfilled their burden of proof by a preponderance of evidence of violations of the supreme law of the land; to quote Judge Hudson; the Act; "*is neither within the letter nor the spirit of the Constitution*," since H.R. 3590 violates Articles and Amendments of the Constitution, to include established statutory legislation. *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.

Michael Oakshott's, "*On Human Conduct*" reminds us:

> "*The Constitution was designed to bring government under the rule of law, as opposed to achieving any specific purposes…it is primarily a structural and procedural document, specifying who is to exercise what powers and how. It is a body of law,* ***designed to govern, not the people, but government itself****; and it is written in language intelligible all, that all might know whether it is being obeyed*."

Defendants by law, are required to raise an affirmative defense, the burden of proof required they prove their argument by presenting proof supported by legal precedent if not an issue of first impression. Defendants were required to set forth where in the Constitution grants the authority to institute the provision set forth in "H.R. 3590." Nowhere, in Defendants opposition to either the Petition or the Motion for Summary Judgment did Defendants demonstrate that the "*People*" were in error in their allegations of the usurping of the rights as set forth in the Constitution of these United States.

If they are unaware of what an affirmative defense and burden of proof read the FRCP and refer to the following authorities; *see, e.g., F.T.C. v. National Bus Consultants, Inc.,* 376 F.3d 317, 322 (5th Cir. 2004) *Gonnzalez-Gonzalez v. United States* , 257 F.3d 31 (1st Cir.2001); *Bridgestone/Firestone Research, Inc. v. Automobile Club De L'Quest De La France,* 245 F.3d 1359, 1361 (Fed.Cir.2001); *Continental Airlines, Inc v. Intra Brokers, Inc.*, 24 F.3d 1099. 1103 (9th Cir. 1994).

Defendants have utterly failed to disprove each and every constitutional challenge set forth in the "*People's*" 15-Count Petition. Defendants would have this Court rule in their favor without being able to rely on a single shred of evidence. That alone violates Supreme Court precedent. See, *Goldberg v Kelly*, 397 U.S. 245, 271 299 in which the court held:"

> "*that for a full and fair hearing to have occurred, the court 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*."

The only thing before the Court presented by Defendants counsel are distortions of our Constitution, and Amendments, misrepresentation of fact, and conclusionary opinions in addition to case studies (citations) to be taken as legal precedent that have as much to do about nothing. The only thing Defendants say is "*This Count must be dismissed*" because we say so. At no time have Defendants established a nexus between the status and precise nature of the Constitutional infringements alleged.

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."

To repeat the finding of the Honorable Judge Henry E. Hudson, (Va.) before the same Defense attorneys in this action; so aptly stated concerning "H.R. 3590":

"is neither within the letter nor the spirit of the Constitution,"

WHEREFORE, this District Court cannot ignore Defendants are in blatant 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 this District Court must issue a Summary Judgment, in favor of the "*People's*" Plaintiffs, 15 Count Petition.

Therefore, this Court if justice is to prevail, and for our Constitution to have meaning must invalidate "H.R. 3590" as unconstitutional based upon the pleadings, facts, and evidence put before this District Court that have not been refuted. The integrity of the process must be guaranteed by the judiciary.

Defendants at all time have failed to demonstrate with "particularity that the "*People's*" are without legal merit. To not rule based upon the unconstitutional provisions set forth in "H.R. 3590" would be tantamount to deconstruction of the United States Constitution.

The Court has made clear to all parties it is required to ***following the rules and procedures established for the orderly determination of all matters that come before this and all Federal Courts.***"

Respectfully submitted,

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