United States
District of New Jersey

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

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

Plaintiffs

v.

KATHLEEN SEBELIUS, et al.,

Motion Date February 22, 2011

Defendants.

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ORDER AND MEMORANDUM OPINION

Now pending before this court are Plaintiffs' "Petition" (doc.1), Plaintiffs' Amended Motion for Summary Judgment for Default (doc.18), and Defendants Memorandum in Opposition Motion to Plaintiffs' Motion for Default Summary Judgment and in Support of Defendants' Motion To Dismiss for Lack of Jurisdiction" (doc.26-1).

On the 4th of January 2011, the Court, recognizing the importance of the action, graciously extended Defendants time to reply, for a third time, to reply to Plaintiffs' Motion for a "Summary Judgment for Default". Defendants have chosen to use the extension of time to present the Court with a duel Motion to Dismiss the Petition as well the Summary Judgment.

I. **INTRODUCTION:**

Defendants Motion seeks to Dismiss Plaintiffs' Petition (doc.1) Counts 1 through 15 for lack of "subject matter jurisdiction" and "standing" pursuant to Rule 8(b)(1).

Therefore, the Court has concluded it will deal with all matters before it, the Petition, and Summary Judgment for Default addressing each Constitutional challenge to the federal healthcare reform law known as "Patient Protection and Affordable Care Act", (hereafter "H.R.3590" and ACA) and Defendants Opposition Motion (doc.26-1).

This court is aware the Honorable Judge Vinson declared the individual mandate in the ACA "H.R.3590" unconstitutional and not severable, thereby declaring the entire Act "must be declared void". Judge Vinson, in his ruling, cited both the removal of the severability clause in the final version that had existed in the original, and the DOJ's own argument that to sever the individual mandate would render the ACA unworkable: "Moreover, the defendants have conceded that the Act's health insurance reforms cannot survive without the individual mandate, which is extremely significant because the various insurance provisions, in turn, are the very heart of the Act itself."

That being said, unlike that multidistrict litigation and the many legal challenges before District Courts throughout the country, the Court recognizes the constitutional challenges in the Petition before this Court extend far beyond just the legality of "H.R. 3590" within the meaning of the "commerce clause" and/or Amendment 10.

After an exhausting review it is apparent this Plaintiffs' Petition raises some-what-more than whether the federal government can mandate an individual citizen to purchase a product. Petitioners have based their arguments, on actual provision cited in the "Act" "H.R.3590". It has become exceedingly clear from their Petition that Congress has cross the line, failing to operate within the bounds established by the United States Constitution.

Due to the serious nature of the complaint each count will be addressed separately. The real question before this court after reading the papers before the Court becomes; whether the United States Constitution means what it says, or whether Congress is permitted to read words into Articles, Amendments, and statutes to give them meaning not otherwise found therein.

Defendants argue Plaintiffs failed to demonstrate immediate 'injury in fact' asserting the "act" doesn't commence until 2014 and therefore are without standing citing *Lujan v Defenders of*

Wildlife, 504 U.S. 555. 560-61 (1992), but what the court has concluded citing *Lujan v Defenders of* Wildlife was misapplied by defendants.

The Court has concluded there is concrete injury. It was brought to this Court's attention that Defendant previously conceded before the Honorable Roger Vinson that an injury does not have to occur immediately and is sufficient to withstand a motion to dismiss based upon lack of standing.

Pending future harm is an "impending threat of injury" and is "sufficiently real to constitute injury in fact and afford constitutional standing", *see* In *Village of Bensenville v. FAA*, 376 F.3d 1114 (D.C. Cir.2004), *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L.Ed.2d 895 (1979) Babbitt, supra 442 U.S. at 298

This Court has painstakingly reviewed Defendants argument regarding "standing" and has determined that Plaintiffs are well within their constitutional right to Petition their government for grievances. This is their Amendment 1 Right, in conjunction with Article 3, so as not to unreasonably deny a litigant's "*due process*" to vindicate any loss of their constitutional rights; *see*, *Cohens v. Virginia*, 19 U.S. 264 (1821); *also see Flast v. Cohen*, 392 U.S.83; *Sierra Club v. Morton*, 405 U.S. 727 (1972) (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); *Massachusetts v. EPA*.,549 U.S. 497 (2007) . Thus standing and jurisdiction is found to be just and proper.

Defendants mistakenly argue this Court "lacks jurisdiction" failing to present a factual attack or valid argument. Their request for dismissal is predicated upon Rule 12, failing to consider Rule 12(b)(1) that grants dismissal "*...only if there is no federal question at issue*,…"

Defendants argument to dismiss for improper service is found wanting for numerous reasons. It is without question their failure to present any objections, that began as early as October 1, makes this request untimely, *see, Parker v U.S*. 110 F.3 678, 682 (9th Cir. 1997) in which the court 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.*".

Therefore the Court has concluded Defendants waived any and all rights they might have had based on service, which also contradicts the doctrine of *laches*. It is relevant to note that Rule 5.1 concerning Constitutional challenges to a statute[1] does not forfeit a constitutional claim. The Court must legally conclude service was acknowledged, accepted, and ratified by performance. Defendants waived any rights to argue differently after the fact; *Chisholm v. Georgia,* 2 U.S. (2 Dall.) 419 (1793).

More importantly, any jurisdictional claim must be waived, considering that before the Court are over a dozen Constitutional challenges. The Federal Rules require this court to review the *Merits as well as any technicalities.* They cannot be separated. *See*, *Gonzalez v. United States*, 284 F3d 281, 287 1st Cir. 2002) noting that the jurisdictional issue is intertwined with merits where a court's "*subject matter jurisdiction*" depends upon statute that governs substantive claims; *see also Montez v. Department of Navy*, 392 F.3 147, 150 (5th Cir. 2004); *Warren v Fox Family Worldwide, Inc*., 328 F.3d 1136, 1139 (9th Cir.2003); *Sizova v. National Inst. of Standards & Tech.,* 282 F.3d 1320, 1324 (10th Cir.2002).

In *Marbury v. Madison*, 1 Cranch 163 (1803), the Supreme Court makes clear to deny standing is to close the court house doors to a litigant who seeks justice under "rule of law."

II. **FEDERAL JURISDICTION**:

Defendants are sorely mistaken in their claim that Plaintiffs are restricted from invoking Article 3. Article 3, Section 2, Paragraph 1 states: "*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 their Authority; ... to Controversies to which the United States shall be a part; ...*."

[1] 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***." Defendants failed to dispute the Petition 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".

The court notes *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. Before this Court Plaintiffs raises not one but numerous constitutional challenges cited with specificity and particularity contained throughout the "Act" pointing to provisions that requires federal review.

James 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."*

III. **CONSTITUTIONAL CHALLENGES**:

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."*

Considering the severity of the "Act" "H.R.3590" and the ramifications associated with its implementation the Court will legally analyze each constitutional challenge separately to make certain Congress has not exceeded the bounds of its authority as set forth in the Constitution:

Count 1, Defendants claim "H.R. 3590" does not violate the "origination clause" and that "total substitution" is an ongoing practice citing *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143 (1911) as their authority. The Court scrutinized *Flint v. Stone Tracy Co.* and found in that case the Senate was amending a House originate revenue raising bill – not a bill that was written, or originated entirely by the Senate. Defendants presented no further argument.

Article 1, Section 7, Paragraph 1 is unambiguous, it is without question in this Court's opinion "H.R. 3590" originated in the Senate which exceeds the authority granted to the Senate. [2] The

[2] The court also addressed Judge Vinson from document 79: "To the extent there is statutory ambiguity on this issue, and both sides did request Judge Vinson to look to the Act's legislative history to determine if Congress intended the penalty to be a tax. Ironically, as plaintiffs' noted; 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

Constitution makes clear the Senate of the United States Congress is prohibited from enacting, writing or originating any revenue raising bill. It is also pertinent to mention Defendants previously requested the Honorable Judge Roger Vinson (Florida) to address the history of the "Act" and found the "Act" originated in the Senate.

In Count 2, Defendants presented conclusionary arguments, paraphrasing verbiage set forth in the "Act" itself. This court also takes exception to misapplied authorities cited by Defendants, i.*e.* *United States v. South-Eastern Underwriters Association* (322 U.S. 9 533 (1944)) to "justify" the individual mandate.[3]

Defendants also distort the "Necessary and Proper Clause"[4] claiming Congress' has authority to enact this "Act" claiming: "*Congress has the power to enact a regulation of interstate commerce*, which is true, but only within the **bounds specifically authorized by the Constitution of the United States.**

The Court's review of the "Act" finds the individual mandate violates substantive "*due process*" under Amendment 5 concerning fines and taxes in which no judicial review is allowed. No authority was presented or exists that grants the Congress authority to dictate, order, or force any individual, company, or state to engage in any form of commerce nor does the Constitution grant Congress the authority to create vehicles of commerce.

The Court concludes the individual mandate is found to be an unconstitutional direct tax, and unapportioned capitation in violation of Article 1, Section 9, Paragraph 4, as well as in violation of Amendments 9 and 10 of the U.S. Constitution.

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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.

[3] The Court read the case and found it pertained to 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. The case itself relates to 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"

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.

The Court notes; *United States v. Lopez*, 515 U.S. 549, 115 S. Ct 1624, 131 L, Ed. 2d 626 (1995) also see, *U.S. v Morrison*, 514 U.S. 549, 568, 577-578; in that "the extent of Congressional authority over State rights and restrictions on Congressional authority" is limited and "H.R. 3590" contradicts both these rulings. Liken to the above citations the Court must concluded the statute does not "*substantially affect interstate commerce*", and far exceeds the scope of the "*Commerce Clause*" and is an unconstitutional exercise of Congress's legislative power.

Defendants mistakenly argue authority also exists pursuant the "*General Welfare*" provision. The court must point to *United States v Butler*, 297 U.S. 1 (1936) that prohibits the type of activities being promulgated by the "Act" "H.R. 3590" which levies taxes, fines and fees specifically to supply a product to one specific group by taxing other specific groups. This "Act" "H.R. 3590" in comparison with *Butler* constitutes "*Specific Welfare*" for which no provision exists in the United States Constitution.

The Court is cognizant that Plaintiffs' Exhibit 1 consolidated their argument with those submitted by twenty or so states that joined in *State of Florida v. U.S. Dept. Health and Human Services*, et al, 3:10-cv-91-RV/EMT, that has been adjudication and decided finding that "H.R.3590" unconstitutional by the Honorable Roger Vinson. The Court also notes the Honorable Henry Hudson in *Cuccinelli v. Sebelius*, 702 F. Supp. 2d 598, 602-07 (E.D. Va. 2010), found the "commerce clause" and the "Act's" mandate that an individual purchase Health Insurance or suffer a penalty "*is neither within the letter nor the spirit of the Constitution,"* Likewise, this Court finds the same. Article 1, Section 8, Paragraph 3 has been violated.

Addressing Count 3, Defendants present no valid argument to dispute that "H.R.3590" violates the "*Posse Comitatus*" Act. Nor do they presented argument to dispute it also violates Article 1, Section 8 of the U.S. Constitution. It unnecessary to elaborate other than to refer to the fact that the Constitution grants Congress the power *"…to raise and support armies, but no appropriation of money to that use shall be for a term longer than two years*. "H.R. 3590" *violates appropriation provision* and funds the "Ready Reserve Corp" for four or more years.

In Count 4, Defendants mistakenly rely upon the "*Commerce Clause*" and "general welfare" provisions to justify the provision for a "Capitation" Tax. 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*". As written the "Act" levies a tax on incomes without apportionment. "Capitation" taxes are taxes, not on incomes, but taxes on individuals, discriminately devoid of proportionality to various States regardless of population, automatically renders this "Act" "null and void". It must also be noted, the Court has found in Count 1, the Senate exceeded its authority to create a revenue raising bill.

This court will cite one example, *see* Section 10907: "*There is hereby imposes on any indoor tanning service a tax*". The tax imposed is specifically laid on the person getting the service and not the service itself, and is clearly without apportionment.

Thus far four waivers have gone to State governments, Massachusetts, New Jersey, Ohio, and Tennessee, of the restricted annual limits on behalf of issuers of state-mandated policies. The Court sees no equal and proper "apportionment", which also violates Amendment 14.

Shockingly, Defendants requested the Court to adjudicate and rule on Plaintiffs' original Petition yet failed to comply with FRCP by responding to Counts 5, 6, and 7. By law, this Court is mandated to automatically grant forfeiture to Plaintiffs. *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, to 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".

In Count 8 Defendants put forth the unsubstantiated claim "H.R. 3590" does not violate Amendment 4, and the "HIPAA" legislation. The Court recognized Plaintiffs explicitly pointed to provisions in the "Act" "H.R. 3590" Section 1128J: Medicare and Medicaid Program Integrity Provisions (pp. 1687-1692ff). This section creates an "Integrated Data Repository" and states "….the Inspector General's Office will have access to any medical record that he deems necessary to investigate". What struck this Courts attention was the wording in the provision *"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."*

It is/has been a Constitutional requirement that even federal "inspectors general" are required prior to enactment of this legislation to obtain warrants prior to seizure of records. Section 1128J provides for warrantless searches and seizures. It is inarguable this provision violates Amendment 4.

Defendants deceptively tell 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"*. Yet, one finds that the "Act" (see Part 6) grants the Federal Government access to individual-bank account and financial records and medical records as provided by that individual's health plan. The government has the right to monitor 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's bank account for the purposes of debiting his/her account for fees and penalties. Such broad powers reeks of a police state. This court must conclude such overreaching provisions are unconstitutional and violate Amendment 4, and the HIPPA legislation.

The Court previously recognized the violations of Amendment 5 in Count 2 but finds it necessary to elaborate further in relationship to Count 9. Defendants claim H.R. 3590" does not constitute a "*taking*"[5] in violation of Amendment 5, nor does it impose involuntary servitude in violation of the Thirteenth Amendment saying: "*Requiring money to be spent is not a taking of property*" going on to state: *"[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.

Such conclusionary statement is not a proper response in accordance with the requirements set forth in the *FRCP*, Rule 8(b) and 8(d). Mandating that every citizen purchase "Healthcare Insurance" under treat of penalty, for which no judicial review is permitted is cited as so stated on (pp. 630, 653, 676, 680, 725, 738, 772, 831, 1013, 1415, 1679, and 2303) is unconstitutional and violate Amendment 5, that in relevant part reads: "*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*." Any seizure of property void "*due process*" is a "*taking*." More appalling is the wrongful threatening of the seizures of property that clearly implies a transfer of a possession.[6] Any seizure, whether a tax, fine, or lien on property, without "*due process*"

[5] 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".

[6] 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*

constitutes a "*taking*". Mandating citizens purchase a product, or participate in any act of "commerce" is unconstitutional.

As far as Plaintiffs' allegation of relegating citizens to involuntary servitude in violation of Amendment 13 this Court must conclude mandating a freeman to do anything against his or her will is an act of involuntary servitude. Unmistakable Congress' draconian mandates and the use of threats incorporated into "H.R.3590" crosses the line and does relegate honest citizens to criminal status without "*due process*" if they fail to comply with the mandate to purchase insurance. The government can only mandate criminals to adhere to demands, not free American citizens.

Defendants previously mocked plaintiffs to this Court when they asserted this "Act" rendered the judiciary irrelevant. Let this court be clear, any provision forbidding judicial review of a law flies in the face of separation of powers, and eliminates "*due process*" of law.

The court will address Count 10 (Amendment 14) and Count 11 (Amendment 1) collectively. Amendment 14 in part reads: "*No State shall…deny to any person within its jurisdiction the equal protection of the laws."* 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 argue "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*". Amendment 1, says in relevant part: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;…."*

The U.S. Constitution prohibits Congress from instituting laws regarding religion (respecting one religion over another). Yet, "H.R. 3590" grants exemptions that specifically exempt select religious sects from the mandate to purchase Healthcare Insurance without penalty.

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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.*

Unmistakably, such a provision granting waivers to select religious sects, Muslims[7] and/or Amish etc., violates Amendment 14, "*Equal protection and treatment*". And respecting one religious sect over another violates Amendment 1.

Set forth in "Section 1402(g)" of the "Act" that relate to the Internal Revenue Code (26 USC 1402(g)) 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.

What is troubling to this Court, if any other 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. Further edification is on page 326 and page 2105 of the "Act" that grants "religious conscience exemptions" in a very specific unconstitutional way. Amendment 1 prohibits Congress from drafting any law that contains preferences to religious organizations, or based on membership in religious organizations. The language in the "Act" grants "preferential treatment" to individuals based upon their membership or participation in selected establishments of religion.

In an attempt to establish precedent, defendants cited *Walz v Tax Comm'n of the City of New York*, 397 U.S. 664, 669 (1970) totally misapplying the content therein. The citation is a general State property tax exemption for religious entities and is clearly not a provision respecting an established of religion. It applies to all religious groups as constitutional religious exemptions do.

The courts have always unanimously agreed that any law must apply with equal force to everyone. "H.R. 3590" abridges the rights of certain individuals while favoring other individuals and or groups in direct violation of Amendments 1 and 14. "H.R.3590" does favors and respects one religion over another failing to prescribe a standard and authorization for such privileged exemptions.

[7] 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 and Amish faith above Christianity and Judaism, and other religions to include atheism. (atheism is a belief system which fundamentally is what every religion is).

More troubling, if one is not a member of the favored religions that individual is subject to a penalty for failure to comply with the provision of the "Act" and without "*due process*" (Amendment 5, violation) or any appeal process. Therefore it stands to reason, the "Act" regards/respects one religious sect over another violating not only Amendment 1, but Amendments 5 and 14 as well.

In reviewing the provision set forth in the "Act" that 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)***** 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.

Plaintiffs rightfully cite *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.

The Court must concur with Plaintiffs that 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."

The provisions in the "Act", that relate to the Internal Revenue Code (26 USC 1402(g)) 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 Plaintiffs are correct that case remains ripe for review, because the concept of *stare decisis* would not apply.

The consequence of the unconstitutional mandates set forth in provisions of the "Act" open the door to numerous challenges that effect the issue at bar. What the "Act" does, 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.

What make these provisions discriminatory is the exemptions are based not on individuals but on the sects. The way the "H.R.3590" was drafted no individual enjoys their full right to have judicial review, or appeal provisions in the "Act." Instead, they are penalized void "*due process*" in violation of Amendment 5. It also clearly violates Amendment 14 by its special waivers to unions, selected corporations, and foundations and recently to 4-selected states. Equal protection rights are nowhere to be found in this legislation. The Court finds such gross abuse of power, invidious discrimination, or fundamentally unfair procedures to be unconstitutional.

Defendants requested the court determine all pleadings yet fail to comply with the FRCP and respond to Counts 12, 13, and 14. By law, the court is mandated to automatically declare a forfeiture, *see* law cited page 8, of Counts 5, 6, and 7 in favor of the Plaintiffs.

Lastly, Count 15, though which the Court was basically addressed above, see Count 2, the Court refers to words of James Madison, the architect of the Constitution: "*The powers delegated by the proposed Constitution to the federal government <u>are few and defined</u>. <u>Those which are to remain in the state government are numerous and indefinite</u>*;"

Defendants say *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*"

Amendment 10 acknowledges every State and the people have 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 or to the people.

This "Act" throughout exceeds the enumerated powers of Congress and thus infringes upon powers properly reserved to the States and the "*People*", *see* Amendment 10, the key word "*People*". It is inarguable the "*People*" bear the cost of implementation therefore the people have a constitutional a right to settle their grievances in a court of law.

My colleague, the Honorable Judge Henry E. Hudson, presiding in *Cuccinelli v. Sebelius*, No. 3:10-cv-91-RV/Emt, made clear, the "*commerce clause*" does not give the federal government the authority to require States to establish an "*insurance exchange*,". This Court could not agree more.

"HR3590" mandates an "appropriation", conveniently exempting the federal government 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 and 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, violating Article 1, Section 8, and Amendment 10 incorporated therein.

IV. **CONCLUSION**:

The pleadings before this court clearly demonstrate Congress in the passage of "H.R. 3590" grossly exceeded its authority under the U.S. Constitution. The court's Order dated January 4, 2011 required Defendants to respond to the Summary Judgment. Defendants have chosen otherwise, and instead requested this Court rule upon the Petition and the Summary Judgment for Default arguing previously for judicial economy. This court could not agree.

The court finds Defendants failed to comply as required by Rule 8(b) and 8(d). Defendants have presented no cognizant or coherent argument to dismiss a single Count submitted by the Plaintiffs in their petition.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and because the individual mandate is totally unconstitutional and not severable, the entire Act must be declared null and void. This has been a difficult decision to reach. The court is also aware of indeterminable implications. But, for all the reasons stated above the decision making contemplated by the Constitution, requires this Court to render "Act" "H.R. 3590" in accordance with its duty under the Constitution unconstitutional in its entirety:

IT IS So ORDERED, Defendants "Memorandum in Opposition Motion to Plaintiffs' Motion for Default Summary Judgment and in Support of Defendants' Motion to Dismiss for Lack of Jurisdiction" is DENIED in its entirety;

IT IS ALSO ORDERED Plaintiffs' motion for Summary Judgment for Default (doc. 18) is hereby GRANTED and plaintiffs Petition (doc.1) is GRANTED in its entirety, As to Plaintiffs request for declaratory relief, the Court grants the request for relief set forth rending "Patient Protection and Affordable Care Act" (hereafter "H.R.3590") is null and void and all implementation of said "Act" must cease and desist immediately.

DONE and ORDERED this __ day of February, 2011

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FREDA L. WOLFSON
United States District Court Judge