Why the United States Court of Appeals For The Sixth Circuit ruling in the *Thomas More Law Center, et al. v. Obama, et al.*, 10-2388 is wrong.

Our Case Overview

The question everyone is going to be asking is how will the ruling of the *Thomas More Law Center, et al. v. Obama, et al.*[1], case number 10-2388 effect our case *Purpura v Sebelius et al.*[2], case number 11-2303. The ruling actually helps us.

First, the ruling clearly rejects the DOJ and Judge Freda Wolfson's fake standing argument that was used to reject the case in the Federal District Court of Trenton NJ. Pages 5 through 11 gives a detailed discussion of standing and ripeness. The discussion clearly shows that Judge Wolfson ignored existing Supreme Court rulings. So we, and the other people petitioning, had and have standing to challenge "H.R. 3590". The *Bond v United States*[3] ruling reinforces this.

Second, the DOJ failed to answer the original Petition, filed in September of 2010. That is why District Court and DOJ created the fake standing argument. Unlike other "H.R. 3590" cases before the various Courts ours addresses nineteen (19) violations of the U.S. Constitution and 4 (four) violations of existing Laws in "H.R. 3590". DOJ failure to answer the petition, or complaint, was an acknowledgment that every Count in the Petition is correct. When we filed the first Motion for a Temporary Restraining Order (TRO), the DOJ stated they would answer and prove each Count without merit. DOJ then ignored the Petition until we filed the Motion for Summary Judgment for Default. That motion was filed more than 20 days after the DOJ missed the deadline to answer the original Petition. So DOJ and the Court wanted to find a way to get rid of the suit and created the fake standing argument. Of course they ignored prior Supreme Court rulings to do it.

Important Definitions

In this reviewing the Opinion it is important to remind ourselves of what the U.S. Constitution actually states and what the actual meaning of the words are. This is important given the expansive, and incorrect meaning "regulate" has been given over the years. The Courts have over the years distorted what Article 1, Section 8, Paragraph 3 states. With "The Congress shall have Power " is

> To regulate Commerce with foreign Nations, and
> among the several States, and with the Indian Tribes;

To insure one understands the meaning of the sentence clause one must first look at the what the definition of the key words in the statement are. It is important to remember that the definition of "regulate"[4] is

1. To adjust by rule, method or established mode;
2. To put in good order;
3. To subject to rules or restrictions;

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1 http://www.ca6.uscourts.gov/opinions.pdf/11a0168p-06.pdf
2 Files available at http://www.jerseyshoreteaparty.org/healthcare or via http://www.ca3.uscourts.gov/default.htm
3 http://www.supremecourt.gov/opinions/10pdf/09-1227.pdf
4 http://www.1828-dictionary.com/d/search/word,regulate

The definition includes nothing that would allow one to dictate an action. It always involves establishing "how something is done". In other words if you do "this" you must do it in this fashion or by following these rules.

"Among"[5] means

1. Mixed or mingled; surrounded by.
2. Conjoined, or associated with, or making part of the number of;
3. Expressing a relation of dispersion, distribution, etc.; also, a relation of reciprocal action.

The meaning is collections and associations. No where does the meaning delve into the items, or inside of something. If you are among the trees you are not inside a tree.

The phrase "interstate commerce" has a special meaning legal documents and is not used in the U.S. Constitution. Consider the meaning of the word "commerce" [6]

1. In a general sense, an interchange or mutual change of goods, wares, productions, or property of any kind, between nations or individuals, either by barter, or by purchase and sale;
2. Intercourse between individuals; interchange of work, business, civilities or amusements; mutual dealings in common life.
3. Familiar intercourse between the sexes.
4. Interchange; reciprocal communications; as, there is a vast commerce of ideas.

The Examination

Remember: rulings like *Wicker v Filburn* 317 U.S. 111 (1942)[7] have illicitly expanded Article 1, Section 8, Paragraph 3 into areas that are not "among the several States" - things that are strictly happening within the States. The U.S. Constitution, the result of the Constitutional convention, was created to address the trade wars that were occurring between the original thirteen States. This contract, a covenant, between the Sovereign States of the United States established that the national Government can only do certain things. The States clearly were not going to give up authority to regulate their internal trade. But even with the illicit expansion done by *Wicker v Filburn* into areas that are not "commerce among the States" the case does not support the Court's opinion. In *Wicker,* wheat was being grown. The farmer was performing an activity. The Court claimed that act of growing your wheat could be regulated even if not being sold in commerce that was among the States.

Growing your own food for your own use is not "commerce among the several States". If the Mandate is maintained as Constitutional then Congress can mandate anything be done if the "thing" even marginally effects "commerce among the States". Based upon *Wicker v Filburn* Congress could pass a law that prohibits personal gardens since they could claim you won't buy produce that has been grown in another State or Country and are therefore effecting commerce. Every decision made every day in some fashion effects interstate commerce in the end. This is the fundamental flaw in the *Wicker v Filburn* ruling. The wheat he was growing was to feed his own animals. The animals might have been sold as "commerce among the States". The wheat, however, was not going into "commerce among the States".

5 http://www.1828-dictionary.com/d/search/word,among
6 http://www.1828-dictionary.com/d/search/word,commerce
7 http://www.law.cornell.edu/supct/html/historics/USSC_CR_0317_0111_ZS.html

The Court tried to sidestep the simple fact that the Individual Mandate forces some people, not all, to purchase a product or be punished. "H.R. 3590" does not regulate the product purchase but requires the purchase of a product, specifying the product to purchase. When the original *Interstate Commerce Commission*[8] was created it was specifically charged with regulating transportation among the States and territories of the U.S. The key - the regulating of an activity.

The argument related to *Gonzales v Raisch,* 545 U.S. 1, 25 (2005)[9] is also flawed. Congress has no authority to regulate Marijuana not going into "commerce among the States". Article 1, Section 8, Paragraph 1 ("General Welfare) can be used to allow regulation. The General Welfare clause allows the FDA and CDC to exist. Everyone benefits from effective medication, food inspections. etc. One can not be required to be buy medicine – even if one needs it.

Another problem with the Opinion is its use of the "Commerce Clause" as authorization of various programs and laws. The laws are not authorized by Article 1, Section 8, Paragraph 3 - nothing to do with commerce. The laws are Constitutional. Authorization is found in Article 1, Section 8, Paragraph 1, Amendments 5 and 13. The States and national Government can impose requirements on those duly convicted of real crimes. General welfare never identifies specific recipients, specific welfare does. Understanding *United States v Butler* 297 U.S. 1 (1936)[10] is important. It clearly delineates the differences between general Welfare and specific welfare.

The opinion distorts *United States v. South-Eastern Underwriters Association* 322 U.S. 533, 552-53 (1942)[11] as well. The case was not about requiring a person purchase products but about how a company was selling products and conducting business among the States located in the southeast of the United States. The case was about collusion, pricing fixing and other serious and criminal issues related to the selling of insurance policies across State lines. Or actual "commerce among the States".

On page 23 of the ruling the Court states Article 1, Section 8, Paragraph 3 does not distinguish between activity and inactivity. This is a ludicrous statement. The Paragraph's words imply activity. "Regulate" implies activity by its very meaning. The Individual Mandate is not regulating the purchase of insurance, which if insurance is being purchased or sold among the States, across State lines, then Congress can regulate the purchase. The Individual Mandate dictates one purchases a product and the type of product to be purchased. It is the classic "do what I say since I know best" attitude seen all over the world. The Court failed to comprehend, or chose to ignore, is just because something may effect commerce among the States does not give Congress the authority to regulate it.

The Court ignored the general Welfare issue. The Individual Mandate is not general Welfare but specific Welfare. In *Butler v United States* the Supreme Court specified the difference between the two. The purpose of the Individual Mandate is to supply a product – health insurance – to those who can not afford it, by requiring those who can afford it to purchase it and subsidize those who can't. Exactly what *Butler v United States* identified as specific Welfare and prohibits. General Welfare is authorized by the U.S. Constitution. Specific Welfare is the responsibility of the people and the States.

Most problems in Health Care are due to illicit rulings and laws that force Hospitals and Doctors to treat people. One of the problems is that Congress along with the Courts are trying to force people to engage

8 http://www.archives.gov/research/guide-fed-records/groups/134.html
9 http://www.law.cornell.edu/supct/html/03-1454.ZO.html
10 http://www.law.cornell.edu/supct/html/historics/USSC_CR_0297_0001_ZS.html
11 http://supreme.justia.com/us/322/533/

in behaviors that they believe will help improve people. That is not a responsibility of the government. The government, at any level, is not responsible for improving people. Examining events and history shows the consequences of this attitude. Responsibility belongs with the individual.

The Opinion then goes on to use straw man[12] arguments (Page 52) to justify the Individual Mandate is Constitutional by comparing the purchase of automobile insurance to the Individual Mandate. Most States require the purchase of auto insurance as a condition of using the public highways, just as one is require have a drivers license. But not all States require insurance. At one time, and it may be the same, Tennessee did not require one to get insurance. One could pay a fixed fee into an uninsured motorist fund. Banks insist on insurance for loan they originate for the purchase of a car. They want to insure the loans are paid back in the event of accidents or theft.

Congress can not dictate to the States except where the States gave them specific authority. "H.R. 3590" instructs the States to create insurance exchanges for people to buy insurance. While a State, depending upon their State Constitution, can create exchanges on their own, Congress has never been given any such authority. The bill is creating vehicles of commerce and requiring States to create the same. You can anticipate the straw man arguments that will used such as: "The Post Office is a vehicle of commerce." Of course the USPS is authorized by Article 1, Section 8, Paragraph 7 of the U.S. Constitution and the argument collapses.

Why our case is so much stronger

So why is *Purpura v Sebelius et al.*, Case 11-2303, not effected by this ruling? Unlike the many other cases and this case challenging "H.R. 3590" our case is not limited to Article 1, Section 8, Paragraph 3 and Amendment 10.

We read the whole bill. It took 36 hours over 2 weeks. We took notes and examined how the bill conformed to or violated the U.S. Constitution. Not everything in the bill violates the U.S. Constitution. We examined, as did Judge Vinson, the origination of the bill. It is a bill that raises revenue that originated or was written by the Senate. We looked at "was the bill constitutional signed into law?" These two (2) Counts are external to actual text of the bill.

In the first reading of the bill, we found 17 specific violations of the U.S. Constitution. The violations range from illicit taxes, violations of equal protection and treatment, illicit imposition of involuntary servitude, privacy violations and other issues. The Individual Mandate is involuntary servitude[13]. Our case addresses all of the constitutional violations we found in the bill, its unconstitutional creating and its unconstitutional signing into law. All identified by a single reading of the bill. We have since identified Amendment 8 – excessive fines – violations.

This is why Department of Justice could not answer our brief . We addressed all of the issues and they obviously could not dispute them. When forced to, they wrote ridiculous non-answers. Even now they are continuing their attempts to stall, hoping this case will go away.

For those who wish to examine the documents that have been submitted in both the District Court and Court of Appeals for the Third Circuit they are located at **JSTP's web site here** or **or in a zip file here.**

12 http://grammar.quickanddirtytips.com/what-is-a-straw-man-argument.aspx
13 http://www.lectlaw.com/def/i071.htm