UNITED STATES COURT OF APPEALS
FOR THIRD CIRCUIT

4005. CVD

CASE No. 11-2303

Appendix

APPEAL TO ORDER BY JUDGE FREDA L. WOLFSON
DISMISSING PETITIONER CLAIM

3:10-CV-04814-GEB-DEA

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To United States Court of Appeal
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CC Ethan P. Davis
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Federal Programs Branch
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Washington, D.C. 20001

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United States District Court
District of New Jersey

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

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

v.

NOTICE OF APPEAL TO ORDER BY JUDGE FREDA L. WOLFSON DISMISSING PETITIONS' CLAIM & MOTION TO EXPEDITE

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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TO THE HONORABLE COURT, DEFENDANTS AND THEIR ATTORNEYS OF RECORD, AND ALL INTERESTED PARTIES:

COMES NOW Nicholas E. Purpura and Donald R. Laster, Jr., et al. (Petitioners) to file this timely Motion of Notice of Appeal, and Motion to Expedite the Order of April 21, 2011 (Exhibit 1) Dismissing Petitioners' Petition based upon lack of subject matter jurisdiction pursuant to Federal Rules of Civil Procedures (FRCP) 12(b)(1); that will have grave consequence by the precedent it would establish if left standing. Petitioners' respectfully request this Honorable Circuit Court reverse said finding Order in its entiety.

The District Court action stripped Petitioners' of their Constitutional Rights and virtually erased the Constitution, Statutory law, as well as rendered Circuit and Supreme Court precedent null and void.

The Defendants in this action failed to address a single allegation as required by FRCP 8(b), and Rule 8 (d). In the interest of substantial justice Petitioners pray they can come before the Circuit Court as soon as possible to plead their case. And it will be based upon the facts, law, and Federal Rules of Procedure that this matter will be adjudicated by this Court. Petitioners say, this Petition has been intentionally protracted in the District Court. Petitioners have also been denied proper procedural "*due process*". If this action is protracted any longer Petitioners as well as the American people as a whole will continue to suffer ill reversal damage that strips Petitioners of the Constitutional Rights.

JURISDICTION

This Honorable Court has Original Jurisdiction to hear all matters involving Constitutional and Civil Rights violations. No doctrine, law, statute or moral reason exists that would bar this Federal Court from addressing the merits of Petitioners' complaint due to the violations of Petitioners federally protected guaranteed federal civil rights.

QUESTIONS PRESENTED

I. Whether the District Court erred in dismissing Petitioners' claims pursuant to '*lack of jurisdiction*' arbitrarily and capriciously without any legal bases. And whether the Court, by its own admission, had not reached or examined the merits of the claims;

II. Whether the District Court refused to recognize Petitioners' political status as sovereign "Natural Born" "Citizens' of these United States". Thereby disenfranchised Petitioners' from our government thus creating law valid for one political class of citizens, but not valid for all classes;

III. Whether Petitioners Constitutional rights have been abrogated, thus denying Petitioners "*due process*" and "*equal protection*" Rights guaranteed under the Constitution.

IV. Whether the District Court failed/refused to adhere to proper judicial procedure resulted in the deprivation of Petitioners Constitutional civil rights as a Citizen of these United States by failing to conduct a straight-forward inquiry into the ongoing violation of federal law and Constitution of the United States. By failing to do so placed Petitioners' and all Americans in jeopardy of political persecution by allowing one branch of government to unconstitutionally force citizens to obey an unconstitutional law through wrongful use of threatening … or fear of economic harm …. to surrender a federally protected rights.

V. Whether the District Court suspended the Constitution and decided to interrupt law and authorities to suit a political purpose suspended Petitioners civil rights by:

- Ruling upon its own interpretation of what the law should mean, redefining established Constitutional authority, statutes, and the Federal Rules of Civil Procedure;
- As a fact-finder failed in its fiduciary duty by ignoring the explicit facts presented;
- By judicial fiat created a counterfeit "standing argument" claiming the Court "*lacked of jurisdiction*" to challenge a branch of government's unconstitutional exercise of power;
- Refusing to weight arguments as written and/or meaning of the text and laws. The text's and law's purpose and customary practices associate with the Constitution, statutory regulations and meanings as outlined in the Federal Rules of Civil Procedure (hereafter FRCP). Thus deprived Petitioners of their Constitutional rights;
- Acted with *deliberate indifference*, and *obstruction of justice* aiding and abetting in the unconstitutional actions of Defendants and their attorneys;
- Whether the District Court by judicial fiat ruled to suit a personal ideology or benefit, violated its fiduciary duty essential to controlling protected rights set forth in the Constitution that indicates the end of the "*rule of law*".

VI. Whether District Court usurped Supreme Court precedent by violating proper procedural "*due process*" and "*equal protection*" by denying Petitioners' the required "*evidentiary hearing*" in a matter of finality.

VII. Whether the District Court without proper jurisdiction ruled on an issue that was not properly before the Court; that contradicted the Court's previous order of January 4th 2011. Clearly usurped the FRCP by granting procedurally infirm extensions of time void any

proper motion for an enlargement of time for good purpose pertaining to a Motion or Order [A practice that took place throughout these legal proceeding].

VIII. Whether Petitioners' should have been granted an automatic judgment in their favor by law as set forth in the FRCP, see Rule 8 (d) for failure to put forth any opposition. Thereby admitting Counts 5, 6, 7, 12, 13,and 14 that the assetion are correct and factural.

IN CONCLUSION

It is also inarguable Petitioners' litigation was intentionally protracted by the District Court that failed and refuse to address the merits, consistently suffered abusive improper judicial procedure. Petitioners realize that law sometimes tends to sleep, but it is not dead. The United States Constitution is the Supreme law of the land and has been rendered "*null and void*" by "H.R. 3590" that shedded the United States Constitution.

Respectfully submitted,

S/

Nicholas E. Purpura,

S/

Donald R. Laster, Jr.

cc: Ethan P.

PROOF OF SERVICE

I, _____, served:

NOTICE OF MOTION TO APPEAL & EXPEDITE PETITION

To: Etahn P. Davis, Esq.,
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachussetts Ave. N.W., Room 7320
Washington, D.C. 20530

and,

Assistant U.S. District Attorney Tony West
United States District Court (TNJ)
402 East State Street
Trenton, NJ. 08608
New York, NY 10271

I served the above referenced document by causing a true and correct copy to be mailed Certified Return receipt.

I declare I am a citizen of the United States, am over the age of 21, reside in New Jersey, and am not a party to this action.

I declare under the penalty of perjury under the laws of New Jersey and this United States that the foregoing is true to the best of my knowledge.

Dated: May 17, 2011

JENNIFER LISBETH WHITE-DOREMUS
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires Aug. 11, 2015

NOT FOR PUBLICATION [16, 26]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NICHOLAS E. PURPURA, et al., Plaintiffs	
v.	Civil Action No. 10-04814
KATHLEEN SEBELIUS et al. Defendants	**OPINION**

WOLFSON, United States District Judge:

Presently before the Court is a motion by Defendants Kathleen Sebelius, Timothy F. Geithner and Hilda L. Solis, individually and in their official governmental capacities (collectively "Defendants"), to dismiss the Complaint of Plaintiffs, pro se, Nicholas E. Purpura and Donald R. Laster, Jr. for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).[1] This action is one of many challenges to the Patient Protection and Affordable Care Act ("ACA" or "Act"), brought by various individuals and organizations throughout the country. In the Complaint, Plaintiffs allege that the Act violates numerous Constitutional provisions and conflicts with several federal statutes. As a result, Plaintiffs seek a declaration that the Act is

[1] The Court is compelled to note that although Plaintiffs claim to represent "We the People" and the "citizens of the State of New Jersey," Compl. ¶¶ 2, 11, Plaintiffs are not attorneys and this lawsuit has not been brought as a class action. Moreover, no individual signed the Complaint other than the named Plaintiffs. Thus, the Court considers this as a challenge to the Act brought solely on behalf of the two individual Plaintiffs – Messrs. Purpura and Laster.

unconstitutional and ask this Court to enjoin Defendants from its enforcement.

In response, Defendants filed the instant Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) arguing that the Complaint does not establish Plaintiffs' standing to challenge the Act. Specifically, Defendants contend that the Complaint " reveals nothing about plaintiffs other than their names, their addresses, their affiliations with various political groups in New Jersey, and their disapproval of the challenged statute." Defs' Br. at 1. The Court has considered the motion without oral argument pursuant to Fed. R. Civ. P. 78.[2] For the reasons set forth below, Defendants' motion is GRANTED and the Complaint is DISMISSED.

I. BACKGROUND

On March 23, 2010, President Barack Obama signed into law the Patient Protection and Affordable Care Act, Pub. L. No 111-148, 124 Stat. 199(2010), amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010). The Act, a

[2] The Court understands that Plaintiffs have requested oral argument. Federal Rule of Civil Procedure 78 expressly grants a district judge wide discretion to decide whether to hear oral argument on a particular motion, or instead, to decide it on the papers. Fed. R. Civ. P. 78. Similarly, the Due Process Clause of the Fifth Amendment does not compel oral argument on civil motions. See e.g., Greene v. WCI Holdings Corp., 136 F.3d 313, 316 (2d Cir.1998) ("we find no merit in [appellant's] claim that a dismissal of a complaint without an oral hearing violates due process."); Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 391 (6th Cir.1975) (denial of an oral hearing before granting a motion to dismiss does not violate "fundamental notions of fairness and due process of law"); Spark v. Catholic Univ., 510 F.2d 1277, 1280 (D.C.Cir.1975) ("due process does not include the right to oral argument on a motion"); Dredge Corp. v. Penny, 338 F.2d 456, 464 n. 14 (9th Cir.1964) ("The opportunity to be heard orally on questions of law is not an inherent element of procedural due process, even where substantial questions of law are involved."). Because of the limited nature of this Court's inquiry, the Court finds that oral argument would be an unnecessary use of the parties' and this Court's resources and this motion will be decided on the papers.

broad piece of health care reform legislation, was enacted to "provide affordable health insurance, and to reduce the number of uninsured Americans 'and the escalating costs they impose on the healthcare system.'" New Jersey Physicians, Inc. v. Obama, No.10-1489, 2010 WL 5060597, at *1 (D.N.J. Dec. 8, 2010) (SDW) (quoting Thomas More Law Ctr. v. Obama, 720 F. Supp. 2d 882, 886 (E.D. Mich. 2010)).

As part of the effort to provide health insurance to uninsured Americans, the Act includes a requirement to maintain minimum essential coverage ("Individual Mandate") which provides that "[a]n applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month." 26 U.S.C. § 5000(A)(a) (2010).[3,4] According to Congress, the Individual Mandate is essential because absent such a "requirement, many individuals would wait to purchase health insurance until they needed care," and such a result would undermine the Act's purpose of lowering the number of uninsured Americans. Act §§ 1501(a)(2)(G), 10106(a).

Importantly, if an individual fails to obtain minimum essential coverage, "a monetary penalty will be imposed and included in that taxpayer's tax return." Id. § 5000A(b). The Act, however, provides various exceptions to the penalty including that no penalty shall be imposed

[3] An "applicable individual" is defined as any individual other than (1) those with certain religious exemptions; (2) those not lawfully present in the United States; and (3) those incarcerated. Id. § 5000A(d).

[4] The Act defines "minimum essential coverage" as (1) a government-sponsored healthcare program (e.g. Medicare, Medicaid); (2) coverage under an eligible employer-sponsored plan; or (3) other eligible healthcare plans obtained through the market. Id. § 5000A(f).

upon: (1) individuals who cannot afford coverage; (2) individuals whose income falls below the tax filing threshold; (3) members of Indian tribes; (4) those without health coverage for only short time periods; and (5) those who "have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan." Id. § 5000A(e).

On September 20, 2010, Plaintiffs filed a fifteen count Complaint against the Defendants alleging numerous constitutional violations arising from the passage, and eventual enforcement, of the Act.[5] At the outset, the Court is compelled to note that the Complaint contains a litany of conclusory allegations concerning the Act's allegedly illegal, unconstitutional and fraudulent nature. For example, in Counts One and Fourteen, Plaintiffs allege that the Act violates Articles One and Six of the Constitution since "the Senate bills were originated completely independent of any House bill [and] the Senate may not originate revenue rasing bills." Compl. ¶ 20. In Count Six, Plaintiffs allege that Act violates Article II of the Constitution because it was not signed into law by a person eligible to be President of the Untied States. Compl. ¶¶ 55-61. In Count Eleven, Plaintiffs allege that the Act violates the First Amendment because it allegedly exempts "practitioners of the Islamic or Muslim religion and the Amish religious sects," Compl. ¶ 90.[6] In Count Twelve, Plaintiffs allege that the Act violates unspecified anti-trust laws.

[5] On October 1, 2010, before properly serving the Untied States, Plaintiffs filed a petition for a temporary restraining order ("TRO") barring the implementation of the Act. On October 20, 2010, this Court denied Plaintiffs' TRO. Thereafter, Plaintiffs filed a "Reply Affidavit" in support of the TRO, which this Court construed as a request for reconsideration, and, on October 29, 2010, the Court denied the request. On December 9, 2010, Plaintiffs filed a Motion for Summary Judgment. In response, Plaintiffs filed the instant Motion to Dismiss. Because this Court grants Defendants' motion, Plaintiffs' motion is denied as moot.

[6]The Court is compelled to note that Plaintiffs have not pointed to any particular provisions of the Act in support of their allegations, and the Court will refrain from commenting on the accuracy of these allegations.

Compl.¶ 94. In Count Thirteen, Plaintiffs allege that the Act violates Title VII and the Fourteenth Amendment because it allegedly "allocates $2.55 billion in federal funding to historically black and minority serving colleges," and because it taxes tanning salons which "punishes one class of citizen" and "'exempts citizens of color' that have no need or desire to purchase said services." Compl. ¶¶ 105, 107. In addition, the Court understands Plaintiffs to assert at least seven counts challenging the minimum essential coverage provision of the Act. See, e.g., Compl. ¶¶ Counts Two, Three, Four, Seven, Nine, Ten, and Fourteen. Glaringly absent from the Complaint, however, are any factual allegations concerning how Plaintiffs Purpura and Laster will be affected by the Act or any of its provisions. At best, in their opposition to Defendants' motion, Plaintiffs contend that they are "personally effected [sic] by the 'Act'" since "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 [sic] on medical devices that cross State lines, and will suffer the restrictions to certain drugs, to[sic] that might not meet the cost accounting decision by government bureaucrat." Pls.' Opposition at n.6. Although these "facts" were not included in the Complaint or by Affidavit or Certification attached to any of Plaintiffs' filings, the Court will accept these facts as true for the purpose of deciding this motion.

II. STANDARD OF REVIEW

"It is a principle of first importance that federal courts are courts of limited jurisdiction." 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3522 (2d ed.1984). Accordingly, federal courts are duty-bound to ensure that they have

jurisdiction over the matters before them. As noted previously, the instant motion was filed as one to dismiss the Complaint pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction; thus, the Plaintiffs bear the burden of establishing this Court's jurisdiction. Kehr Packages, Inc., v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

Challenges to subject matter jurisdiction under Rule 12(b)(1) may be "facial" or "factual." Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 188 (3d Cir.2006) (citations omitted). Facial attacks "contest the sufficiency of the pleadings, and the trial court must accept the complaint's allegations as true." Turicentro, S.A. v. American Airlines, Inc., 303 F.3d 293, 300 n. 4 (3d Cir.2002) (citing NE Hub Partners, L.P. v. CNG Transmission Corp., 239 F.3d 333, 341 n. 7 (3d Cir.2001)); see also In re Kaiser Group Int'l Inc., 399 F.3d 558, 561 (3d Cir.2005) (In evaluating "facial" subject matter jurisdiction attacks, the court ordinarily accepts all well-pleaded factual allegations as true, and views all reasonable inferences in the plaintiff's favor). Essentially, a "facial" challenge by the defendant contests the adequacy of the language used in the pleading. Turicentro, 303 F.3d at 300 n.4. Factual challenges, on the other hand, attack the factual basis for subject matter jurisdiction; that is, in a factual challenge to jurisdiction, the defendant argues that the allegations on which jurisdiction depends are not true as a matter of fact. See Turicentro, 303 F.3d at 300. As such, the court is not confined to the allegations in the complaint, but may look beyond the pleadings to decide the dispute. Cestonaro v. United States, 211 F.3d 749, 752 (3d Cir.2000) (citing Mortensen, 549 F.2d at 891). Because the Defendants argue that Plaintiffs have not adequately alleged standing, the Court will consider this as a facial challenge to this Court's subject matter jurisdiction.

III. DISCUSSION

A. STANDING

Pursuant to Article III of the United States Constitution, this Court may only exercise jurisdiction over an actual case or controversy. "The doctrine of standing is one of several doctrines that reflect this fundamental limitation." Summers v. Earth Island Inst., 129 S. Ct 1142, 1149 (2009). "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). "In essence, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Warth v. Seldin, 422 U.S. 490, 498 (1975). In other words, standing is a "threshold question." Id.

The Supreme Court has described the following requirements as the irreducible constitutional minimum of standing:

> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan, 504 U.S. at 560-61 (internal quotations and citations omitted).

Although a plaintiff must establish all three elements, the "injury-in-fact" element is often the most determinative element of standing. Toll Bros., Inc., v. Twp. of Readington, 555 F.3d 131, 138 (3d Cir. 2009). The Supreme Court has explained that in order for an injury-in-fact to

be particularized, it must "affect the plaintiff in a personal and individual way." Lujan, 504 U.S. at 561 n.1. A plaintiff will fail to meet this element if the plaintiff merely raises a "generally available grievance about government – claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large." Id. at 573-74; see also United States v. Richardson, 418 U.S. 166, 179-80 (1974) ("[T]o invoke judicial power the claimant must have a 'personal stake in the outcome,' or a 'particular, concrete injury,' or 'a direct injury,' in short, something more than 'generalized grievances'. . . .") (citations omitted); Warth v. Seldin, 422 U.S. 490, 499-500 (1975) (rejecting the assertion of a "generalized grievance" shared in substance by a large class of citizens as sufficient grounds for a particularized injury-in-fact). The Supreme Court has further held that by refusing to hear "generalized grievances," the power of judicial review is not wielded more than is necessary to resolve an actual dispute or controversy. Lance v. Coffman, 549 U.S. 437, 441 (2007).

Importantly, a plaintiff can meet the injury-in-fact requirement by alleging harm brought about by a governmental statute, but only by demonstrating a clear and realistic danger of direct injury as a result of the operation and enforcement of the statute. Babbit v. UFW Nat'l Union, 442 U.S. 289, 298 (1979). However, a plaintiff does not need to wait for the statute to go into effect; "[i]f the injury is certainly impending that is enough." Pennsylvania v. West Virginia, 262 U.S. 553, 593 (1923). That said, in challenging a federal statute – as Plaintiffs do here – the challengers must show that they have already sustained, or are in immediate and certain danger of sustaining, a real and direct injury. O'Shea v. Littleton, 414 U.S. 488, 494 (1974); Massachusetts v Mellon, 262 U.S. 447, 488 (1923).

B. OTHER CHALLENGES TO THE ACA

As discussed above, since its passage, there have been several challenges to the Act brought by both individual and organizational plaintiffs. Before turning to the merits of the matter before me, this Court will survey the relevant decisions of other district courts that have considered the issue of standing.[7]

Initially, the Court notes that at least one court in this district has already considered and dismissed a challenge to the ACA on the basis of standing. In New Jersey Physicians, Inc., the court considered whether Patient Roe, an individual citizen, had standing to challenge the Act's Individual Mandate provision based on either a present or future injury. 2010 WL 506059, at *1,4. There, Patient Roe had asserted standing on the grounds that he had a concrete, particularized and actual injury since he did not have health insurance, had no plans to purchase health insurance in the future and because the Act will take effect in 2014. Id. Thus, Roe argued that the Individual Mandate will require him to purchase insurance or pay the penalty upon its effective date. Id. The court, however, found that Roe's claims were "hypothetical or speculative, at best." Id. Specifically, the court explained that Roe's alleged injury was not

[7]In light of the growing jurisprudence on the subject, the Court has not undertaken a thorough review of all the cases to have ruled on the ACA, but, instead, since the Plaintiffs here are individuals, the Court will review some of the cases that have considered the issue of the individual plaintiff and standing to challenge the Act. However, the Court notes that some of the challenges to the Act have been brought by various States as plaintiffs. See, e.g., Florida ex rel. Bondi v. U.S. Dep't of Health and Human Serv., No. 3:10-cv-91-RV/EMT, 2011 WL 285683, at *9, *10 (N.D. Fla. Jan. 31, 2011) (finding standing for at least two of the State plaintiffs, alleging different injuries-in-fact than those alleged by the individual plaintiffs); Virginia ex rel. Cuccinelli v. Sebelius, 702 F. Supp. 2d 598, 607 (E.D. Va. 2010). In those cases, the courts have held that States have standing to challenge the Act since the states are seeking to protect their quasi-sovereign interests and, as a result, are often granted "special solicitude" in standing analyses. See, e.g., Massachusetts v. EPA, 549 U.S. 49, 520 (2007). Because neither of the Plaintiffs here are States, such reasoning is inapplicable.

"certainly impending" since Roe may not be subject to the penalty because he may be able to obtain insurance through an employer by 2014; moreover, the court noted that even if he did not obtain insurance, he may qualify for one of the exceptions to the penalty. Id. Thus, the court found that there was a "real possibility that Roe will neither have to pay for insurance nor be subject to the penalty." Id. In addition, the court found that Roe had not alleged that he was suffering a present injury since, for example, Roe did not allege that the Act imposed "financial pressure" upon him or that "he ha[d] 'arranged [his] personal affairs such that it will be a hardship for [him] to either pay for health insurance or face penalties under the Act' . . . or that he has to forego spending money in order to pay for the insurance." Id. As a result, the court found Roe's allegations of injuries based on the effect and enforcement of the ACA to be "purely hypothetical" and dismissed his complaint for lack of standing. Id.

Similarly, in Baldwin v. Sebelius, the court found that an individual plaintiff lacked standing to challenge various provisions of the Act including the Individual Mandate and could not assert general challenges to the Act under various constitutional provisions such as the Equal Protection clause. Baldwin v. Sebelius, No. 10-CV-1033, 2010 WL 3418436, at *4 (S.D. Cal. Aug. 27, 2010). In relevant part, the Court noted that plaintiff had not alleged "any particularized injury stemming from the" Act. Id. at *1,2. Specifically, the court explained that Baldwin did "not indicate whether he has health insurance or not. But that is of no moment because, even if he does not have insurance at this time, he may well satisfy the minimum coverage provision of the Act by 2014: he may take a job that offers health insurance, or qualify for Medicaid or Medicare, or he may choose to purchase health insurance before the effective

date of the Act." Id. at 3. Moreover, the court noted that Baldwin "alleges no facts that he would not purchase heath insurance in 2014, but for the requirements of the Act." Id. at *4.[8]

In Shreeve v. Obama, a group of approximately 25,000 individuals and entities sought to challenge the ACA by alleging that the Act violated various constitutional provisions, including Congress' enumerated powers in Article I, § 8 and the Tenth Amendment of the United States Constitution. No. 1:10-CV-71, 2010 WL 4628177, at *1 (E.D. Tenn. Nov. 4, 2010). The court found that despite the lengthy list of constitutional violations set forth in the complaint, none of the plaintiffs could satisfy the particularized injury-in-fact requirement because none of them alleged that they currently lacked health care coverage, that they would be compelled by the Act to purchase the requisite coverage or otherwise pay a penalty, nor that they would have had to rearrange their finances or forego planned spending in order to accommodate the future requirements of the Act. Id. at *4. ("[N]ot one plaintiff has shown 'such a personal stake in the outcome of the controversy as to assure . . . concrete adverseness' by alleging a particularized injury stemming from the ACA.") (quoting Massachusetts v. E.P.A., 549 U.S. at 497).

Similarly, in Bryant v. Holder, ten individuals without any form of health insurance

[8]The Baldwin court also dismissed plaintiff's claims that the Act violated his right to privacy. 2010 WL 3418436, at *4. In that regard, the court found that Baldwin did not and could not allege that the Act compelled him to provide personal information or that such information had been used improperly or in violation of physician-patient privilege. Id. Further, the court explained that Baldwin could not show that his medical decisions would be affected by the Act, for he failed to show that he would even be compelled to purchase health insurance by the Act's Individual Mandate provision. Id. Finally, the court noted that Baldwin did not cite any provision of the Act which would force him personally to be subject to unwanted medical treatment. Id. As a result, the Court explained, "Baldwin fails to allege a particularized injury stemming from violation of his privacy rights. If he has health insurance, the provisions of the Act may well have no affect on him; if he does not have insurance, he alleges no facts that he would not purchase health insurance in 2014, but for the requirements of the Act." Id.

coverage argued that the Individual Mandate was passed in excess of Congress' Commerce Clause power, constituted an unconstitutional taking, violated the Fifth and Fourteenth Amendment substantive due process rights, and violated the Tenth Amendment. No. 2:10-CV-76-KS-MTP, 2011 WL 710693, at *2 (S.D. Miss. Feb. 3, 2011). There, the court held that despite plaintiffs' claims that the Individual Mandate would force them to rearrange their finances in order to purchase undesired health insurance or pay a penalty, the plaintiffs lacked standing because their allegations of direct injury were legal conclusions unsupported by facts. Id. at 11 ("Plaintiffs simply alleged that they will be subject to the minimum essential coverage—a bare legal conclusion which the Court may not accept as true.").

Conversely, several courts that have considered challenges to the Act have held that certain individual plaintiffs have standing to sue. In Thomas More Law Center v. Obama, 720 F. Supp.2d 882 (E.D.Mich.2010), several individual plaintiffs challenged the Individual Mandate and asserted standing on the ground that they had arranged their personal affairs such that it would be a hardship for them to have to pay for health insurance or face a penalty under the Act. Id. at 887-88. There, the court did not address whether the plaintiffs' alleged future injury was sufficient to confer standing, since plaintiffs had alleged a present injury, i.e., "being compelled to reorganize their affairs" to prepare for the impending requirement to purchase health insurance. Id. at 888. Moreover, the court found that plaintiffs' injuries were "fairly traceable to the Act" since "[t]here is nothing improbable about the contention that the Individual Mandate is causing plaintiffs to feel economic pressure today." Id. at 889. Indeed, the court held that plaintiffs' "decisions to forego certain spending today, so they will have the funds to pay for health insurance when the Individual Mandate takes effect in 2014, are injuries fairly traceable to

the Act for the purposes of conferring standing." Id.

Similarly, in Goudy-Bachman, two individuals (the "Bachmans") challenged the ACA's Individual Mandate as an unconstitutional exercise of Congress' powers under the Commerce Clause or other enumerated powers in Article I § 8 of the U.S. Constitution.[9] 2011 WL 223010, at *1, *3. There, the Bachmans asserted a particularized injury on the grounds that they are self-employed, do not currently have health insurance, do not and will not qualify for Medicare in 2014, and do not fall under an exception to the Individual Mandate's penalty provision. Id. at *2. Further, the Bachmans alleged that they do not intend to purchase health insurance before the ACA goes into effect but that they would comply with the law if it is found valid. In addition, the Bachmans averred that their injury was imminent since, if they are forced to purchase health insurance or pay a penalty when the Act goes into effect in 2014, they will not be able to afford to presently purchase a new vehicle with a five-year financing plan, the only plan affordable to them. Id. at *3. In other words, the Bachmans argued that but for the Individual Mandate, they would have enough disposable income to afford the vehicle. Id. The court agreed that Plaintiffs had standing. In Goudy-Bachman, as in Thomas More Law Ctr., the court held that the economic pressure of rearranging finances and making concrete changes in a current financial plan was an injury-in-fact sufficient to satisfy the standing requirements. Id. at *5, *6. Specifically, the court found that the decision to forego the purchase of a new vehicle was not abstract or remote, but based on compliance with a law that will go into effect at a designated

[9] The Goudy Bachman court appears to intend to address the challenge in two parts. In its initial opinion, the court ruled on jurisdictional issues including standing and ripeness. The Court however reserved ruling on the remaining substantive issues of whether the Bachmans "have stated a plausible claim that the mandate exceeds Congress's authority under the Commerce Claus." Goudy-Bachman, 2011 WL 223010, at *12.

time in the near future. Id. at *6. Moreover, the court explained that the decision to forego the purchase was "fairly traceable" to the Individual Mandate and plaintiffs' attempt to ensure their ability to comply with the provision once it goes into effect. Id. at *7

Similarly, in Liberty University v. Geithner, No. 6:10-cv-00015-nkm, 2010 WL 4860299 (W.D. Va. Nov. 30, 2010), two individuals challenged the Individual Mandate claiming that its impending enforcement forced them to "make 'significant and costly changes' in their personal financial planning, necessitating 'significant lifestyle . . . changes' and extensive reorganization of their personal and financial affairs." Id. There, the court found that those individual plaintiffs sufficiently alleged an injury-in-fact to confer standing. 2010 WL 4860299, at *7. Indeed, the court explained that "[t]he present or near-future costs of complying with a statute that has not yet gone into effect can be an injury in fact sufficient to confer standing." Id. While the court did acknowledge the uncertainty as to whether the plaintiffs would continue to fall within the requirements of the ACA by 2014, the court explained that "[t]aking the allegations as true, it is clear that the signficant adjustments that Plaintiffs must make to their financial affairs in anticipation of the mandatory coverage requirements are fairly traceable to the Act's requirements." Id. Accordingly, the court held that the individual plaintiffs had standing to challenge the Individual Mandate.

C. THE PRESENT MATTER

As discussed above, Plaintiffs in the instant matter have alleged few, if any, facts demonstrating the effect that the Act has on them currently or the effect that the Act will have in the future. At best, the Court understands Plaintiffs to allege that Mr. Purpura is 68 years old and

that the Act will cause him to lose "Medicare Advantage" and the privacy of his medical records. In addition, the court understands Plaintiffs to allege that Mr. Laster is handicapped and that the Act will cause him to "be tax[sic] on medical devices that cross State lines, and will suffer restrictions to certain drugs." Considered on their own, as well as in light of the numerous challenges to the Act that have already come before district courts and these courts' standing analyses, it is clear that these allegations fail to establish Plaintiffs' standing to challenge any of the provisions of the Act.

Initially, the Court notes that to the extent Plaintiffs allege constitutional harms in Counts One, Five, Six, Eight, Eleven, Twelve, Thirteen and Fifteen, these harms are, at best, generalized grievances for which Plaintiffs have no standing. For example, in Counts One and Fourteen, Plaintiffs claim that the Act violates Articles 1 and 6, in that the "Senate bills were originated completely independent of any House bill. [But] [t]he Senate may not originate revenue raising bills." Compl.¶¶ 19, 119. Similarly, in Count Five, Plaintiffs allege that the "Act placed taxes on medical devices exported from the individual States." Compl. ¶ 49. In Count Six, Plaintiffs allege that the Act is unconstitutional because President Obama is "ineligible to hold the office of President." Id. ¶ 56. In Count Eight, Plaintiffs appear to allege that the Act is unconstitutional because it "grants access to the General Government unconditionally. . .to access and seize the private records of individuals." Id. ¶ 70. In Count Eleven, Plaintiffs allege that the Act violates the First Amendment and in Count Twelve that the Act violates unspecified "anti-trust" laws. Id. ¶¶ 89-91, 94. In Count Thirteen, Plaintiffs allege that the Act violates the Fourteenth Amendment because the Act provides funding to "historically black and minority serving colleges" and taxes tanning salons. Compl. ¶ 105-113. Finally, in Count Fifteen, Plaintiffs

allege that the Act encroaches on the sovereignty of the State of New Jersey. Compl. ¶¶ 121-138. In light of these conclusory statements alleging general harm under the Constitution, and in the absence of any facts about the effect of these harms on Plantiffs as individuals, it is patently clear to this Court that, contrary to what is clearly required to establish standing, Plaintiffs have not alleged an injury in fact sufficient to establish standing. See, e.g., Lujan, 504 U.S. at 561 n.1 (holding that for an injury-in-fact to be particularized, it must "affect the plaintiff in a personal and individual way."). Indeed, the Court finds that Plaintiffs' claims amount to nothing more than "generally available grievance[s] about government—claiming only harm to [Plaintiffs'] and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large " Id. at 573-74. As a result, the Court dismisses these Counts for lack of standing.

In addition, the Court finds that in the remaining Counts of the Complaint – Counts Two, Three, Four, Seven, Nine, Ten, and Fourteen – Plaintiffs appear to contest the Individual Mandate provisions of the Act. See, e.g., Compl. ¶ 29 ("[t]he Act requires that selected groups of people. . . [to] engage in a specific type of commerce as dictated by "Act"); Compl. ¶ 45("The various mandates in the Act are direct taxes that are required to be paid by individuals . . ."); Compl.¶ 65 ("[t]he Act unconstitutionally levies additional tax based on "gross income" for not complying with the Act."). As discussed above, when analyzing standing for purposes of determining subject matter jurisdiction, a court must initially determine whether Plaintiffs have suffered an injury that is: (a) concrete and particularized; and (b) actual or imminent, and not hypothetical or conjectural. Lujan, 504 U.S. 560-61. Plaintiffs here have failed to allege any concrete or particularized harm, nor have they alleged that such harm is concrete and imminent.

Initially, the Court notes that Plaintiffs have not sufficiently alleged that they will be subject to the Act's Individual Mandate. As discussed above, the courts that have addressed individual standing have required the plaintiffs to allege and demonstrate that they are or will be subject to the Act's provisions. See, e.g., New Jersey Physicians, 2010 WL 5060597, at *4 (dismissing for lack of standing because the individual plaintiff failed to establish with certainty that he would fall under the Individual Mandate provision by 2014); Bryant, 2011 WL 710693, at *11 (dismissing for lack of standing where plaintiffs "simply alleged that they will be subject to the [Individual Mandate]—a bare legal conclusion which the Court may not accept as true"); Baldwin, 2010 WL 3418436, at *3 (dismissing for lack of standing after finding that "it is impossible to know now whether or not Plaintiff will be subject to or compliant with the Act in 2014"); cf. Goudy-Bachman, 2011 WL 223010, at *1 (concluding that plaintiffs' supporting documents and affidavits sufficiently showed that they would fall subject to the Individual Mandate provision, which was required for them to show standing). Here, neither the Complaint nor the supporting documents nor the voluminous briefs sufficiently allege – or for that matter, allege at all – that Plaintiffs will be subject to the Act's Individual mandate provision.[10] For example, the Complaint does not indicate, inter alia, whether Plaintiffs currently have health insurance, whether they are currently employed or whether they may be employed in the future by an entity that will be required to provide health insurance under the Act. See, e.g., Baldwin, 2010 WL 3418436, at *3. Moreover, Plaintiffs have not alleged whether they may fall into one

[10]Notably, unlike the majority of the plaintiffs to challenge the Act, Plaintiffs here have not provided affidavits, certification or any supporting documentation that would demonstrate the effects of the Act upon them personally. The only facts that the Court could glean from Plaintiffs' voluminous filings are the facts set forth in footnote six of Plaintiffs' Opposition to this motion. See pg. 5, supra.

of the exemptions to the Individual Mandate, i.e., the insufficient income exemption . See, e.g., New Jersey Physicians, Inc., 2010 WL 5060597, at *4. Further, Plaintiffs have not alleged that they will refrain from purchasing health insurance before the Mandate becomes effective. See, e.g., Goudy-Bachman, 2011 WL 223010, at *3 (holding that plaintiffs had standing where plaintiffs alleged, in relevant part, that they did not intend to purchase health insurance before the Act's effective date). As a result, the Court finds that Plaintiffs have failed to demonstrate that they will be subject to the provisions of the Act, an initial step in this inquiry. [11]

[11] Indeed, the Court notes that contrary to what Plaintiffs appear to assert, the meager facts set forth in footnote six to Plaintiffs' Opposition – the only facts asserted by Plaintiffs at all in this matter -- appear to suggest that Plaintiff Purpura would not be subject to the Act's Individual Mandate since, based on his age alone, Mr. Purpura appears to qualify for Medicare. 42 U.S.C. § 426(a) ("[e]very individual who has attained age 65 and is entitled to monthly [Social Security] benefits. . .shall be entitled to hospital insurance benefits under Part A of [the Medicare Act]."). Because Medicare would satisfy the individual mandate, Mr. Purpura has not established that he will be subject to the Act. See, e.g., Mead, 2011 WL 61139, at *6 (holding that an individual plaintiff lacked standing because she was sixty-two and, thus, would be entitled to receive Medicare when the Act goes into effect in 2014.). While the Mead court noted that individuals over sixty-five may opt out of Medicare benefits,to do so, they must also forgo their Social Security benefits. Mead, 2011 WL 61139, at *6 (citing Social Security Administration, POMS Section HI 00801.002 Waiver of HI Entitlement by Monthly Beneficiary, available at http://policy.ssa.gov/poms.nsf/lnx/0600801002); see also Hall v. Sebelius, -- F. Supp. 2d --, No. 08-1715, 2011 WL 891818 (D.D.C. March 16, 2011). In that regard, the Mead court noted that while the Amended Complaint stated that plaintiff Mead intended to refuse to enroll in Medicare, it did not aver that she intended to forgo her Social Security benefits. Mead, 2011 WL 61139, at *6. "In the absence of such an allegation, the Court is not persuaded that there is a substantial probability that she will reject her monthly Social Security checks and therefore not be covered under Medicare Part A in 2014." Id. Here, Plaintiffs make no allegations whatsoever concerning Social Security or Medicare. Moreover, the Court is not clear what Plaintiff means by the statement that the Act will cause him to lose "Medicare Advantage." Thus, on its face, it appears that Mr. Purpura's age alone would qualify him for Medicare. In addition, Plaintiff's general reference to the "privacy of his medical records" is insufficient to confer standing on Mr. Purpura to challenge the Act .

In addition, with regard to Mr. Laster, the Court is aware of no facts concerning Mr. Laster other than that he is allegedly handicapped and that he believes the Act may subject him to a tax on unspecified medical devices and that he may not be able to receive certain drugs. Pl's Opp. at n. 6. Not only are these facts unspecific, they are also entirely conjectural and

However, even if Plaintiffs had sufficiently alleged that they would be subject to the Individual Mandate, Plaintiffs have failed to allege that the Individual Mandate has caused, or will cause them, a personal and particularized injury. For example, unlike the individual plaintiffs in Thomas More Law Center and Liberty University, neither Mr. Purpura nor Mr. Laster have alleged that they have been forced to reorganize their financial affairs to prepare for the impending requirement to purchase health insurance or pay a penalty. Thomas More Law Center, 720 F. Supp. 2d at 888; Liberty University, 2010 WL 4860299, at *7 . Similarly, unlike the plaintiffs in Goudy Bachman, Plaintiffs here have not alleged that they have had to forego or will have to forego current expenditures to ensure their ability to comply with the Individual Mandate. 2011 WL 223010, at * 3. Indeed, Plaintiffs have not alleged any facts whatsoever regarding their financial situations, let alone set forth any facts demonstrating their inability to make purchases as a result of the Act. Instead, Plaintiffs assert their belief that a "violation of the Constitution is an immediate personal injury of every citizen of this [sic] United States," Pl's Opp. at 9; however, as discussed throughout this opinion, such a generalized type of injury flies in the face of well-established Supreme Court precedent requiring every Plaintiff to demonstrate a concrete, particularized injury before he may be heard by a federal court. Lujan, 504 U.S. at 573-75; United States v. Richardson, 418 U.S. at 179-80; Warth, 422 U.S. at 499-500. Plaintiffs' generalized grievances about allegedly unconstitutional government action do not amount to standing. Lujan, 504 U.S. at 573-75; United States v. Richardson, 418 U.S. at 179-80; Warth, 422 U.S. at 499-500.

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hypothetical and, therefore, insufficient to confer standing on Mr. Laster.

IV. CONCLUSION

For the reasons set forth above, the Court finds that Plaintiffs have failed to demonstrate that they have standing to challenge the constitutionality of the Act. Accordingly, this Court does not have subject matter jurisdiction over Plaintiffs' claims and Defendants' motion to dismiss is GRANTED.

Dated: April 21, 2011

/s/ Freda L. Wolfson

Freda L. Wolfson, U.S.D.J.

NOT FOR PUBLICATION [16, 26]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NICHOLAS E. PURPURA, et al., Plaintiffs v. KATHLEEN SEBELIUS et al. Defendants	Civil Action No. 10-04814 **ORDER**

This matter having been opened to the Court on a motion by Defendants Kathleen Sebelius, Timothy F. Geithner and Hilda L. Solis, individually and in their official governmental capacities (collectively "Defendants"), to dismiss the Complaint of Plaintiffs, pro se, Nicholas E. Purpura and Donald R. Laster, Jr. for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1); the Court having considered the Motion pursuant to Fed. R. Civ. P. 78; for the reasons stated in the Opinion filed on this date; and for good cause shown;

IT IS on this 21st day of April, 2011,

ORDERED that Defendants' Motion to Dismiss is **GRANTED**.

/s/ Freda L. Wolfson

Honorable Freda L. Wolfson

United States District Judge

APPEAL, CLOSED

U.S. District Court
District of New Jersey [LIVE] (Trenton)
CIVIL DOCKET FOR CASE #: 3:10-cv-04814-FLW -DEA
Internal Use Only

PURPURA et al v. SEBELIUS et al
Assigned to: Judge Freda L. Wolfson
Referred to: Magistrate Judge Douglas E. Arpert
Case in other court: Third Circuit, 11-02303
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 09/20/2010
Date Terminated: 04/21/2011
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

Plaintiff

NICHOLAS E. PURPURA

represented by **NICHOLAS E. PURPURA**
1802 RUE DE LA PORT
WALL, NJ 07719
(732) 449-0856
PRO SE

Plaintiff

DONALD R. LASTER, JR.

represented by **DONALD R. LASTER, JR.**
25 HEIDL AVENUE
WEST LONG BRANCH, NJ 07764
(732) 263-9235
PRO SE

V.

Defendant

KATHLEEN SEBELIUS
INDIVIDUALLY AND AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

represented by **ETHAN PRICE DAVIS**
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH
20 MASSACHUSETTS AVENUE NW
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202-514-9242
Email: ethan.p.davis@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

represented by **ETHAN PRICE DAVIS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

TIMOTHY F. GEITHNER
INDIVIDUALLY AND AS SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY

represented by **ETHAN PRICE DAVIS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

UNITED STATES DEPARTMENT OF THE TREASURY

represented by **ETHAN PRICE DAVIS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

HILDA A. SOLIS
INDIVIDUALLY AND AS SECRETARY OF THE UNITED STATES DEPARTMENT OF LABOR

represented by **ETHAN PRICE DAVIS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

UNITED STATES DEPARTMENT OF LABOR

represented by **ETHAN PRICE DAVIS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/20/2010	1	COMPLAINT against TIMOTHY F. GEITHNER, KATHLEEN SEBELIUS, HILDA A. SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY (Filing fee $350, receipt number TRE0005078.) JURY DEMAND., filed by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (Attachments: # 1 Exhibit A)(gxh) (Entered: 09/21/2010)
09/24/2010	2	SUMMONS ISSUED as to TIMOTHY F. GEITHNER, KATHLEEN SEBELIUS, HILDA A. SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. Issued By *Gina Hernandez-Buckley* (gxh) [MAILED TO BOTH PLAINTIFFS] (Entered: 09/24/2010)
09/27/2010	3	PROOF OF SERVICE by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (mmh) (Entered: 09/27/2010)
10/01/2010	4	AFFIDAVIT in Support of Order to Show Cause for a Restraining Order due to Extraordinary Circumstances that Require Emergency Relief by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (Attachments: # 1 Text of Proposed Order to Show Cause)(gxh) (Entered: 10/01/2010)

10/04/2010	5	PROOF OF SERVICE by DONALD R. LASTER, JR, NICHOLAS E. PURPURA (mmh) (Entered: 10/06/2010)
10/07/2010	6	ORDER REASSIGNING CASE. Case reassigned to Judge Judge Freda L. Wolfson and Judge Freda L. Wolfson for all further proceedings. Judge Judge Freda L. Wolfson no longer assigned to case. Signed by Chief Judge Garrett E. Brown, Jr. on 10/6/2010. (mmh) (Entered: 10/07/2010)
10/19/2010	7	NOTICE of Appearance by ETHAN PRICE DAVIS on behalf of All Defendants (Attachments: # 1 Certificate of Service)(DAVIS, ETHAN) (Entered: 10/19/2010)
10/19/2010	8	Letter from Defendants re 4 Affidavit. (Attachments: # 1 Certificate of Service)(DAVIS, ETHAN) (Entered: 10/19/2010)
10/20/2010	9	ORDER that Plaintiffs' Order to Show Cause is DENIED. Signed by Judge Freda L. Wolfson on 10/20/2010. (mmh) (Entered: 10/20/2010)
10/25/2010	10	REPLY AFFIDAVIT in Support Order to Show Cause for a Restraining Order and/or Reargument for An Immediate Stay (Recall and Vacate prior denial) or Summary Judgment Violation Title 28 U.S.C. 1331 & Civil Rights by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (Attachments: # 1 Text of Proposed Order to Show Cause)(mmh) (Entered: 10/25/2010)
10/28/2010	11	Letter from Defendants re 10 Affidavit,. (Attachments: # 1 Certificate of Service)(DAVIS, ETHAN) (Entered: 10/28/2010)
10/29/2010	12	ORDER that Plaintiffs Order to Show Cause for a Restraining Order and orReargument for an Immediate Stay is DENIED. Signed by Judge Freda L. Wolfson on 10/29/2010. (mmh) (Entered: 10/29/2010)
11/23/2010	13	LETTER ORDER in re: Plaintiffs request of recusal. Signed by Judge Freda L. Wolfson on 11/23/2010. (mmh) (Entered: 11/23/2010)
12/06/2010	14	RESPONSE re 13 Letter Order. (Attachments: # 1 Envelope)(mmh) (Entered: 12/06/2010)
12/07/2010	15	LETTER ORDER in re: 14 Letter request for recusal. Signed by Judge Freda L. Wolfson on 12/7/2010. (mmh) (Entered: 12/07/2010)
12/09/2010	16	MOTION for Summary Judgment by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (mmh) (Entered: 12/09/2010)
12/09/2010		Set Deadlines as to 16 MOTION for Summary Judgment. Motion set for 1/3/2011 before Judge Freda L. Wolfson. The motion will be decided on the papers. No appearances required unless notified by the court. (mmh) (Entered: 12/09/2010)
12/10/2010	17	CERTIFICATE OF SERVICE by DONALD R. LASTER, JR, NICHOLAS E. PURPURA re 16 MOTION for Summary Judgment. (mmh) (Entered: 12/10/2010)
12/13/2010	18	AMENDED DOCUMENT by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. Amendment to 16 MOTION for Summary Judgment.

		(Attachments: # 1 Certificate of Service, # 2 Envelope)(eaj) (Entered: 12/13/2010)
12/17/2010	19	Rule 7.1 Letter for extension of return date re 16 MOTION for Summary Judgment filed by TIMOTHY F. GEITHNER, KATHLEEN SEBELIUS, HILDA A. SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Certificate of Service)(DAVIS, ETHAN) (Entered: 12/17/2010)
12/20/2010		Reset Deadlines as to 16 MOTION for Summary Judgment. Motion reset for 1/18/2011 before Judge Freda L. Wolfson. The motion will be decided on the papers. No appearances required unless notified by the court. (mmh) (Entered: 12/20/2010)
12/23/2010	20	MOTION to Stay re 16 MOTION for Summary Judgment by TIMOTHY F. GEITHNER, KATHLEEN SEBELIUS, HILDA A. SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Memorandum in Support of Stay Motion, # 2 Text of Proposed Order)(DAVIS, ETHAN) (Entered: 12/23/2010)
12/28/2010		Set Deadlines as to 20 MOTION to Stay re 16 MOTION for Summary Judgment MOTION to Stay re 16 MOTION for Summary Judgment. Motion set for 1/18/2011 before Judge Freda L. Wolfson. The motion will be decided on the papers. No appearances required unless notified by the court. (eaj) (Entered: 12/28/2010)
12/30/2010		(Court only) Motions No Longer Referred toMagistrate Judge Arpert: 20 MOTION to Stay re 16 MOTION for Summary Judgment MOTION to Stay re 16 MOTION for Summary Judgment (dd,) (Entered: 12/30/2010)
01/03/2011	21	REPLY AFFIDAVIT in Opposition re 20 MOTION to Stay re 16 MOTION for Summary Judgment and Request for Immediate Forfeiture Against Defendants filed by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (Attachments: # 1 Text of Proposed Order)(mmh) (Entered: 01/03/2011)
01/03/2011	22	Letter from Defendants. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Service)(DAVIS, ETHAN) (Entered: 01/03/2011)
01/04/2011	23	ORDER denying 20 Motion to Stay; that Defendants' request for an extension of time until January 17, 2011 to respond to Plaintiffs' Motion for Summary Judgment is GRANTED. Signed by Judge Freda L. Wolfson on 1/4/2011. (mmh) (Entered: 01/04/2011)
01/10/2011	24	REPLY AFFIDAVIT in Opposition to Defendants Anticipated Motion For Dismissal of the People's Motion for a Summary Judgment That Must Be Denied On the Merits and Law by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (Attachments: # 1 Clerk Letter)(mmh) (Entered: 01/10/2011)
01/13/2011	25	LETTER ORDER that the Court will consider both Pltfs' Motion for

		Summary Judgment and Defts' forthcoming Motion to Dismiss, as well as any opposition thereto, on 2/22/2011; that, if the Court elects to hold oral argument on these motions, it will so inform the parties. Signed by Judge Freda L. Wolfson on 1/13/2011. (gxh) (Entered: 01/13/2011)
01/17/2011	26	Cross MOTION to Dismiss *and response in opposition to plaintiffs' motion for default summary judgment* by TIMOTHY F. GEITHNER, KATHLEEN SEBELIUS, HILDA A. SOLIS, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF THE TREASURY. Responses due by 2/8/2011 (Attachments: # 1 Brief, # 2 Text of Proposed Order, # 3 Certificate of Service)(DAVIS, ETHAN) (Entered: 01/17/2011)
01/18/2011		Set Deadlines as to 26 Cross MOTION to Dismiss *and response in opposition to plaintiffs' motion for default summary judgment*. Motion set for 2/22/2011 before Judge Freda L. Wolfson. The motion will be decided on the papers. No appearances required unless notified by the court. (mmh) (Entered: 01/18/2011)
02/07/2011	27	Letter to Judge Wolfson from Nicholas E. Purpura and Donald R. Laster re 16 MOTION for Summary Judgment. (mmh) (Entered: 02/08/2011)
02/07/2011	28	REPLY to Response to Motion re 16 MOTION for Summary Judgment and In Support re 26 Cross MOTION to Dismiss *and response in opposition to plaintiffs' motion for default summary judgment*, filed by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. (Attachments: # 1 Exhibit 2, # 2 Exhibit 3, # 3 Exhibit 4, # 4 Exhibit 5, # 5 Text of Proposed Order, # 6 Proof of Service) **Clerk's Note: "Exhibit 1" was not included with this submission.(mmh) (Entered: 02/08/2011)
02/14/2011	29	Letter from Plaintiffs re 28 Reply to Response to Motion stating that Exhibit 1 was filed with the Court in the original filing in September of 2010. (mmh) (Entered: 02/14/2011)
04/07/2011	30	Letter from Plaintiffs requesting that the Court issue a ruling for the Plaintiffs. (mmh) (Entered: 04/07/2011)
04/21/2011	31	OPINION filed. Signed by Judge Freda L. Wolfson on 4/21/2011. (mmh) (Entered: 04/21/2011)
04/21/2011	32	ORDER that Defendants' Motion to Dismiss is GRANTED. Signed by Judge Freda L. Wolfson on 4/21/2011. (mmh) (Entered: 04/21/2011)
05/12/2011	33	NOTICE OF APPEAL as to 31 Opinion, 32 Order on Motion for Summary Judgment, Order on Motion to Dismiss by DONALD R. LASTER, JR, NICHOLAS E. PURPURA. Filing fee $ 455, receipt number TRE011068. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Attachments: # 1 Exhibit 1)(mmh) (Entered: 05/13/2011)
05/18/2011	34	USCA Case Number 11-2303 for 33 Notice of Appeal (USCA filed by NICHOLAS E. PURPURA, DONALD R. LASTER, JR.. USCA Case

		Manager Desiree (Document Restricted - Court Only) (ca3dwb,) (Entered: 05/18/2011)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NICHOLAS E. PURPURA, DONALD R. LASTER JR., et al.,	Civil Action No. 010-4814 (FLW)
Plaintiff,	
v.	**ORDER**
KATHLEEN SEBELIUS, et al.,	
Defendants.	

This matter having been opened to the Court on a Motion to Stay by Defendants Kathleen Sebelius, the United States Department of Health and Human Services, Timothy F. Geitner, the United States Department of the Treasury, Hilda L. Solis, and the United States Department of Labor ("Defendants") as well as by a letter request by Defendants seeking a thirteen day extension of time to respond to Plaintiffs' motion for summary judgment; the Court noting that Plaintiff has refused to consent to Defendants' request for an extension; and, further, the Court finding good cause to grant Defendants' request for a brief extension in light of the intervening holidays; and the Court noting that Plaintiff's Motion for Summary Judgment will be decided at the same time as Defendants' forthcoming Motion to Dismiss

IT IS on this 4th day of January, 2011

ORDERED that Defendants' Motion to Stay is **DENIED**; and it is further

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

/s/ Freda L. Wolfson
Honorable Freda L. Wolfson
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(609) 989-2182

CHAMBERS OF
FREDA L. WOLFSON
UNITED STATES DISTRICT JUDGE

Clarkson S. Fisher Courthouse
402 E. State Street
Trenton, NJ 08608

January 13, 2011

Nicholas E. Purpura
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Donald R. Laster
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West Long Branch, NJ 07764
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Ethan P. Davis
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, NW
Washington, DC 20001

Re: Purpura v. Sebelius
Docket No.: 10-4814 (FLW)

Dear Messrs. Purpura, Laster and Davis:

The Court writes to inform the parties that it will consider both Plaintiffs' Motion for Summary Judgment and Defendants' forthcoming Motion to Dismiss, as well as any opposition thereto, on February 22, 2011. If the Court elects to hold oral argument on these motions, it will so inform the parties.

Very Truly Yours,

/s/ Freda L. Wolfson
Freda L. Wolfson, U.S.D.J.

Other Orders/Judgments

3:10-cv-04814-FLW -DEA PURPURA et al v. SEBELIUS et al

U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered on 1/13/2011 at 1:55 PM EST and filed on 1/13/2011
Case Name: PURPURA et al v. SEBELIUS et al
Case Number: 3:10-cv-04814-FLW -DEA
Filer:
Document Number: 25

Docket Text:
LETTER ORDER that the Court will consider both Pltfs' Motion for Summary Judgment and Defts' forthcoming Motion to Dismiss, as well as any opposition thereto, on 2/22/2011; that, if the Court elects to hold oral argument on these motions, it will so inform the parties. Signed by Judge Freda L. Wolfson on 1/13/2011. (gxh)

3:10-cv-04814-FLW -DEA Notice has been electronically mailed to:

ETHAN PRICE DAVIS ethan.p.davis@usdoj.gov

3:10-cv-04814-FLW -DEA Notice will not be electronically mailed to::

DONALD R. LASTER, JR
25 HEIDL AVENUE
WEST LONG BRANCH, NJ 07764

NICHOLAS E. PURPURA
1802 RUE DE LA PORT
WALL, NJ 07719

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1046708974 [Date=1/13/2011] [FileNumber=4734702-0
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cadc42f1f1a12234ff9396663cfde6fdb77fac96c00ae5d3746d2abbf259a]]

Other Orders/Judgments

3:10-cv-04814-FLW -DEA PURPURA et al v. SEBELIUS et al

U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered on 12/7/2010 at 3:41 PM EST and filed on 12/7/2010
Case Name: PURPURA et al v. SEBELIUS et al
Case Number: 3:10-cv-04814-FLW -DEA
Filer:
Document Number: 15

Docket Text:
LETTER ORDER in re: [14] Letter request for recusal. Signed by Judge Freda L. Wolfson on 12/7/2010. (mmh)

3:10-cv-04814-FLW -DEA Notice has been electronically mailed to:

ETHAN PRICE DAVIS ethan.p.davis@usdoj.gov

3:10-cv-04814-FLW -DEA Notice will not be electronically mailed to::

DONALD R. LASTER, JR
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Document description: Main Document
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Electronic document Stamp:
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dc274fa67207cd32710d8682d1fbaf570baaed0a13898fbea90e5267bcc34]]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(609) 989-2182

CHAMBERS OF
FREDA L. WOLFSON
UNITED STATES DISTRICT JUDGE

Clarkson S. Fisher Courthouse
402 E. State Street
Trenton, NJ 08608

December 7, 2010

Nicholas E. Purpura
1802 Rue De La Port
Wall, NJ 07719
Pro Se

Donald R. Laster
25 Heidl Avenue
West Long Branch, NJ 07764
Pro Se

Ethan P. Davis
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, NW
Washington, DC 20001

Re: Purpura v. Sebelius
Docket No.: 10-4814 (FLW)

Dear Messrs. Purpura, Laster and Davis:

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

Moreover, in response to Plaintiffs' contention that they represent any persons or entities other than themselves, the rules governing the practice of law are clear that non-lawyers are not permitted to represent parties in federal court. See United States v. Wilhelm, 570 F.2d 461, 465 (3d Cir.1978). Indeed, this Court does not allow a non-lawyer to act as an advocate for another party. L. Civ. R. 101.1; see also Elizabeth Teachers Union, AFT Local 733 v. Elizabeth Bd. of Educ., Civ. A. No. 90-3343, 1990 WL 174654, at *5 (D.N.J. Nov. 8, 1990) ("A non-attorney may not represent another person."). To do so constitutes the unauthorized practice of law. In

addition, the Court notes that none of the parties included in Plaintiffs' attachment have filed an appearance in this action or filed an action on their own behalf.

Finally, the Court understands that despite filing their Complaint on September 20, 2010, Plaintiffs have failed to properly effectuate service upon the United States. See Fed. R. Civ. P. 4(i)(1)(A)(i).

Very Truly Yours,

/s/ Freda L. Wolfson
Freda L. Wolfson, U.S.D.J.

Other Orders/Judgments

3:10-cv-04814-FLW -DEA PURPURA et al v. SEBELIUS et al

U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered on 11/23/2010 at 4:46 PM EST and filed on 11/23/2010

Case Name: PURPURA et al v. SEBELIUS et al
Case Number: 3:10-cv-04814-FLW -DEA
Filer:
Document Number: 13

Docket Text:
LETTER ORDER in re: Plaintiffs request of recusal. Signed by Judge Freda L. Wolfson on 11/23/2010. (mmh)

3:10-cv-04814-FLW -DEA Notice has been electronically mailed to:

ETHAN PRICE DAVIS ethan.p.davis@usdoj.gov

3:10-cv-04814-FLW -DEA Notice will not be electronically mailed to::

DONALD R. LASTER, JR
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Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1046708974 [Date=11/23/2010] [FileNumber=4632473-0] [2ab56f9d1f6b9a1f93d4dba1fed070cc7c6d15fe63ca51c24a4163c94e21532965 03adf57730616d0ed5c6614554c8bdbd984f937aa1bc387f213ee2dfd497a9]]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(609) 989-2182

CHAMBERS OF
FREDA L. WOLFSON
UNITED STATES DISTRICT JUDGE

Clarkson S. Fisher Courthouse
402 E. State Street
Trenton, NJ 08608

November 23, 2010

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Ethan P. Davis
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, NW
Washington, DC 20001

Re: Purpura v. Sebelius
Docket No.: 10-4814 (FLW)

Dear Messrs. Purpura, Laster and Davis:

This Court is in receipt of a letter by Plaintiffs, pro se, dated November 18, 2010, in which Plaintiffs contend, among other things, that this Court is ignoring correspondence by the Plaintiffs including an informal request that I recuse myself from this matter. Initially, the Court would like to point out that at this time, there are no formal motions pending in this matter that require a decision or response by this Court. Thus, this Court is not ignoring, and has never ignored, anything submitted by the Plaintiffs.

Moreover, the Court notes that in order to properly request this Court's recusal, Plaintiffs must satisfy the requirements set forth in 28 U.S.C.A. § 455. At this time, there is no indication that Plaintiffs have properly requested recusal let alone satisfied the stringent statutory requirements that govern recusal.

In addition, it appears that Plaintiff continues to send letters on behalf of "We the People." Importantly, the Court notes that Purpura v. Sebelius, Civ. A. No. 10-814, is an action that was commenced by two individual Plaintiffs, Mr. Purpura and Mr. Laster. Thus, the Court

has no idea who or what entity the Plaintiffs continue to refer to in their letters.

Finally, the Court understands that Plaintiffs continue to send letters to Chambers that state "to be made part of the official record." None of these letters appear to have been filed with the Clerk of the Court as required by the Local Rules of Civil Procedure. Thus, at this time, none of these letters are, in fact, part of the "official record." The Court advises Plaintiffs that they should familiarize themselves with the Local Rules which are available in print and on the Court's website.

Very Truly Yours,

/s/ Freda L. Wolfson
Freda L. Wolfson, U.S.D.J.

U.S. Department of Justice

Civil Division

Washington, DC 20530
Tel: (202) 514-9242
Fax: (202) 616-8470
Ethan.P.Davis@usdoj.gov

December 17, 2010

Document Electronically Filed

Clerk of the Court
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Federal Building & U.S. Courthouse
402 East State Street
Room 2020
Trenton, New Jersey 08608

Re: *Purpura et al. v. Sebelius et al.*, Case No. 3:10-cv-04814 (D.N.J.) (FLW)

Dear Clerk of the Court:

On behalf of defendants Kathleen Sebelius, Secretary of Health and Human Services, Timothy F. Geithner, Secretary of the Treasury, and Hilda L. Solis, Secretary of Labor, I write to invoke the automatic two-week extension, provided by Local Civil Rule 7.1(d)(5), to extend the return date of plaintiffs' Motion for Summary Judgment, filed December 9, 2010, from January 3, 2011, until January 17, 2011. With this automatic two-week extension of the return date of plaintiffs' Motion for Summary Judgment, the due date for the filing of defendants' opposition papers to plaintiffs' Motion for Summary Judgment is automatically extended from December 20, 2010, until January 3, 2011.

I have enclosed a Certificate of Service.

Dated: December 17, 2010

Respectfully submitted,

TONY WEST
Assistant Attorney General

IAN HEATH GERSHENGORN
Deputy Assistant Attorney General

PAUL J. FISHMAN
United States Attorney
District of New Jersey

JENNIFER RICKETTS
Director

SHEILA LIEBER
Deputy Director

s/ Ethan P. Davis
ETHAN P. DAVIS
Trial Attorney
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Ethan.P.Davis@usdoj.gov

Enclosure
cc: Judge Freda L. Wolfson (w/encl)(By FedEx mail)
Mr. Nicholas E. Purpura (w/encl)(By FedEx mail)
Mr. Donald R. Laster Jr. (w/encl)(By FedEx mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the methods of service noted below, a true and correct copy of defendants' letter invoking the automatic extension provided by Local Rule 7.1(d)(5) was served on the following:

Served Electronically through CM/ECF:

NONE

Served by FedEx Mail:

Nicholas E. Purpura
1802 Rue De La Port
Wall, NJ 07719

Donald R. Laster, Jr.
25 Heidl Avenue
West Long Branch, NJ 07764

DATED: December 17, 2010

/s/ Ethan P. Davis
ETHAN P. DAVIS
Trial Attorney
U.S. Department of Justice

United States District Court
District of New Jersey

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

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

AMENDED MOTION FOR DEFAULT SUMMARY JUDGMENT

v.

Individually & in their Official Capacity

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
KATHLEEN SEBELIUS, in her official capacity Individually & in their Official Capacity as the Secretary of the United States, Department of Health And Human Services;
UNITED STATES DEPARTMENT OF THE TREASURY;
TIMOTHY F. GEITHNER, in his official capacity as the Secretary of the United States Department of the Treasury;
UNITED STATES DEPARTMENT OF LABOR; and HILDA L. SOLIS, in her official capacity as Secretary of the United States Department of Labor,

Defendants.
----------x

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

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

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

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

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

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

4. The *FRCP* is unambiguous:

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

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

Statement of Genuine Issues not address by Defendants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In Conclusion

Thomas Aquinas quoting Augustine:

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

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

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

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

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

We anxiously await the Court's Order.

Respectfully submitted,

S/

Plaintiffs: Nicholas E. Purpura, pro se
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Wall, NJ 07719
732-449-0856

S/

Donald R. Laster, pro-se (s)
25 Heidl Ave
West Long Branch, NJ 07764
732-263-9235

cc: Ethan P. Davis, et el

United States District Court
District of New Jersey

Civil Docket No._____

Nicholas E. Purpura, *Pro Se*
Donald R Laster Jr, *Pro Se*
et al.
(Named separately on separate page)

Plaintiffs

v.

VIOLATION

Title 28 U.S.C. 1331
&
CIVIL RIGHTS
Request For
Declaratory Judgment
Trial by Jury

Individually & in their Official Capacity

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Defendants.

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COMPLAINT

Plaintiffs, the citizens of the STATE OF NEW JERSEY, by and through NICHOLAS E. PURPURA and DONALD R LASTER JR, *Pro se,* representing as plaintiffs and/of affiliate organizations, listed in separate sheet attached and open to citizens willing to join in this Petition, against Defendants, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS); KATHLEEN SEBELIUS, in her official capacity as the secretary of HHS; UNITED STATES DEPRTMENT OF THE TREASURY (Treasury); TIMOTHY F. GEITHNER, in his official capacity as the Secretary of the Treasury; UNITED STATES DEPARTMENT OF LABOR (DOL); and HILDA L. SOLIS, in her official capacity as the Secretary of DOL, and state;

PARTIES

Plaintiffs:

NICHOLAS E. PURPURA
1802 Rue De La Port,
Wall New Jersey 07719

DONALD R LASTER JR.
25 Heidl Ave
West Long Branch, New Jersey 07764

Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

STATEMENT OF FACT

We the people, come before this Honorable Court, as a matter of right, "*to petition the Government for redress of grievances*":

1. Plaintiffs respectfully request this Honorable Court address this Petition and/or any other action for "Declaratory Relief" submitted by the citizens of New Jersey prior to any other action pending on the Constitutional validity of the *"Patient Protection and Affordable Care"*, labeled H.R. 3590. Hereafter the "Act" currently on the law books of the United States of America as Public Law 111-148 and the Laws, regulations, taxes and other items created from this Act.

2. *We the people* of these United States of American (United States) are the true voice of government, and respectfully request we be granted precedence and let all other actions be consolidated within this action. The people feel they can no longer depend upon public officials that have been repeatedly usurping the will of the people, being subservient to political parties rather than the will of the majority and the Constitution of these United States of America.

3. Plaintiffs allege the combined actions against H.R. 3590 (hereafter the "Act") instituted by the 14 States' of these United States, Case No. 3:10-cv-91. before the federal Judiciary unmistakably fails to fully articulate numerous violations of the Constitution of the United States (hereafter Constitution) and Amendments incorporated therein be heard jointly, since said actions involve issues of common fact:

4. In the *interest of substantial justice*, the people's action demonstrates the arguments before the federal Court instituted by the Attorney Generals' are lacking and limited, omitting compelling law and fact on the question at bar concerning the unprecedented act of encroachment on the Constitutional liberties of citizens of all States in the Union.

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NATURE OF ACTION

5. The Act is one of the most significant pieces of legislature enacted by the legislature of these United States of America (US) in recent history. Before this Honorable Court is not whether the majority of the American people oppose this Act; but whether the legislature illegally created a law that blatantly violates the Constitution of these United States of America.

6. The material facts herein demonstrate the Healthcare Reform Act not only illegally and unconstitutionally expands government, in an attempt by a majority party to take control of one-sixth of the U.S. economy, but an intentional fraudulent scheme was concocted by those in the legislature to intentionally circumvent the Constitution and Amendments attached thereto.

7. Essentially absent from each petition previously brought before various District Courts is "material fact" set forth in this Class-action present by "We the people" that by law, requires judicial scrutiny to come to a fair and just outcome to rightly determine the issue at bar. Each Count presented herein articulates Constitutional questions essential to the case that must be addressed since each action presented by the Attorney Generals of the various States failed to present said arguments.

8. For example Count One in-of-itself is an issue of first impression, upon which no previous precedent has been found to exist. To pass this Act the majority in the legislative branch of government played foot-loose and fancy free with Articles of the Constitution and the laws of this Republic.

9. Before this Honorable Court Plaintiffs action does have the same two arguments as presented by the Attorney Generals of various States, but not one action before those District Courts presents the Constitutional questions presented herein that must be addressed. In the interest of substantial justice it is incumbent on this Honorable Court to address each Constitutional violation.

10. What has been lost over the last century is that the General Government was created by the sovereign States of these United States of America by contract to serve the States and the people. The time is long overdue for the Federal Courts and States to return the General Government to its boundaries established by the Constitution and its agencies to adhere to the letter of the law as clearly enumerated in the Constitution.

QUESTIONS PRESENTED

11. Incorporated in this "Petition" are Constitutional challenges and questions that must not go unanswered if *"equal protection"* and *"due process"* are to have meaning. Therefore, Plaintiffs Nicholas E. Purpura and Donald R Laster Jr, on behalf of themselves and the citizens of the State of New Jersey, respectfully request this Honorable Court address entirely whether the Act is unconstitutional and overly intrusive based upon violation of:

    1. Article 1, Section 7, Paragraph 1, of the U.S. Constitution;
    2. Article 1, Section 8, Paragraph 3, of the U.S. Constitution;
    3. Article 1, Section 8, Paragraphs 12, 14, 15 of the U.S. Constitution as well as the "*Posse Comitatus*" Act;
    4. Article 1, Section 9, Paragraph 4 of U.S. Constitution;
    5. Article 1, Section 9, Paragraph 5 of U.S. Constitution;
    6. Article 2, Section 1, Paragraph 5 of U.S. Constitution;
    7. Amendment 16 of U.S. Constitution;
    8. Amendment 4 of U.S. Constitution and Civil Rights;
    9. Amendment 5 of U.S. Constitution;
    10. Amendment 13 of the U.S. Constitution;
    11. Amendment 14 of U.S. Constitution and Discriminatory Taxation;
    12. Amendment 1 of U.S. Constitution;
    13. Anti-Trust Laws of the U.S. that results in a violation of Amendment 5;
    14. Title VII and Amendment 14 of the U.S. Constitution;
    15. Article 6 of the U.S. Constitution; and,
    16. Article 1, Section 8 of the U.S. Constitutional and Amendment 10.

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COUNT ONE

Violation of Article 1, Section 7, Paragraph 1 of the U.S. Constitution

12. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 11 above as though fully set forth herein.

13. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform in violation of Article 1, Section 7, Paragraph 1 of the contract defined by the U.S. Constitution that created the General Government. Specifically the contract states:

> *All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.*

14. The Senate of the Congress of the United States (Senate) is explicitly prohibited from originating revenue generating bills by the constitutional contract. The House of Representative of the Congress of these United States (House), at the same time the Senate was originating its revenue raising bills, passed and delivered a number of bills that raised revenue, specifically H.R. 3200 and the actual H.R. 3590, to the Senate.

15. The Senate's Finance Committee with the assistance of the Senate's Leadership originated a variety of revenue raising bills related to the health care reform and adopted these bills by individual Senate votes. When the Senate received the Bill House Resolution 3200 (H.R. 3200) the Senate refused to consider this bill in any fashion. The Senate neither proposed Amendments or concurred with the bill as specifically allowed by Article 1, Section 7, Paragraph 1. The Senate rejected H.R. 3200 in its entirety. Then at the behest of Barack H. Obama Jr, the Senate and House concocted a scheme to pass the combined versions of the Senate's various health care reform legislation.

16. Then the Senate in order to circumvent Article 1, Section 7, Paragraph 1 inserted the revenue raising bills that the Senate had originated into the actual H.R. 3590, a bill that contained revenue provisions, replacing all of the original H.R. 3590's provisions even to the point of giving said House bill a new name.

17. What the Senate did in order to attempt to circumvent Article 1, Section 7, Paragraph 1 must be addressed whether the Senate and House acted with fraudulent intent in the conveyance of this legislation by giving the appearance of proper Constitutional procedure was the equivalent of taking the book Frankenstein, written by Mary Shelley, removing all of the pages from inside of the book, then inserting the pages of the book Dracula, written by Bram Stoker, and then

fraudulently presenting the book as Frankenstein written by Mary Shelley.

18. In a charade, the Senate has essentially taken a bill created by the House known as H.R. 3590, titled "Service Members Home Ownership Tax Act of 2009", gutting it since it had nothing what so-ever to do with health care, and inserted the revenue raising bills originated by the Senate into the cover of H.R. 3590 giving it a new title of "Patient Protection and Affordable Care Act". The resultant bill is not an amended version of H.R. 3590 "Service Members Home Ownership Tax Act of 2009" but the Senate's "Patient Protection and Affordable Care Act", a bill which is a revenue raising bill that originated in the Senate of the Congress of the United States of America. This can further be seen in that the real H.R. 3590 titled "Service Members Home Ownership Tax Act of 2009", which is a total of 6 pages long, passed by the House of Representatives deals with home ownership and has nothing whatsoever to do with health care or health care related insurance and the "amendments" to said bill are not home ownership related. This Senate bill is clearly not an amended version of the real H.R. 3590 "Service Members Home Ownership Tax Act of 2009".

19. This is clearly a violation of Article 1, Section 7, Paragraph 1 of the contract defined by the U.S. Constitution that created the General Government since the Senate bills inserted into the shell of H.R. 3590 was originated by the Senate without any regards to any existing House bills that had been presented to the Senate. The Senate bills were originated completely independent of any House bill. The Senate may not originate revenue raising bills. This action is specifically and unconditionally reserved to the House of Representatives.

20. The Senate may only propose Amendments or concur with revenue raising bills after they are passed by the House and delivered to the Senate. This is not what the Senate's Finance Committee and Senate Leadership did. They pretended they were amending a House bill knowing this to be false in order to pass and send a bill to the House to be voted upon that was originated in violation of Article 1, Section 7, Paragraph, 1 of the United States Constitution.

21. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

    i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Article 1, Section 7, Paragraph 1 of the Constitution of the United States of America;

    ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT TWO

Violation of Article 1, Section 8, Paragraph 3 of the U.S. Constitution

22. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 21 above as though fully set forth herein.

Please take Special Judicial Notice: The usage of the '*Commerce Clause*' by the government in this Act requires immediate judicial review as a question of first impression. Since for the first time in United States history, the federal government is attempting to use the '*Commerce Clause*' for a non-activity other than being a citizen. In essence the government is saying breathing is an act of commerce.

23. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform in violation of Article 1, Section 8, Paragraph 3 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

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

24. Congress is granted broad authority to regulate commerce in its various forms and this action does not challenge this specific grant of authority. However, the grant of authority does not grant Congress the authority to dictate, order or force any person, company or State to engage in commerce. Nor does the contract represented by the U.S. Constitution that created the General Government give Congress the authority to create vehicles of commerce. The authority to regulate does not imply a grant of authority to create specific forms of commerce and then require any person, company or State to engage in the specific form of commerce created.

25. The word "regulate" is defined as in Webster's Universal Encyclopedic Dictionary 2002 as

> **1 a** to govern or direct according to rule, **b** to bring under the control of law or constituted authority (2) **:** to make regulations for or concerning <*regulate* the industries of a country>
>
> **2 :** to bring order, method or uniformity to <regulate one's habit>
>
> **3 :** to fix or adjust the time, amount, degree or rate of (regulate the pressure of a tire>

and the online dictionary at http://dictionary.reference.com/browse/regulate defines the word as

> **1** to control or direct by a rule, principle, method, etc.;
>
> **2** to adjust to some standard or requirement, as amount, degree, etc.;
>
> **3** to adjust so as to ensure accuracy of operation;
>
> **4** to put in good order.

Webster's New Twentieth Century Dictionary of the English Language Unabridged 1953 defines the word the same as does Samuel Johnson's 1849 Dictionary of the English Language and Noah Webster's 1828 American Dictionary of the English Language both of which are available on-line. Nowhere in any of these definitions of "regulate" do the definitions allow a dictate of commerce or a mechanism to force any commerce to be performed. It specifically allows the creation of guidelines of how to perform commerce.

26. In 1995, for the first time in nearly 60 years, the U.S. Supreme Court held that Congress had exceeded its power to regulate interstate commerce. In *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995), the Court ruled 5-4 that Congress had exceeded its *"Commerce Clause"* power in enacting the Gun-Free School Zones Act of 1990 (18 U.S.C.A. § 921), which prohibited the possession of firearms within 1,000 feet of a school.

27. In reaching its decision, the Court took the various tests used throughout the history of the *"Commerce Clause"* to determine whether a federal statute is constitutional, and incorporated them into a new standard that specifies three categories of activity that Congress may regulate under the clause:

(1) the channels of interstate commerce,

(2) persons or things in interstate commerce or instrumentalities of interstate commerce,

(3) activities that have "a substantial relation to interstate commerce i.e., those activities that substantially affect interstate commerce.

The Court then applied this new standard to the 1990 Gun-Free School Zones Act and found that the statute could be evaluated under the third category of legislation allowed by the Commerce Clause.

28. The Supreme Court noted that the act was a criminal statute that had nothing to do with commerce and that it did not establish any jurisdictional authority to distinguish it from similar State regulations. Because the statute did not *"substantially affect interstate commerce"*, according to the Court, it went beyond the scope of the *"Commerce Clause"* and was an unconstitutional exercise of Congress's legislative power.

29. The Act requires that selected groups of people, companies, and the States engage in a specific type of commerce as dictated by "Act." Specifically, the Act now Public Law 111-148, unconstitutionally requires a majority, not all, of the citizens to purchase Government specified Health Care Insurance. Failure to comply with the mandates of the Act levies penalties based

upon gross income in what has now become a specific act of "commerce" to justify the unconstitutional mandates in the Act.

30. The Act selectively penalizes selected group of people, companies, and States who may or may not engage in what is now deemed an act of commerce regardless of whether the only activity is the equivalent of breathing. The Act selectively requires individuals and companies (required to offer insurance or a public option) to meets the requirements of the government. Those not complying are subject to punishment and fines if their insurance is superior or inferior to the specified requirements of the Act. Therefore, because all citizens are not equally required to meet the same requirements said Act violates "*equal protection and treatment*" as well.

31. Above all this Honorable Court must first address whether breathing and refusing to comply with a mandated to participate in an activity is an act of "commerce in these United States" Therefore, this Honorable Court has before it a question of first impression.

32. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Article 1, Section 8, Paragraph 3 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and;

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT THREE

Violation of Article 1, Section 8, Paragraph 12, 14, 15 and 16 of the U.S. Constitution and the "Posse Comitatus" Act

33. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 32 above as though fully set forth herein.

Violation of Article 1, Section 8, Paragraph 12:

34. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform that includes the creation of a private Presidential Army to enforce health care laws in a Presidential Declared medical emergency (Section 203, 5210) in violation of Article 1, Section 8, Paragraph 12 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;*

35. Therefore, it is irrefutable H.R. 3590, also known as the Act is noticeably a violation of Article 1, Section 8, Paragraph 12 which restricts all funding of Armies to a maximum of 2 years at one time. The Act specifically and unconstitutionally calls for funding of this specific Army for 4 years for which no constitutional authority exists.

Violation of paragraph 14:

36. Under the guise of health care reform that creation of a private Presidential Army to enforce health care laws in a Presidential Declared Medical emergency violates of Article 1, Section 8, Paragraph 14 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *To make Rules for the Government and Regulation of the land and naval Forces;*

37. The Act is clearly in violation of Article 1, Section 8, Paragraph 14 since it authorizes the Surgeon General of the United States to force individuals to active duty without any emergency declaration of War. Nor does any provision exist in the U.S. Constitution that allows the special units of the U.S. Army created under the auspices of the U.S. Constitution to be used for "routine public health". If such a need were warranted it would be the function of the sovereign States involved that comprise these United States of America to call upon their National Guards only. One could also argue the use of federal troops in any State violates the *Posse Comitatus* Act void Congressional approval. Further evidence of this violation of the U.S. Constitution can be seen in the requirements and procedures that the General Government must follow in responding to

natural emergencies such as the land fall of the hurricane Katrina. Before the General Government could act the Governor of the sovereign States of Louisiana, Mississippi and Alabama had to formally request aid from the General Government.

Violation of paragraph 15:

38. Article 1, Section 8, Paragraph 15 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;*

39. The Act violates Article 1, Section 8, Paragraph 15 (see section 203) since it places into the hands of the Executive Branch and Surgeon General of the United States the ability to force individuals (Draft) to active duty without any emergency declaration of war. Nowhere in the U.S. Constitution does authority exist for Presidential Armies to be created under the auspices of the U.S. Constitution to be used for "routine public health." Again, this is a function of the sovereign States to activate their National Guard that are the first responders for the States of these United States of America in time of a State crisis.

Violation of paragraph 16:

40. Article 1, Section 8, Paragraph 16 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;*

41. H.R. 3590, also known as "Act", is clearly in violation of Article 1, Section 8, Paragraph 16. H.R. 3590 (see, section 203) places into the hands of the Executive Branch and Surgeon General of the United States the ability to force individuals to active duty without an emergency declaration. Again, the U.S. Constitution does not allow for Armies created under the auspices of the U.S. Constitution to be used for "routine public health." Only a sovereign State's governor has the legal authority to activate to duty its National Guard in time of emergency, other than a time of war. The executive branch of the federal government by contract is obligated to first obtain Congressional approval outside an act of war.

Please Take Special Judicial Notice: The Act as written allows the Executive branch of government to circumvent Congressional approval to implement a draft. [See, section 203, b through d]. It behooves this Honorable Court to consider the utterance on July 2, 2008 by Barack

H. Obama Jr prior to occupying the office of the Presidency when coupled with this unconstitutional provision that was inserted in the Act 24-hours before passage, I quote:

> ***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.***

42. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Article 1, Section 8, Paragraph 12, 14, 15 and 16 of the Constitution of the United States of America as well as violating the provisions of the Posse Comitatus Act ;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT FOUR

Violation of Article 1, Section 9, Paragraph 4 of U.S. Constitution

43. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 42 above as though fully set forth herein.

44. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform in violation of Article 1, Section 9, Paragraph 4 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

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

45. Congress is prohibited from laying direct taxes. The various mandates in the Act are direct taxes that are required to be paid by individuals and companies in violation of Article 1, Section 9, Paragraph, 4 of the U.S. Constitution.

46. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Article 1, Section 9, Paragraph 4 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT FIVE

Violation of Article 1, Section 9, Paragraph 5 and 6 of U.S. Constitution

47. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 46 above as though fully set forth herein.

48. In 2009 the Senate of the Congress of the United States originated numerous revenue raising bills under the guise of health care reform in violation of Article 1, Section 9, Paragraph 5 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *No tax or duty shall be laid on articles exported from any State.*

49. The Congress of the United States (Senate) is explicitly prohibited from taxing or putting duties on products that are exported from State to State. The Act placed taxes on medical devices exported from the individual States. The final bill passed by the legislature and signed by the Executive branch is currently in violation of the Constitution since it specifically levies tax on products that are exported from the States.

50. The Act in its present form also violates of Article 1, Section 9, Paragraph 6 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: Nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties, in another.*

51. More glaring, no constitutional authority exists that allows the Congress of these United States (Senate) to grant 'special preference' on any commerce and/or financial incentives to selective States. The Act blatantly violates this provision by granting special treatment and preferences on commerce for the various States in an act of bribery to obtain the needed vote for passage of this Act.

52. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

    i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Article 1, Section 9, Paragraph 5 and 6 of the Constitution of the United States of America;

    ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT SIX

Violation of Article 2, Section 1, Paragraph 5 of U.S. Constitution

53. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 52 above as though fully set forth herein.

54. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform that was then signed into law by Barack Hussein Obama Jr in violation of Article 2, Section 1, Paragraph 5 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.*

55. It is asserted and alleged by Plaintiffs that the Act has never been legally and constitutionally signed into law as required by the contract represented by the U.S. Constitution.

56. It is indisputable and not denied that Mr. Barack Hussein Obama Jr's father was a citizen of the British Commonwealth. By law, it is undeniable Mr. Barack Hussein Obama Jr is ineligible to hold the office of President of this United States. The framers of the Constitution when they adopted the requirement they excluded dual citizens from qualifying as natural born. Mr. Obama was born of a father who is a British subject/citizen and Obama himself was the same. The term "natural born citizen" is defined, at least since 1758, as "a child born in the country of parents who are citizens." Only one of Barack Hussein Obama Jr's parents was a citizen at the time of his birth; in this case his mother who was/is a U.S. Citizen.

Please take Special Judicial Notice: Plaintiff's are not arguing whether Mr. Obama was or was not born in Hawaii, though it is incumbent for this Honorable Court to also address that question. Mr. Obama has expended in excess of one point seven million dollars to have the State of Hawaii seal his records. The question that mandates an answer, why is Mr. Obama above the law, when by law you need a birth certificate to obtain a driver's licenses, Social Security card and/or passports. They are also used extensively for employment purposes, to obtain benefits or other documents, to assist in determining eligibility for public assistance and other benefits, to enroll children in school and as proof of age eligibility for sports and other age-restricted activities. There are other questions that demand answers; why does Mr. Obama have scores of Social security numbers, and those numbers it has been discovered were issued by the State of Connecticut. If a fraud was perpetrated upon the American people it is a crime. Regardless, based upon the Constitution and the British citizenship of Mr. Obama's father, he, Mr. Barack Obama Jr, is constitutionally ineligible to hold the office of the President of this United States. Not being eligible to be president and Commander in Chief, Mr. Obama is currently acting without constitutional authority which is causing plaintiffs injury in fact.

57. The Supreme Court of these United States, in *"Minor v Happersett"* when deciding an issue of citizenship issued a decision on March 29, 1875 specifically held:

> *The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that* ***all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also.*** These were natives, or natural-born citizens, as distinguished from aliens or foreigners. *Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their [p168] parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. The words "all children" are certainly as comprehensive, when used in this connection, as "all persons," and if females are included in the last they must be in the first. That they are included in the last is not denied. In fact the whole argument of the plaintiffs proceeds upon that idea.*

58. The Supreme Court specifically referenced and acknowledge the meaning of "natural born citizen" as defined by Monsieur De Vattel's "Law of Nations" Book 1, Chapter 19, Paragraph Number 212, (online at http://www.constitution.org/vattel/vattel_01.htm) which states:

> *The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages.* ***The natives, or natural-born citizens, are those born in the country, of parents who are citizens.*** *As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent. We shall soon see whether, on their coming which they were born. I say, that, in order to be of the country, it is necessary that a person be born of a father who is a citizen; for, if he is born there of a foreigner, it will be only the place of his birth, and not his country.*

59. In the Supreme Court ruling ***"PERKIN," Secretary of Labor, et al. V ELG. ELG v. PERKINS, Secretary of Labor, et al."*** which was decided on May 29, 1939 discussed the differences between a natural born citizen and a native born citizen. From the decision

> *Fifth.-The cross petition of Miss Elg, upon which certiorari was granted in No. 455, is addressed to the part of the decree below which dismissed the bill of complaint as against the Secretary of State. The dismissal was upon the ground that the court would not undertake by mandamus to compel the issuance of a passport or control by means of a declaratory judgment the discretion of the Secretary of State. But the Secretary of State, according to the allegation of the bill of complaint, had refused to issue a passport to Miss Elg 'solely on the ground that she had lost her native born American citizenship.' The court below, properly recognizing the existence of an actual controversy with the defendants Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617, 108*

> *A.L.R. 1000), declared Miss Elg 'to be a natural born citizen of the United States' (99 F.2d 414) and we think that the decree should include the Secretary of State as well as the other defendants. The decree in that sense would in no way interfere with the exercise of the Secretary's discretion with respect to the issue of a passport but would simply preclude the denial of a passport on the sole ground that Miss Elg had lost her American citizenship.*

60. In the Supreme Court ruling of "*THE VENUS*, 12 U. S. 253 (1814)" the Court referenced the definition of "natural born citizen" and cited Book 1, Chapter 19, Paragraph Number 212 of Vattel's Law of Nations.

> *The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives or indigenes are those born in the country of parents who are citizens. Society not being able to subsist and to perpetuate itself but by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights.*

61. Due to the dual citizenship status of the Barack Hussein Obama Jr, Barack Hussein Obama Sr was a British citizen and gave his son British citizenship, Barack Hussein Obama Jr does not meet the "natural born citizen" requirement of Article 2, Section 1, Paragraph 5 of the contract represented by the US Constitution nor was he, Barack Obama Jr, alive and a citizen of the United States of America at the time the US Constitution was adopted. Barack Hussein Obama Jr is a native born or statutory citizen and is therefore ineligible to exercise the authority of the office of President of the United States and can not sign bills into law.

62. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Article 2, Section 1, Paragraph 2 of the Constitution of the United States of America and has never been signed into law;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

COUNT SEVEN

Violation of Amendment 16 of U.S. Constitution

63. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 62 above as though fully set forth herein.

64. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform in violation of Amendment 16 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration.*

65. The Act unconstitutionally levies additional tax based on "gross income" for not complying with the Act. In effect, Congress created a tax based upon gross income for a 'non-activity' other than breathing and being a citizen of this United States. Basically, such a provision can be described as legal extortion under the *"color of law."* You either comply or we will punish you.

66. Nowhere in the contract represented by the U.S. Constitution does Congress have the authority to make laws that tax the same income multiple times or tax income that does not exist.

67. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Amendment 16 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper

COUNT EIGHT

Violation of Amendment 4 of U.S. Constitution and HIPPA Legislation

68. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 67 above as though fully set forth herein.

69. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform in violation of Amendment 4 of the contract:

> *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

70. The Act, grants access to the General Government unconditionally authority to access and seize the private records of individuals in violation of Amendment 4 of the U.S. Constitution. This is clearly prohibited by Amendment 4.

71. Specifically, all medical records will be forwarded to a government bureaucracy without the legal consent of the citizen or a valid Court order. This act can have a detrimental effect on a citizen civil rights. Said Act also violate current legislation still on the books

Please Take Judicial Notice: The Act also violates the "Civil Rights" of the citizens of the State of New Jersey by dismissing existing legislation enacted in 1996, known as "The Health Insurance Portability and Accountability Act of 1996" (HIPAA) "nullifying" said protection. If this Act is held to be constitutional, all medical records will be open to government bureaucrats at the Department of Justice who can without legal justification or "due process" deem these individuals a threat or burden to society and revoke a citizen civil rights void any "due process."

At the time of this writing the Office for "Civil Rights" is charged with enforcement of the HIPAA Privacy Rule, which protects the privacy of individually identifiable health information. The HIPAA Security Rule, which sets national standards for the security of electronic protected health information; and the confidentiality provisions of the Patient Safety Rule, which protect identifiable information being used to analyze patient safety events and improve patient safety.

72. In addition, the Act, allows the federal government to have direct, real-time access to all individual bank accounts for electronic funds transfer. This invades citizen's privacy, and violates the "search and seizure protection" afforded by the Constitution's Amendment 4.

Special Note: The Supreme Court's prior precedent concerning legal constrains related to "privacy" are critical. The concept of privacy rights according to the Court in Roe v Wade, allowed mothers the right to "kill" their unborn children. Since, "constitutionalization" of "social issues" are now acceptable and have become the norm, one could rightly argue there should be no distinction between either health related issue. Should not an individual have a right to the same privacy (and in the case at bar, here, no one is being killed). Constitutionally the government has no legal right to have access to health records that are private. Plaintiffs are unaware of any

constitutional authority that grants the Congress to over-ride the HIPPA legislation, related to "privacy" of one's papers or for that matter to have access to one's bank account to make "electronic fund transfers" for healthcare costs? Especially if one chooses not to purchase healthcare! None! Amendment 4 protects; "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.*"

73. In short, nowhere in the contract represented by the U.S. Constitution does Congress have the authority to seize records, medical or otherwise, without Warrants being issues for specific reasons.

74. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Amendment 4 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void;" and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court

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COUNT NINE

Violation of Amendment 5 and 13 of U.S. Constitution

75. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 74 above as though fully set forth herein.

76. In 2009 the Senate of the Congress of these United States originated a number of revenue raising bills under the guise of health care reform in violation of Amendment 5 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

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

77. The Act unconstitutionally gives access to the General Government to criminalize citizens and seize the property of those individuals who do not purchase the mandated health insurance coverage or do not purchase the specific type of health insurance that the government specifies. By this Act American citizens are without recourse to challenge the "*taking*" or seizure of property.

78. As a result of the tax penalties incorporated into the Act the constitutional civil right to "due process" is rendered "null and void." The Act deprives citizen of property (based upon gross income) by a "taking" in which no trial or appeal process is available to contest said seizure: which allow the federal government to ignore the basic principle of Constitutional law to include normal established laws governing taxation. Thereafter, reducing citizens to forced servitude.

The Thirteenth Amendment:

79. The 13th Amendment prohibits "involuntary servitude" except for crimes. The Act IN-OF-ITSELF is criminal, since it classifies one class* of citizens criminals if they refuse to succumb to the involuntary requirement to either obtain Healthcare or be subject to penalties. This is tantamount to a *"governmental extortion scheme"*.

Note: To be addressed in a separate count is the violation of the Amendment 14, since the Act unconstitutionally exempts certain class of citizens based upon religious sects. Therefore, it could also be argued the Act violates the Amendment 1 since it respects selected religions over others.

80. Clearly by the language in the Act any refusal to buy the product, in the case at bar, insurance, constitutes criminal behavior. It is incontrovertible, if one is forced to buy a product, that individual is being subjected to a form of 'involuntary servitude" to an all powerful federal government? This is not the limited government as specified by the contract entered into by the sovereign State of New Jersey and the other sovereign States in the creation of the Union, nor

does the U.S. Constitution allow such mandates or punishments.

81. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Amendments 5 and 13 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void;" and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT TEN

Violation of Amendment 14 of U.S. Constitution

82. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 81 above as though fully set forth herein.

83. In 2009 the Senate of the Congress of the United States originated a number of revenue raising bills under the guise of health care reform in violation of Amendment 14 of the contract defined by the U.S. Constitution. Specifically the Contract states:

> *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

84. The Act enacted by Congress elevates the general government above established Constitutional law that guaranties every citizen be afforded *"equal treatment"* by the granting of special exemptions and treatment to selected classes of citizens based upon religious affiliations and/or State of residence is therefore discriminatory. At the same time the Act criminalizes other citizens based upon their religious beliefs for refusing to comply with a forced mandate to purchase healthcare insurance.

85. The Act grants the government the unconstitutional authority to seize the property of those individuals who do not purchase the mandated health insurance coverage or do not purchase the specific type of health insurance that the government specifies. The Act's provision denies citizens who refuse to comply with the Act no recourse to challenge the "taking" or seizure of property.

86. As a result of the tax penalties incorporated into the Act the constitutional civil right to "due process" is rendered "null and void." Depriving any citizen of property (based upon gross income) 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. The Act in reality is tantamount to a "governmental extortion scheme," [As alleged in Count Nine] reducing Americans citizens to forced servitude.

Discriminatory Taxation:

Please take Special Judicial Notice: Newly discovered in the Act is a hidden provision that discriminates and punishes homeowners that violates "unequal treatment." The Act gives the government a partial ownership in every individual's capital investment, (their home) purchased with after tax dollars. On the sale of every home the Act allows the government to confiscate a 3.8 percent tax, in addition to any normal "capital gains" tax. Said 3.8-percent Tax, is fixed and is

mandated whether or not there is a profit or loss. Clearly, this constitutes an illegal "taking" that in essence makes the government a 3.8% partner in a homeowners capital investment outside normal taxing. What is also outrageous is the government will "take" your monies void "due process" leaving the citizen without recourse. Therefore, being a homeowner, you are selectively being discriminated against and punished, for attaining the American dream and are exempt if you rent.

87. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Amendment 14 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void;" and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT ELEVEN

Violation of Amendment 1 of U.S. Constitution

88. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 87 above as though fully set forth herein.

89. In 2009 the Senate of the Congress of the United States originated H.R. 3590, the Act under the guise of health care reform which on its face violates Amendment 1 of the contract defined by the U.S. Constitution that created the General Government. Specifically the Contract states:

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

The word respecting means "regarding" or "concerning."

90. The Act clearly give access to the General Government to unconditionally grant religious exception's to various sects. The U.S. Constitution prohibits Congress from making laws regarding religion; nowhere in the U.S. Constitution does Congress have the authority to make laws that grant exemptions or other special rules for religious sects. Nor does the Constitution allow granting preferences or other special considerations. In the Act the practitioners of the Islamic or Muslim religion and the Amish religious sects are exempt from the provisions of the bill.

91. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Amendment 16 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving; and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

COUNT TWELVE

Violation of Anti Trust Laws of the U. S. that results in a violation of Amendment 5 of U.S. Constitution

92. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 91 above as though fully set forth herein.

93. In 2009 the Senate of the Congress of the United States originated H.R. 3590 Act under the guise of health care reform which on its face triggers violation of Amendment 5 of the U.S. Constitution that created the General Government, and the Anti-Trusts Laws of this United States. Specifically the Contract states:

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

94. Inarguably, the Act blatantly violates the "**anti-trust**" laws of this United States making a mockery of American *"jurisprudence"*. The Act by its language exempts the federal government from the anti-trust laws and allows the federal government to create a monopoly by "price fixing" and would eventually force out of business all private entities related to healthcare.

95. Thus, the federal government has stealthily inserted that provision to create an all powerful governmental "single-payer system," which neither the Senate nor the House of Representatives contemplated or agreed upon. Thereafter, the government will be in total control of 1/6th of the American economy. Proof of this illegal and unprecedented "anti-trust violation" can be found on page 124 of said "Act" that effectively says:

> *No company can sue the government for price fixing. No "judicial review" is permitted against the government monopoly.*

96. The Act's exempting from granting the government permission to become a "monopoly," illegally allows "price fixing," was stealth-fully inserted among 2,400 pages prior to passage leaving little or no time for review. The Act's devious purpose of allowing "price fixing" was inserted to eventually force private insurance companies out of existence, to create a single payer government run system. Both the House of Representative and Senate originally rejected any "single payer system".

97. The "anti-trust" exemption clearly puts the federal government above established "anti-trust law" that strictly disallowed monopolies to be created to protect the citizens of the United States' against non-competitive markets.

98. The "No judicial review" provision inserted into the Act erases the *"separation of powers"*

rendering the Judicial Branch unable to protect the Constitution and the people of the United States as contemplated by the Founding Fathers in the creation of our limited Constitutional government. By so doing the Act renders Amendment 5 irrelevant. No longer are the American people protected by "checks and balances" as established by the Founding Fathers.

99. In essence, the Act says to the Judicial branch of government and the American people your Constitutional protections are irrelevant. We the legislative and executive branch of government will decide what is Constitutional, go to hell! This draconian Act is big brother's way of saying whether you like it or not we have our one payer socialist healthcare system!

100. Again, this Act in-of itself is tantamount to *"governmental extortion scheme"*, with numerous sections that contain taxes. For example, any business who's 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 a 2 to 6% tax on payroll. Any employer with 50 or more workers would pay $2,000 per worker if they don't offer health insurance. Such disproportional the tax penalties violate "equal treatment" for which no judicial review is available or allowed under provisions of the Act.

101. Nowhere in the contract represented by the U.S. Constitution does Congress have the authority to seize property without *"due process"* of law.

102. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act", Public Law 111-148, to be in violation of Amendment 5 of the Constitution of the United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States of America from enforcing the Public Law 111-148 against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void;" and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

COUNT THIRTEEN

Violation of Title VII and the Amendment 14 Anti Trust Laws of the U.S. Constitution

103. Plaintiffs re-allege, adopt, and incorporates by reference paragraphs 1 through 102 above as though fully set forth herein.

104. In 2009 the Senate of the Congress of the United States originated H.R. 3590 Act under the guise of health care reform which on its face violates Title VII of the Civil Rights Laws concerning "*equal protection and treatment*" and significantly violates the original intent of Amendment 14 of the U.S. Constitution.

Reverse discrimination:

105. The Act openly discriminates against a majority of the American people by illegally mandating quota programs using the term *"affirmative action programs"*. It is incontestably incorporated therein is the student loan provision that by its language is indisputably an act of "*Reverse Discrimination"*. The Act signed into law, has a provision that allows Department of Education's Federal Direct Loan program that will originate all new student loans beginning in 2011 allocates monies for one particular race of citizens based upon "color" or ethnicity:

> ***The bill allocates $2.55 billion in federal funding to historically black and minority serving colleges, ...***

106. The grant of "special funding", mandated by the "Congressional Black Caucus", unquestionably "separates the races" by granting "special treatment" to one particular race of citizen violating Amendment 14 that assures equality. No one race or ethnic group of people is entitled to special privileges or funding over another class of American citizen. The Supreme Court has unambiguously found that "preferential treatment" and "Affirmative Action Programs", actually quota based programs misusing the term, are unconstitutional, and violate Title VII of the Civil Rights provision.

Special Note: Recently the Supreme Court, in *Ricci v. DeSefano*, held there must be evenhanded treatment of the law, citing Title VII's prohibition against discrimination based on race. There can be no uncertainty, any provision in the Act that favors one race based upon ethnicity is "intentional discrimination" that violates Amendment 14!

Selective Discrimination:

107. In addition, the Act contains discriminatory "taxation of one class of citizen based upon ethnicity" that effects services predominately provided to "White" Americans; ***"Tanning Salons"*** by the imposition of a tax of 10% upon citizens patronizing business punishes one class of citizen, defacto *"exempts citizens of color"* that have no need or desire to purchase said services. This is a

discriminatory Tax pure and simple!

108. The Act imposes regulations on larger corporation with more than 10 operating facilities, and exempts smaller business with less than 10-operating facilities, again, on its face is discriminatory! Since the Act unfairly penalized growth and success by "selective regulation" under threat of punishment the Act is discriminatory.

109. As written the Act vests the Government authority to discriminate against chain restaurants by requiring them to publish the calories of each item on their menu (an unjust increase in operating expenses) and exempts smaller restaurants. By law, all businesses must be required or all exempt, if equal justice treatment is to prevail.

110. The Act, contained therein, deliberately exempts all federal branches of government from the same healthcare mandates forced upon the citizens they supposedly represent elevating themselves above those they serve with "special" and better services than those Americans that are being forced to accept government defined Healthcare Plans, violates *"equal treatment and protection" granted by Amendment 14, and violates Title VII*.

111. The Act discriminates and penalizes citizens with existing "healthcare policies" that offer better coverage than those mandated by the Act by the implementation of the so-called the *"Cadillac Plan"*. Those individuals will incur an additional tax while other policies are exempt is patently discriminatory and unfair.

112. This Act's granting of special benefits to certain groups of citizens, as well exemption as written subsidizing all unions' retirees and community organization healthcare plans, at the expenses of the individual taxpayers is discriminatory, unfair, and violates *"equal treatment"*.

Unconstitutional State Discrimination:

113. This entire Act discriminates against most States. For example, the State of New Jersey and a majority of her sister States are required to unequally fund Health Care. The leadership of the Senate selectively granted special financial packages and exemptions to various States to secure passage of this Act (political bribery). Therefore, any State not granted those same special privileges are forced to incur a larger share of the costs. Any "special exemptions," and/or "special financial packages" constitutes "unequal treatment." One could rightfully argue the Act violates Article 4, Section 2, Paragraph 1, that protects against "special treatment".

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

Said Article unambiguously requires all states to be granted the same treatment.

114. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act" to be in violation of, Title VII, and Amendment 14 to the Constitution of this United States;

ii. Declare Defendants to have violated the Civil Rights Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as a foresaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States from enforcing the Act against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 null and void; and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT FOURTEEN

Constitutional Violation of Article 6 of U.S. Constitution

115. Plaintiffs re-allege, adopt, and incorporate by reference paragraphs 1 through 114 above as though fully set forth herein.

116. Article 6, Paragraph 3: unambiguously states:

> *The Senators and Representatives ... and executive and judicial Officers, shall be bound by the Oath or Affirmation, to support the Constitution.*

117. By law, those who voted for the Healthcare Bill are guilty of dereliction of duty, which constitutes a *"high crime and misdemeanor"* which are impeachable offenses, though not a incarceration offense. Article 6 and Amendment 14 clearly established that a reasonable official in their position would have clearly understood that they were under an affirmative duty to refrain from any unconstitutional conduct. The entire Act unquestionably fails to comply with the Constitution and Amendments incorporated therein. Of great importance plaintiffs allege Congress failed to follow the Constitution, which; (1) provides that Congress must fully qualify the candidate 'elected' by the Electoral College Electors; and, (2) each and every Count set forth in this petition.

118. It is the fiduciary duty of every legislator to scrutinize every Act or bill to address whether the legislation complies with the United States Constitution. The Chairman of the House publicly admitted he didn't understand it, yet he voted for passage. The speaker of the House, Nancy Pelosi stated publicly, they had to pass the "Act" to find out what was in it. Congressmen John Conyers stated on public television: "who can read a bill of that size and understand it, it would take two lawyers to explain what's in it." These statements on their face testify to the dereliction of a fiduciary duty of Congress to the citizens of this United States.

Please Take Judicial Notice: More troubling, by law, all legislation must be drafted by those duly elected by the people. In the case at bar, instead of the Congress drafting the Act, it has become public knowledge and undeniable that the Healthcare Reform Act was drafted by outside non-governmental organizations that admittedly favor a socialist form of government. No constitutional authority exists for any group or special interest advocates to draft legislation to be enacted upon the American people!

119. Since no precedent exists in American history to validate any legislation drafted by "outside" non-governmental organization, especially to create "Acts for raising Revenue"? As stated in Count One, any Act voted and passed "originating" in the Senate, indisputably violates Article 1, Section 7, Paragraph 1 of the Constitution, that states: *"All Bills for raising Revenue* ***shall*** *originate in the House of Representatives."*

120. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act" to be in violation of Article 6, to include but not limited to the Constitution of this United States;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as a foresaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States from enforcing the Act against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violate

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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COUNT FIFTEEN

Violation of Article 1, Section 8 of the U.S. Constitution and Amendment 10 of the U.S. Constitution

121. Plaintiffs re-allege, adopt, and incorporate by reference paragraphs 1 through 120 above as though fully set forth herein.

122. Amendment 10 of the Constitution of these United States of America unambiguously states:

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

123. Nowhere in the Constitution of these United States is the General Government granted the authority to issues the mandates specified in the Act.

124. The Act mandates all residents of the State of New Jersey and sister states to acquire healthcare insurance under penalty of law! Failing to comply with the General Government's directive, a citizen will be subject to an increasing penalty through the year 2016, reaching $750.00 per-year to a maximum of three times that amount $2,250 per-family, or 2-percent or more of the household income, whichever is greater. After 2016, the penalty increases annually based on cost-of-living adjustments. In addition, to the putative penalties, the Act violates the Amendment 14 by provisions that allow exemptions to putative penalties to specified individuals and groups [Addressed in above Counts].

125. The Act alters the prior federal-state relationship and voluntary "contract" to the detriment of the State specifically with respect to prior Medicaid programs in existence and healthcare coverage generally.

126. The Act mandates the State of New Jersey to massively expand its Medicaid program, forcing the State to create insurance exchanges through which individuals can and must purchase healthcare insurance that is only partially funded up until 2015, for the creation of the exchanges. Even if New Jersey were to opt out, the State is still required to provide coverage for the uninsured with incomes between 133-percent and 200-percent of the federal poverty level, which is a penalty since that is a higher level than states that participate under the Act.

127. The only alternative for the state to avoid the Act's mandate is to opt out of the Medicaid program that would unfairly leave millions of people uninsured. Yet, even then, the Courts have ordered that anyone in need of medical treatment must receive it; all hospitals are required to render that service at the expense of the State and the residence residing therein. Either way the citizens of the State by virtue of existing law are force to incur financial hardship void of any federal

assistance.

128. Therefore, the State is left with no alternative but to participate in the Act and required to expend Medical coverage to include all individuals under the age of 65 with incomes up to 133-percent of the federal poverty level. Once again, the mandated coverage creates a financial burden that will continually increase after 2016 in actual dollars and in proportion to the contributions of the federal government that are in no way guaranteed.

129. Especially relevant, the federal government by this Act has mandated an "appropriation" conveniently exempting itself from providing the necessary funding or recourses to administer this requirement, leaving the cost to be passed on to the citizens of the State of New Jersey and its sister States. 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 regulations, consumer protections, rate reviews, solvency, and reserve fund requirements to include premium taxes.

130. The State is required by the Act to enroll all newly-eligible Medicaid beneficiaries, many of whom will be subject to a penalty if they fail to enroll, coordinate enrollment with the new exchanges, and implement other specified changes. The State is mandated to establish an office of the healthcare insurance consumer assistance, or an ombudsman program to advocate for the people in the new program. The forced policing of the required policies set forth in the Act are to be incurred at the expense of the State that sheds the sovereignty of the State to an all-powerful central government! Again, the citizen taxpayers of the State of New Jersey allege this is tantamount to "involuntary servitude".

Please take judicial Notice: Not to over burden the Court with repetition, Plaintiffs rely upon the example presented in the Civil Action Case No. 3:10-cv-91 submitted by the States of Florida, South Carolina, Nebraska, Texas, Utah, Louisiana, Alabama, Michigan, Colorado, Commonwealth of Pennsylvania, Washington, Idaho, South Dakota, against defendants see Copy of which is attached as Exhibit A.

131. The Act's unprecedented encroachment on the sovereignty of the State by mandating the citizens of New Jersey immeasurably broaden its Medicaid eligibility standards to accommodate upwards of 50 percent more enrollees, many of whom must enroll or face a tax penalty under the Act, and imposes onerous new operating rules upon the State. The Act requires the State (taxpayer) to spend billions of additional dollars, and shifts substantial administrative costs to the state, inter alia, hiring and training new employees, as well as requiring that new and existing employees devote a considerable portion of their time to implementing the Act.

132. This onerous encroachment occurs at a time when the State of New Jersey is facing a budgetary crisis and deficit as of April 7, 2010 of 10.7 billion dollars. New Jersey is a State in which the citizens (plaintiffs) are subject to the highest property taxes in the nation. The State can neither afford any additional tax burdens or expenses, nor by law withdraw from participating in the Medicaid programs already in existence, as they have become customary and necessary for citizens throughout New Jersey because individual enrollment in respective Medicaid programs, which presently cover millions of residents, can only be accomplished by their continued participation in Medicaid.

133. The Act converts what had been a voluntary federal-state partnership into a compulsory top-down "command and control" federal program in which the discretion of the State is removed, in derogation of the core Constitutional principle of federalism upon which this Nation was founded. This Act in-of-itself violates the contract between the State of New Jersey and the other Sovereign States of these United States that created the general government as specified by the Constitution of these United States. The Act exceeds the vested powers granted by the Constitution, and violates Article 1, Section 8 and Amendments 10 incorporated therein.

134. The Act contains numerous unfunded mandates that will financially burden the taxpayers of the State of New Jersey and the State's ability to operate significantly. The Act includes dumping huge new financial obligations on the State of New Jersey that has yet to balance its budget, nor will able to any time soon. Said costs would amount to billions of dollars of additional debt. Nor does the Act address the expected 2016 insolvency of Medicare that creates an inequity among the citizens of New Jersey for the insurance programs available.

135. New Jersey is in a financial crisis, over-taxed and over-burdened with a collapsing infrastructure that makes it impossible to discharge sufficiently all the mandates necessary to implement this unconstitutional Act. To meet the requirements related to the increased Medicaid enrollment under the Act, and operate the "healthcare insurance exchange" mandated by Act is patently harmful to the citizens of the State of New Jersey.

136. The Act is intentionally evasive, in its language; first the government will make funds available, but only at the discretion of federal agencies, leaving the State at the mercy of a bureaucracy. Therefore (admittedly) acknowledging the immediate burden on the State of New Jersey and Plaintiffs who reside therein to provide for the implementation of the Act, but provides no assurance or guarantees the State will receive funds. Or that the Act's implementation cost will be fully met by the mandates set forth within.

137. Contained in the Act under the *"color of the law"*, this legislation signed into law erases guaranteed protections set forth in the Constitution. Plaintiffs seek declaratory and injunction relief against the Act's operation to preserve their respective sovereignty and solvency to protect the individual freedom, liberty, public health, and welfare of the citizens of the State of New Jersey.

138. WHEREFORE, Plaintiffs respectfully prays that this Honorable Court:

i. Declare the "Patient Protection and Affordable Care Act" to be in violation of the Constitution of these United States of America and specifically Amendment 10 and Article 1, Section 8 of the Constitution of these United States of America;

ii. Declare Defendants to have violated the Plaintiffs rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as aforesaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States from enforcing the Act against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violate

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

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IN CONCLUSION

139. Plaintiffs re-allege, adopt, and incorporate by reference paragraphs 1 through 138 above as though fully set forth herein.

140. Plaintiffs could fill volumes, with the violations and questionable mandates contained in this unconstitutional Act.

141. In truth, the Act fails to provide affordable health care choices. Instead it is a masterpiece of creativity for the most massive transfer of power to the Executive Branch of General Government that has ever occurred, or had even been contemplated in the history of the Republic that creates in excess of 150 new federal bureaucracies.

142. If this Act, or anything similar is adopted, not only the will of the American people will be violated, the Constitution of these United States of America will.

143. While much of the political dialog is dominated by an agenda to *"fundamentally transform"* America, we the Plaintiffs (citizens) of the State of New Jersey are cognizant as should be this Honorable Court of the rhetoric and real motives behind this legislation (Act H.R. 3590) and dismiss this unconstitutional command-and-control government expansion that will effectively shred and destroy the Constitution of these United States forever.

144. Under the provisions of this Act, and its subsequent amendments, neither the people of the State of New Jersey, or the sovereign State of New Jersey itself, will any longer enjoy the rights, privileges and powers that they have possessed since before the founding of these United States of America and which have been never granted to the General Government by the contract represented by Constitution of the United States of America which the sovereign States of the United States of America created and ratified.

145. This attempt by a one party majority of radical ideologues surrounding this legislation surrenders not only our freedoms, state sovereignty, instead nationalizes the economy and condemns future generations to decades of unsustainable debt.

146. Therefore, it is incumbent upon this Honorable Court *"in the interest of substantial justice"* to protect the "limited" government created as static, authoritative, and restrictive "contract" entered into by the signers of the Constitution and ratified by the States. As crafted the Act totally violates the Constitution, without moral or legal authority, by forcing the American people into a "collective society" contrary to a Republic form of government, established by our Founding Fathers. The "Free Healthcare" espoused by the Act, H.R. 3590, is anything but free, it's

government control that steals America's freedom and liberty. Therefore must be deemed "null and void," as unconstitutional.

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DECLARATORY JUDGMENT

(28 U.S.C.)

147. Plaintiffs re-alleges, adopt, and incorporate by reference paragraphs 1 through 146 above as though fully set forth herein.

148. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of the Plaintiffs and their legal relations with the Defendants to warrant relief under 28 U.S.C. 2201.

149. The immediate harm to Plaintiffs as a direct result of the Act is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment clarifying the legal relations of the parties.

150. WHEREFORE, Plaintiffs respectfully prays this Honorable Court grant the following Declaratory Relief:

i. Declare the *"Patient Protection and Affordable Care Act"* to be in violation of Article 1, Sections 2, 7, 8, and 9, Article 2, Section 1, Article 4, Section 2, Article 6, and to include Amendments 4, 5, 9, 10, 13, 14 and 16, violation of Title VII, and in violation of the *"Anti-trust laws"* and *"Posse Comitatus"* Act of these United States;

ii. Declare Defendants to have violated the States rights as sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents, as a foresaid;

iii. Enjoin Defendants and/or any other agency or employee acting on behalf of the United States from enforcing the Act against the State of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering H.R. 3590 "null and void," and,

iv. Award Plaintiff their reasonable fees and costs, and grant such other relief as the Court may deem just and proper.

Respectfully submitted

S/

Nicholas E. Purpura,
Pro se

S/

Donald R Laster Jr,
Pro se

Sworn before me this day __ of September 2010

S/

Public Notary

00102

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

STATE OF FLORIDA, by and through
Bill McCollum, et al.;

Plaintiffs,

v. Case No.: 3:10-cv-91-RV/EMT

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.
_____/

ORDER AND MEMORANDUM OPINION

Now pending is the defendants' motion to dismiss (doc. 55). This motion seeks dismissal of Counts One, Two, Three, and Six of the plaintiffs' amended complaint for lack of subject matter jurisdiction (pursuant to Rule 12(b)(1), Fed. R. Civ. P.), and dismissal of all counts in the amended complaint for failure to state a claim upon which relief can be granted (pursuant to Rule 12(b)(6), Fed. R. Civ. P.). The plaintiffs have filed a response in opposition, and the defendants have filed a reply to that response. A hearing was held in this matter on September 14, 2010.

I. INTRODUCTION

This litigation --- one of many filed throughout the country --- raises a facial Constitutional challenge to the federal healthcare reform law, Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (the "Act"). It has been filed by sixteen state Attorneys General and four state Governors (the "state plaintiffs");[1] two private citizens, Mary Brown

[1] The state plaintiffs represent: Alabama, Alaska, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North and South Dakota, Pennsylvania, South Carolina, Texas, Utah, and Washington.

and Kaj Ahlburg (the "individual plaintiffs"); and the National Federation of Independent Business ("NFIB") (together, the "plaintiffs"). The defendants are the United States Department of Health and Human Services, Department of Treasury, Department of Labor, and their respective secretaries (together, the "defendants").

Before addressing the plaintiffs' allegations, and the arguments in support of the defendants' motion to dismiss, I will take a moment to emphasize preliminarily what this case is, and is not, about.

The Act is a controversial and polarizing law about which reasonable and intelligent people can disagree in good faith. There are some who believe it will expand access to medical treatment, reduce costs, lead to improved care, have a positive effect on the national economy, and reduce the annual federal budgetary deficit, while others expect that it will do exactly the opposite. Some say it was the product of an open and honest process between lawmakers sufficiently acquainted with its myriad provisions, while others contend that it was drafted behind closed doors and pushed through Congress by parliamentary tricks, late night weekend votes, and last minute deals among members of Congress who did not read or otherwise know what was in it. There are some who believe the Act is designed to strengthen the private insurance market and build upon free market principles, and others who believe it will greatly expand the size and reach of the federal government and is intended to create a socialized government healthcare system.

While these competing arguments would make for an interesting debate and discussion, it is not my task or duty to wade into the thicket of conflicting opinion on any of these points of disagreement. For purposes of this case, it matters not whether the Act is wise or unwise, or whether it will positively or negatively impact healthcare and the economy. Nor (except to the limited extent noted in Part III.A(7) infra) am I concerned with the manner in which it was passed into law. My review of the statute is not to question or second guess the wisdom, motives, or methods

of Congress. I am only charged with deciding if the Act is Constitutional. If it is, the legislation must be upheld --- even if it is a bad law. United States v. Butler, 297 U.S. 1, 79, 56 S. Ct. 312, 80 L. Ed. 477 (1936) ("For the removal of unwise laws from the statute books appeal lies, not to the courts, but to the ballot and to the processes of democratic government") (Stone, J., dissenting). Conversely, if it is unconstitutional, the legislation must be struck down --- even if it is a good law. Bailey v. Drexel Furniture Co. (Child Labor Tax Case), 259 U.S. 20, 37, 42 S. Ct. 449, 66 L. Ed. 817 (1922) (reviewing court must strike down unconstitutional law even though that law is "designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards.").

At this stage in the case, however, my job is much simpler and more narrow than that. In ruling on the defendants' motion to dismiss, I must only decide if this court has jurisdiction to consider some of the plaintiffs' claims, and whether each of the counts of the amended complaint states a plausible claim for relief.

II. BACKGROUND

As Congress has recognized: "By most measures, we have the best medical care system in the world." H.R. Rep. No. 111-443, pt. 1. However, at the same time, no one can deny that there are significant and serious problems. Costs are high and millions do not have insurance. Lack of health insurance can preclude the uninsured from accessing preventative care. If and when the uninsured are injured or become ill, they receive treatment, as the defendants acknowledge, because in this country medical care is generally not denied due to lack of insurance coverage or inability to pay. However, the costs that are incurred to treat the uninsured are sometimes left unpaid --- to the tune of $43 billion in 2008 (which is less than 2% of all national healthcare expenditures for that year). The costs of uncompensated

care are passed along to market participants in the form of higher costs and raised premiums, which, in turn, can help perpetuate the cycle (or the "premium spiral," as the defendants call it) and add to the number of uninsured. It was against this backdrop that Congress passed the Act.

A. The Legislative Scheme

At nearly 2,700 pages, the Act is very lengthy and includes many provisions, only a few of which are specifically at issue in this litigation. Chief among them is Section 1501, which, beginning in 2014, will require that all citizens (with stated exceptions) obtain federally-approved health insurance, or pay a monetary penalty (the "individual mandate"). This provision is necessary, according to Congress and the defendants, to lower premiums (by spreading risks across a much larger pool) and to meet "a core objective of the Act," which is to expand insurance coverage to the uninsured by precluding the insurance companies from refusing to cover (or charging exorbitant rates to) people with pre-existing medical conditions. Without the individual mandate and penalty in place, the argument goes, people would simply "game the system" by waiting until they get sick or injured and only then purchase health insurance (that insurers must by law now provide), which would result in increased costs for the insurance companies. This is known as "the moral hazard." The increased costs would ultimately be passed along to consumers in the form of raised premiums, thereby creating market pressures that would (arguably) inevitably drive the health insurance industry into extinction. The plaintiffs allege that regardless of whether the individual mandate is well-meaning and essential to the Act, it is unconstitutional and will have both a "profound and injurious impact" on the states, individuals, and businesses.

The plaintiffs object to several interrelated portions of the Act as well. First, the Act significantly alters and expands the Medicaid program. Created in 1965, Medicaid is a cooperative federal-state program that provides for federal financial assistance (in the form of matching funds) to states that elect to provide medical

care to needy persons. The Act will add millions of new enrollees to the states' Medicaid rolls by expanding the program to include all individuals under the age of 65 with incomes up to 133% of the federal poverty line. Second, the Act provides for creation of "health benefit exchanges" designed to allow individuals and small businesses to leverage their buying power to obtain competitive prices. The Act contemplates that these exchanges will be set up and operated by the states, or by the federal government if the states elect not to do so. And lastly, the Act requires that the states (along with other "large employers") provide their employees with a prescribed minimum level of health insurance coverage (the "employer mandate"). The plaintiffs allege that these several provisions violate the Constitution and state sovereignty by coercing and commandeering the states and depriving them of their "historic flexibility" to run their state government, healthcare, and Medicaid programs. The plaintiffs anticipate that these and various other provisions in the Act will cost Florida (and the other states similarly) billions of dollars between now and the year 2019, not including the administrative costs it will take to implement the Act, and that these costs will only increase in the subsequent years. In short, the plaintiffs contend that the legislation is coercive, intrusive, and could bankrupt the states.[2]

B. This Lawsuit and the Motion to Dismiss

The plaintiffs advance six causes of action in their amended complaint, and they seek declaratory and injunctive relief with respect to each. They contend that the Act violates the Constitution in the following ways: (1) the individual mandate and concomitant penalty exceed Congress's authority under the Commerce Clause

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[2] Not all states feel this way, and there is even a division within a few of the plaintiff states. Three Attorneys General and four Governors previously requested leave to participate in this case as amici curiae, and they have indicated that they favor the changes the Act will bring as they believe the new legislation will save money and reduce their already overburdened state budgets (docs. 57, 59).

and violate the Ninth and Tenth Amendments (Count I); (2) the individual mandate and penalty violate substantive due process under the Fifth Amendment (Count II); (3) "alternatively," if the penalty imposed for failing to comply with the individual mandate is found to be a tax, it is an unconstitutional unapportioned capitation or direct tax in violation of U.S. Const. art. I, § 9, cl. 4, and the Ninth and Tenth Amendments (Count III); (4) the Act coerces and commandeers the states with respect to Medicaid by altering and expanding the program in violation of Article I and the Ninth and Tenth Amendments (Count IV); (5) it coerces and commandeers with respect to the health benefit exchanges in violation of Article I and the Ninth and Tenth Amendments (Count V); and (6) the employer mandate interferes with the states' sovereignty as large employers and in the performance of government functions in violation of Article I and the Ninth and Tenth Amendments (Count VI). See generally Amended Complaint ("Am. Compl.") (doc. 42).

The defendants seek to have the complaint dismissed on numerous grounds; four of the counts for lack of jurisdiction (under Rule 12(b)(1)), and all six of them for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)). With respect to jurisdiction, the defendants contend that for the challenges to the individual mandate and employer mandate (Counts I, II, and VI), the plaintiffs lack standing; the claims are not ripe; and the claims are barred by the Anti-Injunction Act. (By not raising similar arguments for Counts IV and V, the defendants appear to impliedly concede that those counts allege injuries that are immediately ripe for review). As for the plaintiffs' "alternative" cause of action contending that, if the individual mandate penalty is deemed to be a tax, then it is an impermissible and unconstitutional one (Count III), the defendants maintain that, too, is precluded by the Anti-Injunction Act.

If the foregoing jurisdictional challenges fail, the defendants go on to assert that those causes of action, and all others, fail to state a claim for which relief can be granted.

III. DISCUSSION

A. Is the "Penalty" for Non-Compliance with the Individual Mandate Actually a "Tax" for Constitutional Analysis?

A fundamental issue overlaps the defendants' challenges to several of the plaintiffs' claims, and that is whether the individual mandate penalty is a "tax" within Congress's broad taxing power and thus subject to the Anti-Injunction Act, or instead, a "penalty" that must be authorized, if at all, by Congress's narrower Commerce Clause power. Because of the importance of this issue, I will analyze it first and at some length.

The defendants contend that the individual mandate penalty is a tax that is sustainable under Congress's expansive power to tax for the general welfare. U.S. Const. art I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the . . . general Welfare"). The plaintiffs urge that, if it is a tax, it is an unconstitutional one. The defendants maintain that the plaintiffs have no standing to raise the claim at this point in time because of the Anti-Injunction Act.

The Anti-Injunction Act [26 U.S.C. § 7421(a)] provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . . ." The remedy for challenging an improper tax is a post-collection suit for refund. As the Supreme Court has explained:

> The Anti-Injunction Act . . . could scarcely be more explicit --- "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court . . ." The Court has interpreted the principal purpose of this language to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of preenforcement judicial interference, "and to require that the legal right to the disputed sums be determined in a suit for refund." The Court has also identified "a collateral objective of the Act --- protection of the collector from litigation pending a suit for refund."

Bob Jones Univ. v. Simon, 416 U.S. 725, 736-37, 94 S. Ct. 2038, 40 L. Ed. 2d 496 (1974) (citations omitted); accord, e.g., United States v. Clintwood Elkhorn Min. Co., 553 U.S. 1, 10, 128 S. Ct. 1511, 170 L. Ed. 2d 392 (2008) ("[The Anti-Injunction Act] commands that (absent certain exceptions) 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court,'" even if the tax is alleged to be unconstitutional, which means "the taxpayer must succumb to an unconstitutional tax, and seek recourse only after it has been unlawfully exacted"); Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7, 82 S. Ct. 1125, 8 L. Ed. 2d 292 (1962) (explaining that the "manifest purpose" of the Anti-Injunction Act "is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund. In this manner the United States is assured of prompt collection of its lawful revenue."). The Anti-Injunction Act, in short, applies to "truly revenue-raising tax statutes," see Bob Jones Univ., supra, 416 U.S. at 743, and seeks "protection of the revenues" pending a suit for refund. See id. at 737, 740.

Because the individual mandate does not go into effect until 2014, which means the penalty for non-compliance could not be assessed until that time, the Anti-Injunction Act, if it applies, could render much of this case premature and inappropriate as any injunctive or declaratory relief in favor of the plaintiffs could hinder collection of tax revenue. See id. at 732 n.7, 738-39 (where the outcome of a suit seeking injunctive or declaratory relief will prevent assessment and collection of tax revenue, the case "falls within the literal scope and the purposes of the [Anti-Injunction Act]"). Consequently, whether the individual mandate penalty is a tax is an important question that not only implicates jurisdiction (vis-a-vis the Anti-Injunction Act), and is not only the specific basis of one of the plaintiffs' causes of action, but it also goes to the merits of the individual mandate-related challenges of Counts One and Two (that is, whether the penalty can be justified by, and enforced

through, Congress's indisputably broad taxing power), or whether, instead, the penalty must pass Constitutional muster, if at all, under the more limited Commerce Clause authority. As noted, I should, and will, consider this significant issue at the outset.[3]

(1) Revenue-raising vs. regulatory

The plaintiffs contend that the individual mandate penalty is not a "true tax" because, among other things, it will (at most) "generate only 'some revenue,' and then only as an incident to some persons' failure to obey the law." See Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss ("Pl. Mem."), at 19 (doc. 68). In other words, because its primary purpose is regulatory --- and will only raise "little" revenue --- it is not a tax as the term is generally understood. It is true, as held in certain of the early tax cases to which the plaintiffs cite, see, e.g., Lipke v. Lederer, 259 U.S. 557, 42 S. Ct. 549, 66 L. Ed. 1061 (1922); Hill v. Wallace,

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[3] The plaintiffs have briefly suggested that the Anti-Injunction does not apply to this case because their challenge "is to the individual mandate itself" and not the "incidental penalty that accompanies the individual mandate." While it is true that the language of the Anti-Injunction Act only prohibits suits "for the purpose of restraining the assessment or collection of any tax," which would not apply to the individual mandate for every citizen to maintain healthcare coverage, the mandate and penalty clearly work in tandem. If the penalty is a legitimate tax, striking the individual mandate down will necessarily impede assessment and collection of tax revenue. The Anti-Injunction Act is not limited to direct and actual tax assessment or collection; the Eleventh Circuit and other courts have held that the statute also reaches activities that may "eventually" impede the collection of revenue (even if indirectly). See, e.g., Gulden v. United States, 287 Fed. Appx. 813, 815-17 (11th Cir. 2008) (explaining that the Anti-Injunction Act is "interpreted broadly" and "bars not only suits that directly seek to restrain the assessment or collection of taxes, but also suits that seek to restrain . . . activities 'which are intended to or may culminate in the assessment or collection of taxes'") (citation omitted); Judicial Watch Inc. v. Rossotti, 317 F.3d 401, 405 (4th Cir. 2003) ("it is clear that the Anti-Injunction Act extends beyond the mere assessment and collection of taxes to embrace other activities," such as those that may eventually "culminate in the assessment or collection of taxes").

259 U.S. 44, 42 S. Ct. 453, 66 L. Ed. 822 (1922), that the Supreme Court once drew distinctions between regulatory and revenue-raising taxes. However, those holdings had a very short shelf-life. As noted in Bob Jones Univ., supra, which cited to Lipke and Hill for that position, "the Court . . . subsequently abandoned such distinctions." 416 U.S. at 741 n.12; see also id. at 743 (further stating that the cases were "of narrow scope" and "produced a prompt correction in course"). Succeeding case law recognized that "[e]very tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed. But a tax is not any the less a tax because it has a regulatory effect." Sonzinsky v. United States, 300 U.S. 506, 513, 57 S. Ct. 554, 81 L. Ed. 772 (1937); see also id. ("it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax . . . tends to restrict or suppress the thing taxed"). Thus, as the law currently exists, "[i]t is beyond serious question that a tax does not cease to be valid merely because it regulates, discourages, or even definitely deters the activities taxed. The principle applies even though the revenue obtained is obviously negligible, or the revenue purpose of the tax may be secondary." United States v. Sanchez, 340 U.S. 42, 44, 71 S. Ct. 108, 95 L. Ed. 47 (1950); accord United States v. Kahriger, 345 U.S. 22, 27 n.3, 28, 73 S. Ct. 510, 97 L. Ed. 754 (1953) (holding same and sustaining federal gambling tax even though its proponents sought to hinder the activity at issue and "'indulge[d] the hope that the imposition of this type of tax would eliminate that kind of activity'"), overruled on other grounds, Marchetti v. United States, 390 U.S. 39, 88 S. Ct. 697, 19 L. Ed. 2d 889 (1968). The elimination of the "regulatory vs. revenue-raising" test does not necessarily mean, however, that the exaction at issue in this case is a "tax."

(2) The Court's role in ascertaining what Congress intended

In deciding this specific question, I will start from the assumption (only for the analysis of whether it is a tax) that Congress could have used its broad taxing

power to impose the exaction and that, if it had clearly (or even arguably) intended to do so, then the exaction would have been sustainable under its taxing authority. See Kahriger, supra, 345 U.S. at 28, 31 ("As is well known, the constitutional restraints on taxing are few," and courts are generally "without authority to limit the exercise of the taxing power"); see also United States v. Ptasynski, 462 U.S. 74, 103 S. Ct. 2239, 76 L. Ed. 2d 427 (1983) (observing that "Congress's power to tax is virtually without limitation").[4] However, that is not what happened here. Although factually dissimilar, on this point I find instructive the early case of Helwig v. United States, 188 U.S. 605, 23 S. Ct. 427, 47 L. Ed. 614 (1903). At issue in that case was a federal law that required importers to pay a duty on imported items based on their declared value, plus "a further sum" for any item subsequently found to have been inadequately valued. The sole question the Supreme Court was called upon to decide was whether, for jurisdictional purposes, the so-called "further sum" was "revenue from imports or tonnage" (i.e., a tax), or whether it was in the nature of a penalty. The Court stated:

> Although the statute, under § 7, supra, terms the money demanded as 'a further sum,' and does not describe it as a penalty, still the use of those words does not change the nature and character of the enactment. Congress may enact that such a provision shall not be considered as a penalty or in the nature of one, . . . and it is the duty of the court to be governed by such statutory direction, but the intrinsic nature of the provision remains, and, in the absence of any declaration by Congress affecting the manner in which the provision shall be treated, courts must decide the matter in accordance with their views of the nature of the act.

Id. at 612-13 (emphasis added). In concluding that the provision was a penalty, the Court stated that, based on the statutory language and its application to the facts

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[4] But see the discussion with respect to Count Three, Part III.C(4) infra.

of the case, it was "impossible . . . to hold this provision to be other than penal in its nature." Id. at 613. To be clear, it is not necessarily significant for our purposes that Helwig found the "further sum" to be in the nature of a penalty and not a tax; rather, what is significant is what the Supreme Court said along the way to getting there. In reaching its conclusion, the Court made it a point to stress --- as it did in the emphasized portion quoted above --- that regardless of the "ordinary or general meaning of the words" in the statute, and regardless of the "nature and character of the enactment," the exaction would not have been found a penalty if Congress intended otherwise. Thus, "[i]f it clearly appear that it is the will of Congress that the provision shall not be regarded as in the nature of a penalty, the court must be governed by that will." Id. (emphasis added).

As applied to the facts of this case, Helwig can be interpreted as concluding that, regardless of whether the exaction could otherwise qualify as a tax (based on the dictionary definition or "ordinary or general meaning of the word"), it cannot be regarded as one if it "clearly appears" that Congress did not intend it to be. In this case, there are several reasons (perhaps none dispositive alone, but convincing in total) why it is inarguably clear that Congress did not intend for the exaction to be regarded as a tax.[5]

(3) Congress did not call it a tax, despite knowing how to do so

In addition to the Act, there were several healthcare reform bills introduced

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[5] Although it only matters what Congress intended, I note for background purposes that before the Act was passed into law, one of its chief proponents, President Barack Obama, strongly and emphatically denied that the penalty was a tax. When confronted with the dictionary definition of a "tax" during a much-publicized interview widely disseminated by all of the news media, and asked how the penalty did not meet that definition, the President said it was "absolutely not a tax" and, in fact, "[n]obody considers [it] a tax increase." See, e.g., Obama: Requiring Health Insurance is Not a Tax Increase, CNN, Sept. 29, 2009, available at: http://www.cnn.com/2009/POLITICS/09/20/obama.health.care/index.html.

and debated during the 111th Congress. For example, "America's Affordable Health Choices Act of 2009" (H.R. 3200) was introduced in the House of Representatives on July 14, 2009. Like the Act, it contained an individual mandate and concomitant penalty. However, it called the penalty a tax. Section 401 was unambiguously titled "Tax on Individuals Without Acceptable Health Care Coverage," and went on to refer to the exaction as a "tax" no less than fourteen times in that section alone. See, e.g., id. (providing that with respect to "any individual who does not meet the requirements of subsection (d) at any time during the taxable year, there is hereby imposed a tax"). H.R. 3200 was thereafter superseded by a similar bill, "Affordable Health Care for America Act" (H.R. 3962), which was actually passed in the House of Representatives on November 7, 2009. That second House bill also included an individual mandate and penalty, and it repeatedly referred to the penalty as a "tax." See, e.g., Section 501 (providing that for any person who does not comply with the individual mandate "there is hereby imposed a tax," and referring to that "tax" multiple times); Section 307(c)(1)(A) (further referring to the penalty as a "tax[ ] on individuals not obtaining acceptable coverage").

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, this bill contained an individual mandate and accompanying penalty. In the section titled "Excise Tax on Individuals Without Essential Health Benefits Coverage," the penalty was called a "tax." See Section 1301 ("If an applicable individual fails to [obtain required insurance] there is hereby imposed a tax").

In contrast to the foregoing, the Act --- which was the final version of the healthcare legislation later passed by the Senate on December 24, 2009 --- did not call the failure to comply with the individual mandate a tax; it was instead called a "penalty." The Act reads in pertinent part: "If an applicable individual fails to meet

the requirement of subsection (a) . . . there is hereby imposed a penalty." Act § 1501(b)(1). Congress's conspicuous decision to not use the term "tax" in the Act when referring to the exaction (as it had done in at least three earlier incarnations of the legislation) is significant. "'Few principles of statutory construction are more compelling than the proposition that Congress does not intend sub silentio to enact statutory language that it has earlier discarded in favor of other language.'" INS v. Cardoza-Fonseca, 480 U.S. 421, 442, 107 S. Ct. 1207, 94 L. Ed. 2d 434 (1987). Thus, "[w]here Congress includes [certain] language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the [omitted text] was not intended." Russello v. United States, 464 U.S. 16, 23-24, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983); see also United States v. NEC Corp., 931 F.2d 1493, 1502 (11th Cir. 1991) (changes in statutory language "generally indicate[ ] an intent to change the meaning of the statute"); Southern Pac. Transportation Co. v. Usery, 539 F.2d 386, 390-91 (5th Cir. 1976) (rejecting the interpretation of a statute that was based on language in an earlier House version that the Senate changed prior to passing into law, and attaching "weight to the [Senate's] conscious and deliberate substitution of [the House's] language") (binding under Bonner v. City of Prichard, Alabama, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc)).

Congress's failure to call the penalty a "tax" is especially significant in light of the fact that the Act itself imposes a number of taxes in several other sections (see, e.g., Excise Tax on Medical Device Manufacturers, § 1405 ("There is hereby imposed on the sale of any taxable medical device by the manufacturer, producer, or importer a tax"); Excise Tax on High Cost Employer-Sponsored Health Coverage, § 9001 ("there is hereby imposed a tax"); Additional Hospital Insurance Tax on High-Income Taxpayers, § 9015 ("there is hereby imposed a tax"); Excise Tax on Indoor Tanning Services, § 10907 ("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. Therefore, the strong inference and presumption must

be that Congress did not intend for the "penalty" to be a tax. See generally Hodge v. Muscatine County, 196 U.S. 276, 25 S. Ct. 237, 49 L. Ed. 477 (1905) (noting that "[i]t is not easy to draw an exact line of demarcation between a tax and a penalty," but where the statute uses "tax" in one section and "penalty" in another, courts "cannot go far afield" in treating the exaction as it is called; to do otherwise "would be a distortion of the words employed"); see also Duncan v. Walker, 533 U.S. 167, 173, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2001) ("It is well settled that '[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'") (citations omitted); Freemanville Water Sys., Inc. v. Poarch Band of Creek Indians, 563 F.3d 1205, 1209 (11th Cir. 2009) ("[W]here Congress knows how to say something but chooses not to, its silence is controlling"); DIRECTV, Inc. v. Brown, 371 F.3d 814, 818 (11th Cir. 2004) ("[W]hen Congress uses different language in similar sections, it intends different meanings.").

The defendants assert in their memorandum, see Memorandum in Support of Defendants' Motion to Dismiss ("Def. Mem."), at 33, 50 n.23 (doc. 56-1), as they did during oral argument, that in deciding whether the exaction is a penalty or tax, "it doesn't matter" what Congress called it because the label "is not conclusive." See Transcript of Oral Argument ("Tr."), at 27-29 (doc. 77). As a general rule, it is true that the label used is not controlling or dispositive because Congress, at times, may be unclear and use inartful or ambiguous language. Therefore, as the Supreme Court recognized more than 100 years ago in Helwig, supra, the use of a particular word "does not change the nature and character of the [exaction]," and it is the ultimate duty of the court to decide the issue based on "the intrinsic nature of the provision" irrespective of what it is called. See 188 U.S. at 612-13; accord Cooley v. Bd. of Wardens, 53 U.S. (12 How.) 299, 314, 13 L. Ed. 996 (1851) ("it is the thing, and not the name, which is to be considered"). However, as also noted in

Helwig, this rule must be set aside when it is clear and manifest that Congress intended the exaction to be regarded as one and not the other. For that reason, the defendants are wrong to contend that what Congress called it "doesn't matter." To the extent that the label used is not just a label, but is actually indicative of legislative purpose and intent, it very much does matter. By deliberately changing the characterization of the exaction from a "tax" to a "penalty," but at the same time including many other "taxes" in the Act, it is manifestly clear that Congress intended it to be a penalty and not a tax.[6]

Quoting the Third Circuit in Penn Mut. Indem. Co. v. C.I.R, 277 F.2d 16, 20 (3d Cir. 1960), the defendants maintain that "'Congress has the power to impose taxes generally, and if the particular imposition does not run afoul of any constitutional restrictions then the tax is lawful, call it what you will.'" Def. Mem. at 50 n.23. I do not necessarily disagree with this position, at least not when it is quite clear that Congress intends to impose a tax and is acting pursuant to its taxing power. However, as will be discussed in the next section, that is not the situation here. In the Penn Mutual Indemnity case, for example, it was clear and undisputed that Congress had exercised its taxing authority to impose the exaction; it was inarguably a "tax," and the only question was whether it was an excise tax, an income tax, or some other type of tax. It was in that particular context that the Third Circuit's analysis included the quoted statement, and further elaborated that: "It is not necessary to uphold the validity of the tax imposed by the United States

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[6] A hypothetical helps to further illustrate this point. Suppose that after the Act imposed the penalty it went on to expressly state: "This penalty is not a tax." According to the logic of the defendants' argument, if the intrinsic nature of the penalty was a tax, it could still be regarded as one despite what it was called and despite the clear and unmistakable Congressional intent to the contrary. Such an outcome would be absurd. In my view, changing the word from tax to penalty, but at the same time including various other true (and accurately characterized) taxes in the Act, is the equivalent of Congress saying "This penalty is not a tax."

that the tax itself bear an accurate label." See 277 F.2d at 20. That is obviously a very different situation from the one presented here, where the precise label of an acknowledged tax is not being disputed, but rather whether it is even a tax at all.

(4) Congress did not state that it was acting under its taxing authority, and, in fact, it treated the penalty differently than traditional taxes

Congress did not state in the Act that it was exercising its taxing authority to impose the individual mandate and penalty; instead, it relied exclusively on its power under the Commerce Clause. U.S. Const. art I, § 8, cl. 3 ("[Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"). The Act recites numerous (and detailed) factual findings to show that the individual mandate regulates commercial activity important to the economy. Specifically, it states that: "The [individual mandate] is commercial and economic in nature, and substantially affects interstate commerce" in that, inter alia, "[h]ealth insurance and health care services are a significant part of the national economy" and the mandate "will add millions of new consumers to the health insurance market, increasing the supply of, and demand for, health care services." Act § 1501(a)(1)-(2)(B)(C). It further states that health insurance "is in interstate commerce," and the individual mandate is "essential to creating effective health insurance markets." Id. § 1501(a)(2)(F), (H). The Act contains no indication that Congress was exercising its taxing authority or that it meant for the penalty to be regarded as a tax. Although the penalty is to be placed in the Internal Revenue Code under the heading "Miscellaneous Excise Taxes," the plain language of the Code itself states that this does not give rise to any inference or presumption that it was intended to be a tax. See United States v. Reorganized CF&I Fabricators of Utah, Inc., 518 U.S. 213, 222-23, 116 S. Ct. 2106, 135 L. Ed. 2d 506 (1996) (citing to 26 U.S.C. § 7806(b), which provides that: "No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title").

In fact, while the penalty is placed under the "Excise Taxes" heading of the Code, at the same time Congress specifically exempted and divorced the penalty from all the traditional enforcement and collection methods used by the Internal Revenue Service, such as tax liens, levies, and criminal proceedings. See Act § 1501(b). These exemptions from normal tax attributes --- coupled with Congress's failure to identify its taxing authority --- belie the claim that, simply because it is mentioned in the Internal Revenue Code, the penalty must be a tax.[7]

(5) Lack of statutorily-identified revenue-generating purpose

Perhaps most significantly, the Act does not mention any revenue-generating purpose that is to be served by the individual mandate penalty, even though such a purpose is required. See Rosenberger v. Rector and Visitors of Univ. of Virginia, 515 U.S. 819, 841, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995) ("'A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government'"). In this circuit, the ultimate test of tax validity "is whether on its face the tax operates as a revenue generating measure and the attendant regulations are in aid of a revenue purpose." United

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[7] In highlighting that Congress did not identify its taxing power as the basis for imposing the "penalty," I am not suggesting that legislative action is invalid if a power source is not identified. To the contrary, I recognize that "Congress's failure to cite [a particular power] does not eliminate the possibility that [said power] can sustain this legislation." United States v. Moghadam, 175 F.3d 1269, 1275 n.10 (11th Cir. 1999); see also Wilson-Jones v. Caviness, 99 F.3d 203, 208 (6th Cir. 1996) ("A source of power [can] justify an act of Congress even if Congress did not state that it rested the act on the particular source of power.") (citing cases, including Woods v. Cloyd W. Miller Co., 333 U.S. 138, 144, 68 S. Ct. 421, 92 L. Ed. 596 (1948) ("The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.")). Thus, to be clear, I am not saying that the penalty is invalid as a tax because Congress did not expressly identify its taxing power. Rather, its failure to do so (particularly when it took time to extensively identify its Commerce Clause power), is merely one of several facts that shows Congress was not exercising its taxing authority and did not intend for the penalty to be regarded as a tax.

States v. Ross, 458 F.2d 1144, 1145 (5th Cir. 1972) (emphasis added) (binding under Bonner, supra, 661 F.2d at 1207).

The revenue-generating provisions in the Act were an important part of the legislation as they were necessary under current Congressional procedure to score its final cost. To be sure, much of the debate within and outside Congress focused on the bill's final price tag and whether it would exceed the threshold of $1 trillion over the course of the first ten years; and while the legislation was being debated, Congress worked closely and often with the Congressional Budget Office ("CBO") to ensure that it did not. Obviously, if the penalty had been intended by Congress to be a true revenue-generating tax (that could be used to keep the Act's final cost down) then it would have been treated as a tax "on its face." During oral argument, defense counsel stated that "[t]he purpose of the [penalty] is . . . to raise revenue to offset expenditures of the federal government that it makes in connection, for example, with the Medicaid expansion." See Tr. at 9. However, there is absolutely no support for that statement in the statute itself.

On its face, the Act lists seventeen "Revenue Offset Provisions" (including the several taxes described supra), and, as reconciled, it further includes a section entitled "Provisions Relating to Revenue" (which also references those taxes and other revenue offsetting provisions). However, the individual mandate penalty is not listed anywhere among them. Nowhere in the statute is the penalty provision identified or even mentioned as raising revenue and offsetting the Act's costs. It is especially noteworthy that the Act does not identify revenue to be generated from the penalty (which the defendants now maintain would raise about $4 billion each year), but the statute identifies the tanning salon tax as revenue-raising (even though that tax is expected to raise a significantly smaller $300 million annually). See Joint Committee on Taxation, Estimated Revenue Effects of the Manager's Amendment to the Revenue Provisions Contained in the "Patient Protection and Affordable Care Act," as Passed by the Senate on December 24, 2009 (JCX-10-

10), March 11, 2010, at 2. If Congress had intended and understood the penalty to be a tax that would raise revenue for the government, which could in turn be used to partially finance the Act's budgetary effect and help keep its ten-year cost below the $1 trillion threshold by offsetting its expenditures, it makes little sense that Congress would ignore a "tax" that could be expected to raise almost $20 billion in revenue between the years 2015-2019, yet mention another tax that was expected to raise less than one-tenth of that revenue annually during the same time period.

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). The plaintiffs highlight the fact that the report "consistently" refers to the penalty as a penalty and not a tax, see Pl. Mem. at 19 (as compared, for example, with the tanning salon tax that is consistently referred to as a "tax" in that same report, see JCT, Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as amended, in Combination with the "Patient Protection and Affordable Care Act" (JCX-18-10), March 21, 2010, at 108). The defendants, on the other hand, highlight the fact that the JCT referred to the penalty as an "excise tax" in a single heading in that report. See Def. Mem. at 51.

As the Supreme Court has repeatedly held, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 568, 125 S. Ct. 2611, 162 L. Ed. 2d 502 (2005) (emphasis added). On the facts

of this case, "penalty" is not an ambiguous term, but rather was a carefully and intentionally selected word that has a specific meaning and carries a particular import (discussed infra). Moreover, even if the term was ambiguous, the Supreme Court has pointed out two "serious criticisms" of attempting to rely on legislative history:

> Not all extrinsic materials are reliable sources of insight into legislative understandings . . ., and legislative history in particular is vulnerable to two serious criticisms. First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in "'looking over a crowd and picking out your friends.'" See Wald, Some Observations on the Use of Legislative History in the 1981 Supreme Court Term, 68 Iowa L. Rev. 195, 214 (1983). Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members --- or, worse yet, unelected staffers and lobbyists --- both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text. Id.

In this case, both criticisms are directly on the mark. The report is ambiguous and contradictory, as evidenced by the simple fact that both sides claim it supports their position. Should I look to the heading (that calls the exaction an "excise tax"), or should I look to the actual body of the report (that calls it a penalty no less than twenty times with no mention of it being a tax)? It is, as Judge Leventhal said, like "looking over a crowd and picking out your friends." Further, a strong argument could be (and has been) made that the staffers who drafted the report were merely engaging in last minute "strategic manipulation" to secure results they were unable to achieve through the Act itself. See, e.g., The Insurance Mandate in Peril, Wall St. J., Apr. 29, 2010, at A19 (opining that the "excise tax" heading in the JCT

report should not be used to convert the penalty into a tax because the Supreme Court "will not allow staffers and lawyers to change the statutory cards that Congress already dealt when it adopted the Senate language"). For these reasons, as recognized by the Supreme Court, resort to, or reliance upon, the JCT staff's Technical Explanation would be inappropriate on the facts of this case --- even if the term "penalty" was ambiguous (which it is not).

To summarize the foregoing, it "clearly appears" from the statute itself, see Helwig, supra, 188 U.S. 613, that Congress did not intend to impose a tax when it imposed the penalty. To hold otherwise would require me to look beyond the plain words of the statute. I would have to ignore that Congress:

(i) specifically changed the term in previous incarnations of the statute from "tax" to "penalty;"

(ii) used the term "tax" in describing the several other exactions provided for in the Act;

(iii) specifically relied on and identified its Commerce Clause power and not its taxing power;

(iv) eliminated traditional IRS enforcement methods for the failure to pay the "tax;" and

(v) failed to identify in the legislation any revenue that would be raised from it, notwithstanding that at least seventeen other revenue-generating provisions were specifically so identified.

The defendants have not pointed to any reported case decided by any court of record that has ever found and sustained a tax in a situation such as the one presented here, and my independent research has also revealed none. At bottom, the defendants are asking that I divine hidden and unstated intentions, and despite considerable evidence to the contrary, conclude that Congress really meant to say one thing when it expressly said something else. The Supreme Court confronted the inverse of this situation in Sonzinsky, supra, and I believe the rationale of that

case forecloses the defendants' argument.

The issue in Sonzinsky was whether a levy on the sale of firearms was a tax. The exaction was called a tax on its face, and it was undisputed that it had been passed pursuant to Congress's taxing power. Nonetheless, the petitioner sought to invalidate the tax because it was "prohibitive in effect and [disclosed] unmistakably the legislative purpose to regulate rather than to tax." The petitioner argued that it was not "a true tax, but a penalty." In rejecting this argument, the Supreme Court explained:

> Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power.

Stated somewhat differently, reviewing courts cannot look beyond a statute and inquire as to whether Congress meant something different than what it said. If an exaction says "tax" on its face and was imposed pursuant to Congress's taxing power, courts "are not free to speculate as to the motives which moved Congress to impose it, or as to the extent to which it may [be a penalty intended] to restrict the activities taxed." See generally Sonzinsky, supra, 300 U.S. at 511-14; accord Kahriger, supra, 345 U.S. at 22 (similarly declining invitation to hold that "under the pretense of exercising" a particular power, Congress was, in fact, exercising another power).

The holding of Sonzinsky cuts both ways, and applying that holding to the facts here, I have no choice but to find that the penalty is not a tax. Because it is called a penalty on its face (and because Congress knew how to say "tax" when it intended to, and for all the other reasons noted), it would be improper to inquire as to whether Congress really meant to impose a tax. I will not assume that Congress had an unstated design to act pursuant to its taxing authority, nor will I impute a

revenue-generating purpose to the penalty when Congress specifically chose not to provide one. It is "beyond the competency" of this court to question and ascertain whether Congress really meant to do and say something other than what it did. As the Supreme Court held by necessary implication, this court cannot "undertake, by collateral inquiry as to the measure of the [revenue-raising] effect of a [penalty], to ascribe to Congress an attempt, under the guise of [the Commerce Clause], to exercise another power." See Sonzinsky, supra, 300 U.S. at 514. This conclusion is further justified in this case since President Obama, who signed the bill into law, has "absolutely" rejected the argument that the penalty is a tax. See supra note 5.

To conclude, as I do, that Congress imposed a penalty and not a tax is not merely formalistic hair-splitting. There are clear, important, and well-established differences between the two. See Dep't of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 779-80, 114 S. Ct. 1937, 128 L. Ed. 2d 767 (1994) ("Whereas [penalties] are readily characterized as sanctions, taxes are typically different because they are usually motivated by revenue-raising, rather than punitive, purposes."); Reorganized CF&I Fabricators of Utah, Inc., supra, 518 U.S. at 224 ("'a tax is a pecuniary burden laid upon individuals or property for the purpose of supporting the Government,'" whereas, "if the concept of penalty means anything, it means punishment for an unlawful act or omission"); United States v. La Franca, 282 U.S. 568, 572, 51 S. Ct. 278, 75 L. Ed. 551 (1931) ("A 'tax' is an enforced contribution to provide for the support of government; a 'penalty,' as the word is here used, is an exaction imposed by statute as punishment for an unlawful act.'"). Thus, as the Supreme Court has said, "[t]he two words are not interchangeable one for the other . . . ; and if an exaction be clearly a penalty it cannot be converted into a tax by the simple expedient of calling it such." La Franca, supra, 282 U.S. at 572.

(6) Does the Anti-Injunction Act apply anyway?

The defendants insist that the Anti-Injunction Act should still preclude the

individual mandate challenges even if the penalty is not a tax. For this argument, the defendants rely on Title 26, United States Code, Section 6671, which states that the "penalties" provided under subchapter B of chapter 68 of the IRS Code (a classification that includes the individual mandate penalty) "shall be assessed and collected in the same manner as taxes." If the penalty is intended to be assessed and collected in the same manner as a tax, the defendants contend, then the Anti-Injunction Act should apply. I do not agree. First of all, the penalty is obviously not to be collected and treated "in the same manner as taxes" in light of the fact that Congress specifically divorced the penalty from the tax code's traditional collection and enforcement mechanisms. Further, and more significantly, as noted supra, the whole point of the Anti-Injunction Act is to protect the government in the collection of its lawful tax revenues, and thus it applies to "truly revenue-raising tax statutes," which Congress plainly did not understand and intend the penalty to be. The Eleventh Circuit has recognized (albeit by implication) that the Anti-Injunction Act does not reach penalties that are, as here, "imposed for substantive violations of laws not directly related to the tax code" and which are not good-faith efforts to enforce the technical requirements of the tax law. Cf. Mobile Republican Assembly v. United States, 353 F.3d 1357, 1362 n.5 (11th Cir. 2003). The defendants have cited two out-of-circuit cases in support of their contention that Section 6671(a) requires penalties to be treated the same as taxes for Anti-Injunction Act purposes, Barr v. United States, 736 F.2d 1134 (7th Cir. 1984); Warren v. United States, 874 F.2d 280 (5th Cir. 1989). Although those cases did indeed hold that the penalties at issue fell under the Anti-Injunction Act, they do not really support the defendants' position. As the plaintiffs note, the penalties in both those cases were imposed for failing to pay an undisputed tax, that is, falsely claiming an exemption in Barr, and refusing to sign a tax return in Warren. In other words, the penalties were "directly related to the tax code." Cf. Mobile Republican Assembly, supra, 353 F.3d at 1362 n.5. Allowing IRS penalties such as those to qualify as a tax for Anti-Injunction Act

purposes "is simply a means for ensuring that the [underlying] tax is paid." See Botta v. Scanlon, 314 F.2d 392, 393 (2d Cir. 1963). That is not the situation here. It would be inappropriate to give tax treatment under the Anti-Injunction Act to a civil penalty that, by its own terms, is not a tax; is not to be enforced as a tax; and does not bear any meaningful relationship to the revenue-generating purpose of the tax code. Merely placing a penalty (which virtually all federal statutes have) in the IRS Code, even though it otherwise bears no meaningful relationship thereto, is not enough to render the Anti-Injunction Act (which only applies to true revenue-raising exactions) applicable to this case.

(7) Accountability

I will say one final thing on the tax issue, which, although I believe it to be important, is not essential to my decision. For purposes of this discussion, I will assume that the defendants are correct and that the penalty is (and was always intended to be) a tax.

In Virginia v. Sebelius, 3:10cv188, one of the twenty or so other lawsuits challenging the Act, the federal government's lead counsel (who is lead defense counsel in this litigation, as well) urged during oral argument in that case that the penalty is proper and sustainable under the taxing power. Although that power is broad and does not easily lend itself to judicial review, counsel stated, "there is a check. It's called Congress. And taxes are scrutinized. And the reason we don't have all sorts of crazy taxes is because taxes are among the most scrutinized things we have. And the elected representatives in Congress are held accountable for taxes that they impose." See Transcript of Oral Argument (Virginia case), at 45 (emphasis added).

This foregoing statement highlights one of the more troubling aspects of the

defendants' "newfound"[8] tax argument. As noted at the outset of this order, and as anyone who paid attention to the healthcare reform debate already knew, the Act was very controversial at the time of passage. Irrespective of the merits of the arguments for or against it, the legislation required lawmakers in favor of the bill to cast politically difficult and tough votes. As it turned out, the voting was extremely close. Because by far the most publicized and controversial part of the Act was the individual mandate and penalty, it would no doubt have been even more difficult to pass the penalty as a tax. Not only are taxes always unpopular, but to do so at that time would have arguably violated pledges by politicians (including the President) to not raise taxes, which could have made it that much more difficult to secure the necessary votes for passage. One could reasonably infer that Congress proceeded as it did specifically because it did not want the penalty to be "scrutinized" as a $4 billion annual tax increase, and it did not want at that time to be "held accountable for taxes that they imposed." In other words, to the extent that the defendants are correct and the penalty was intended to be a tax, it seems likely that the members of Congress merely called it a penalty and did not describe it as revenue-generating to try and insulate themselves from the potential electoral ramifications of their votes.

Regardless of whether the members of Congress had this specific motivation and intent (which, once again, is not my place to say), it is obvious that Congress did not pass the penalty, in the version of the legislation that is now "the Act," as a tax under its taxing authority, but rather as a penalty pursuant to its Commerce

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[8] See, e.g., Changing Stance, Administration Now Defends Insurance Mandate as a Tax, N.Y. Times, July 17, 2010, at A14 ("When Congress required most Americans to obtain health insurance or pay a penalty, Democrats denied that they were creating a new tax. But in court, the Obama administration and its allies now defend the requirement as an exercise of the government's 'power to lay and collect taxes.'").

Clause power. Those two exactions, as previously noted, are not interchangeable. And, now that it has passed into law on that basis, government attorneys have come into this court and argued that it was a tax after all. This rather significant shift in position, if permitted, could have the consequence of allowing Congress to avoid the very same accountability that was identified by the government's counsel in the Virginia case as a check on Congress's broad taxing power in the first place. In other words, the members of Congress would have reaped a political advantage by calling and treating it as a penalty while the Act was being debated, see Virginia v. Sebelius, 702 F. Supp. 2d 598, 612 (E.D. Va. 2010) (referring to "preenactment representations by the Executive and Legislative branches" that the penalty was not "a product of the government's power to tax for the general welfare"), and then reap a legal advantage by calling it a tax in court once it passed into law. See Def. Mem. at 33-34, 49 (arguing that the Anti-Injunction Act bars any challenge to the penalty which, in any event, falls under Congress's "very extensive" authority to tax for the general welfare). This should not be allowed, and I am not aware of any reported case where it ever has been.

Congress should not be permitted to secure and cast politically difficult votes on controversial legislation by deliberately calling something one thing, after which the defenders of that legislation take an "Alice-in-Wonderland" tack[9] and argue in court that Congress really meant something else entirely, thereby circumventing the safeguard that exists to keep their broad power in check. If Congress intended for

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[9] Lewis, Carroll, Through the Looking-Glass, Chapter 6 (Heritage 1969):

> "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean --- neither more or less."
>
> "The question is," said Alice, "whether you can make words mean so many different things."

the penalty to be a tax, it should go back and make that intent clear (for example, by calling it a tax, relying on Congress's Constitutional taxing power, allowing it to be collected and enforced as a tax, or identifying revenue to be raised) so it can be "scrutinized" as a tax and Congress can accordingly be held accountable. They cannot, however, use a different linguistic with a perhaps secret understanding between themselves that the word, in fact, means something else entirely. As the First Circuit has explained, the integrity of the process must be guaranteed by the judiciary:

> In our republican form of government, legislators make laws by writing statutes --- an exercise that requires putting words on paper in a way that conveys a reasonably definite meaning. Once Congress has spoken, it is bound by what it has plainly said, notwithstanding the nods and winks that may have been exchanged. . . . And the judiciary must stand as the ultimate guarantor of the integrity of an enacted statute's text.

State of Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 699-70 (1st Cir. 1994).

(8) For Constitutional purposes, it is a penalty, and must be analyzed under Congress's Commerce Clause power

For all the above reasons, I conclude that the individual mandate penalty is not a "tax." It is (as the Act itself says) a penalty. The defendants may not rely on Congress's taxing authority under the General Welfare Clause to try and justify the penalty after-the-fact. If it is to be sustained, it must be sustained as a penalty imposed in aid of an enumerated power, to wit, the Commerce Clause power. See Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 393, 60 S. Ct. 907, 84 L. Ed. 1263 (1940) ("Congress may impose penalties in aid of the exercise of any of its enumerated powers"). Therefore, the Anti-Injunction Act does not deprive this court of jurisdiction. See Lipke, supra, 259 U.S. at 562 ("The collector demanded payment of a penalty, and [thus the Anti-Injunction Act], which prohibits suits to

restrain assessment or collection of any tax, is without application."). I will next consider the rest of the defendants' jurisdictional challenges.

B. Rule 12(b)(1) ("Lack of Subject Matter Jurisdiction") Challenges

The defendants raise two additional jurisdictional arguments: first, that the individual plaintiffs and the NFIB do not have standing to pursue Counts One and Two, and the state plaintiffs do not have standing with respect to Count Six; and second, that those same causes of action are not ripe.

(1) Standing

The Constitution limits the subject matter of the federal courts to "cases" and "controversies." U.S. Const. art III, § 2. "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The "irreducible constitutional minimum of standing" contains three elements: "(1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." Granite State Outdoor Advertising Inc. v. City of Clearwater, 351 F.3d 1112, 1116 (11th Cir. 2003). The defendants appear to concede that (2) and (3) are present in this litigation, but contend that the plaintiffs cannot establish an injury-in-fact. Accordingly, only element (1) is at issue here.

For purposes of ruling on the defendants' motion to dismiss, I simply need to examine the plaintiffs' factual allegations:

> At the pleading stage, general factual allegations of injury resulting from defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim."

Lujan, supra, 504 U.S. at 561 (quoting Lujan v. Nat'l Wildlife Federation, 497 U.S. 871, 889, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990)). Thus, "mere allegations of

injury" are sufficient to withstand a motion to dismiss based on lack of standing. Dep't of Commerce v. U.S. House of Representatives, 525 U.S. 316, 329, 119 S. Ct. 765, 142 L. Ed. 2d 797 (1999); accord Miccosukee Tribe of Indians of Florida v. Southern Everglades Restoration Alliance, 304 F.3d 1076, 1081 (11th Cir. 2002) (noting "at the motion to dismiss stage [the plaintiff] is only required to generally allege a redressable injury caused by the actions of [the defendant] about which it complains").

The individual plaintiffs make numerous allegations in the amended complaint that are relevant to the standing issue. According to those allegations, Mary Brown is a small business owner and current member of the NFIB. She has not had health insurance for the last four years. She devotes her available resources to maintaining her business and paying her employees. She does not currently qualify for Medicaid or Medicare, and she does not expect to qualify for those programs prior to the individual mandate taking effect. Thus, "Ms. Brown will be subject to the mandate and objects to being forced to comply with it" because, inter alia, it will force her (and other NFIB members) "to divert resources from their business endeavors" and "reorder their economic circumstances" to obtain qualifying coverage. Similarly, Kaj Ahlburg has not had health insurance for more than six years; he has no intention or desire to get health insurance; he does not qualify for Medicaid or Medicare and will thus be subject to the individual mandate and penalty; and he is, and expects to remain, financially able to pay for his own healthcare services if and as needed. The individual plaintiffs object to the Act's "unconstitutional overreaching" and claim injury because the individual mandate will force them to spend their money to buy something they do not want or need (or be penalized). See Am. Compl. ¶¶ 27-28, 62. The defendants make several arguments why these claims are insufficient to establish an injury-in-fact.

First, quoting Lujan, supra, the defendants contend that "[a] plaintiff alleging 'only an injury at some indefinite future time' has not shown injury in fact." Def.

Mem. at 26. While that statement is certainly true, the injury alleged in this case will not occur at "some indefinite future time." Instead, the date is definitively fixed in the Act and will occur in 2014, when the individual mandate goes into effect and the individual plaintiffs are forced to buy insurance or pay the penalty. See ACLU of Florida, Inc. v. Miami-Dade County School Bd., 557 F.3d 1177, 1194 (11th Cir. 2009) (standing shown in pre-enforcement challenge where the claimed injury was "pegged to a sufficiently fixed period of time"). Because time is the primary factor here, this case presents a durational issue, and not a contingency issue. "A plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement. But, 'one does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough.'" Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979) (citations and brackets omitted). The defendants contend that the forty-months gap between now and 2014 is "too far off" and not immediate enough to confer standing. However, as the Eleventh Circuit has expressly held:

> [P]laintiffs here have alleged when and in what manner the alleged injuries are likely going to occur. Immediacy requires only that the anticipated injury occur with some fixed period of time in the future, not that it happen in the colloquial sense of soon or precisely within a certain number of days, weeks, or months.

Fla. State Conf. of the NAACP v. Browning, 522 F.3d 1153, 1161 (11th Cir. 2008) (citing Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995)); accord 520 Michigan Ave. Associates, Ltd. v. Devine, 433 F.3d 961, 962 (7th Cir. 2006) ("Standing depends on the probability of harm, not its temporal proximity. When injury . . . is likely in the future, the fact that [the complained of harm] may be deferred does not prevent federal litigation now.").

The defendants concede that an injury does not have to occur immediately

to qualify as an injury-in-fact, but they argue that forty months "is far longer than typically allowed." Def. Mem. at 27. It is true that forty months is longer than the time period at issue in the particular cases the defendants cite. See, e.g., ACLU, supra, 557 F.3d at 1194 (harm was six weeks away); Nat'l Parks Conservation Ass'n v. Norton, 324 F.3d 1229, 1242 (11th Cir. 2003) (harm was between one week to one month away). But, the fact that the harm was closer in those cases does not necessarily mean that forty months is ipso facto "too far off." In Village of Bensenville v. FAA, 376 F.3d 1114 (D.C. Cir. 2004), for example, the plaintiffs challenged a passenger fee at Chicago's O'Hare International Airport that was not scheduled to be imposed until thirteen years in the future. The District 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 afford constitutional standing'" because the decision to impose the fee was "final and, absent action by us, come 2017 Chicago will begin collecting [it]." See id. at 1119 (citations omitted). That is the same situation at issue here. Imposition of the individual mandate and penalty, like the fee in Village of Bensenville, is definitively fixed in time and impending. And absent action by this court, starting in 2014, the federal government will begin enforcing it.

The defendants suggest that the individual plaintiffs may not have to be forced to comply with the individual mandate in 2014. They contend that the individual plaintiffs "cannot reliably predict that insurance will be an economic burden" to them when the individual mandate is in place because, once the Act "mak[es] health insurance more affordable," they may decide to voluntarily buy insurance on their own. Def. Mem. at 26. This argument appears to presuppose that the individual plaintiffs object to the individual mandate solely on the grounds that it will be an "economic burden" to them, and that they do not currently have insurance because they cannot afford it. That does not appear to be the case. Ms. Brown alleges in the amended complaint that she devotes her resources to running

and maintaining her business and paying her employees; she does not allege that she has no money left over after doing so or that she is otherwise unable to buy insurance if she wanted it. Rather, she has apparently just made the decision that she would prefer to direct and divert her resources elsewhere because obtaining insurance, in her particular situation, is not "a worthwhile cost of doing business." See Am. Comp. ¶¶ 27, 62. Further, Mr. Ahlburg has affirmatively stated that he is financially able to pay for all of his own healthcare-related services. Thus, both he and Ms. Brown do not want to be forced to spend their money (whether they have a little or a lot) on something they do not want (or feel that they need), and, in this respect, they object to the individual mandate as "unconstitutional overreaching." See Am. Comp. at ¶¶ 27, 28.[10]

Continuing this argument, the defendants further contend that there is too much "uncertainty" surrounding the individual plaintiffs' allegations. They allege, for example, that while Ms. Brown may not want to purchase healthcare insurance now (because she would rather devote her resources to her business), and although Mr. Ahlburg does not need insurance now (because he is financially able to pay for his own healthcare out-of-pocket and as needed), the "vagaries" of life could alter their situations by 2014. Def Mem. at 26. The defendants suggest that because "businesses fail, incomes fall, and disabilities occur," by the time the individual mandate is in effect, the individual plaintiffs "could find that they need insurance, or that it is the most sensible choice." See id. That is possible, of course. It is also

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[10] And in any event, the defendants' argument seems to assume that the Act will, in fact, reduce premiums so that insurance is "more affordable." That claim is both self-serving and far from undisputed. Indeed, most objective analyses indicate an insurance premium increase, and the CBO itself has predicted that premiums will rise 10-13% under the Act, at least with respect to individuals with certain policies who do not qualify for government subsidies. See Congressional Budget Office, An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act, November 30, 2009.

"possible" that by 2014 either or both the plaintiffs will no longer be alive, or may at that time fall within one of the "exempt" categories. Such "vagaries" of life are always present, in almost every case that involves a pre-enforcement challenge. If the defendants' position were correct, then courts would essentially never be able to engage in pre-enforcement review. Indeed, it is easy to conjure up hypothetical events that could occur to moot a case or deprive any plaintiff of standing in the future. In Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 2d 1070 (1925), for example, a private school sought and obtained review of a law that required children to attend public schools, even though that law was not to take effect for more than two years. Under the defendants' position, there was no standing to consider the case because --- since "businesses fail" --- it was possible that the school may have closed down by the time the law finally went into effect. However, 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 challenge because the complained of injury "was present and very real, not a mere possibility in the remote future," and because the "[p]revention of impending injury by unlawful action is a well-recognized function of courts of equity." Id. at 536.

In short, 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," see Babbitt, supra, 442 U.S. at 298, that is reasonably "pegged to a sufficiently fixed period of time," see ACLU, supra, 557 F.3d at 1194, and which is not "merely hypothetical or conjectural," see NAACP, supra, 522 F.3d at 1161. Based on the allegations in the amended complaint, I am satisfied that the individual plaintiffs have done so. Accordingly, they have standing to pursue Counts One and Two.

The defendants next contend that the state plaintiffs do not have standing to pursue the employer mandate being challenged in Count Six. They devote less than one paragraph to this argument, see Def. Mem. at 21, and I can be equally brief in addressing it. For this count, the state plaintiffs contend that in their capacities as "large employers," they will have to offer and enroll state employees in federally-approved health plans, which they currently do not do. They claim, for example, that under existing Florida law, thousands of OPS (Other Personnel Services) employees are excluded from that state's healthcare plan, but under the Act the employees will have to be enrolled in an approved health plan, which will cost the state money if they do, and will cost the state money (in the form of penalties) if they do not. I am satisfied that this qualifies as an injury-in-fact, for essentially the same reasons discussed with respect to the individual mandate --- to wit, the state plaintiffs have established a realistic (and not hypothetical or conjectural) danger of sustaining a redressable injury at a sufficiently fixed point in time as a result of the Act's operation or enforcement.

The individual plaintiffs thus have standing to pursue Counts One and Two, and the state plaintiffs have standing to pursue Count Six. Because those are the only causes of action for which the defendants have challenged standing, this eliminates any need to discuss whether the NFIB also has standing. See Watt v. Energy Action Educational Foundation, 454 U.S. 151, 160, 102 S. Ct. 205, 70 L. Ed. 2d 309 (1981) ("Because we find California has standing, we do not consider the standing of the other plaintiffs."); Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 264 n.9, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977) ("Because of the presence of this plaintiff, we need not consider whether the other individual and corporate plaintiffs have standing to maintain this suit."); see also Mountain States Legal Found. v. Glickman, 92 F.3d 1228, 1232 (D.C. Cir. 1996) ("For each [challenged] claim, if . . . standing can be shown for at least one plaintiff, we need not consider the standing of the other plaintiffs to raise that

claim.") (citing Watt and Village of Arlington Heights, supra).

However, for the sake of completeness, I will briefly discuss whether the NFIB has standing as well. Under Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977), an association has representative standing when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Id. at 343. All three elements have been satisfied here. First, the NFIB's members (including Ms. Brown, as noted) plainly have standing to challenge the individual mandate, thus meeting Hunt's first element. Furthermore, the interests that the NFIB seeks to protect in challenging the individual mandate on behalf of its members --- certain of whom operate sole proprietorships and will suffer cost and cash flow consequences if they are compelled to buy qualifying healthcare insurance --- are germane to the NFIB's purpose and mission "to promote and protect the rights of its members to own, operate, and earn success in their businesses, in accordance with lawfully-imposed governmental requirements." Am. Comp. ¶ 26; see, e.g., New York State Club Ass'n, Inc. v. City of New York, 487 U.S. 1, 10 n.4, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988) (consortium of private clubs had standing to sue on behalf of its members to enjoin state anti-discrimination law because the interests it sought to protect were "clearly" germane to its broad purpose "'to promote the common business interests of its [member clubs]'") (brackets in original). And lastly, because the NFIB seeks injunctive relief which, if granted, will benefit its individual members, joinder is generally not required. See, e.g., NAACP, supra, 522 F.3d at 1160 (Hunt's third element satisfied because, "when the relief sought is injunctive, individual participation of the organization's members is 'not normally necessary'") (citation omitted).

In light of the foregoing, the plaintiffs have standing to pursue their claims.

(2) Ripeness

There is a "conspicuous overlap" between the doctrines of standing and ripeness and the two "often converge[ ]." See Elend v. Basham, 471 F.3d 1199, 1205 (11th Cir. 2006). Nevertheless, they warrant separate analyses.

"Ripeness is peculiarly a question of timing. Its basic rationale is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." Thomas v. Union Carbide Agr. Products Co., 473 U.S. 568, 580, 105 S. Ct. 3325, 87 L. Ed. 2d 409 (1985) (citations and alterations omitted). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300, 118 S. Ct. 1257, 140 L. Ed. 2d 406 (1998) (citation omitted). The ripeness inquiry turns on "'the fitness of the issues for judicial decision' and 'the hardship to the parties of withholding court consideration." Pacific Gas and Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190, 201, 103 S. Ct. 1713, 75 L. Ed. 2d 752 (1983) (citation omitted). In the context of a facial challenge, as in this case, "a purely legal claim is presumptively ripe for judicial review because it does not require a developed factual record." Harris v. Mexican Speciality Foods, Inc., 564 F.3d 1301, 1308 (11th Cir. 2009).

Because the individual mandate and employer mandate will not take effect until 2014, the defendants contend that those claims are unripe because no injury can occur before that time. However, "[w]here the inevitability of the operation of a statute against [plaintiffs] is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions come into effect." Blanchette v. Connecticut Gen. Ins. Corps., 419 U.S. 102, 143, 95 S. Ct. 335, 42 L. Ed. 2d 320 (1974). "The Supreme Court has long . . . held that where the enforcement of a statute is certain, a preenforcement challenge will not be rejected on ripeness grounds." NAACP, supra, 522 F.3d at 1164 (citing Blanchette, supra, 419 U.S. at 143).

The complained of injury in this case is "certainly impending" as there is no reason whatsoever to doubt that the federal government will enforce the individual mandate and employer mandate against the plaintiffs. Indeed, with respect to the individual mandate in particular, the defendants concede that it is absolutely necessary for the Act's insurance market reforms to work as intended. In fact, they refer to it as an "essential" part of the Act at least fourteen times in their motion to dismiss. It will clearly have to be enforced. See Commonwealth of Pennsylvania v. State of West Virginia, 262 U.S. 553, 592-93, 262 U.S. 553, 43 S. Ct. 658 (1923) (suit filed shortly after the challenged statute passed into law and before it was enforced was not premature where the statute "certainly would operate as the complainant states apprehended it would"). The individual mandate will have to be imposed and enforced against the plaintiffs and others because if it is not, and with proscriptions against insurance companies denying coverage for pre-existing medical conditions, there would the potential for an enormous moral hazard.

The fact that the individual mandate and employer mandate do not go into effect until 2014 does not mean that they will not be felt in the immediate or very near future. To be sure, responsible individuals, businesses, and states will have to start making plans now or very shortly to comply with the Act's various mandates. Individuals who are presently insured will have to confirm that their current plans comply with the Act's requirements and, if not, take appropriate steps to comply; the uninsured will need to research available insurance plans, find one that meets their needs, and begin budgeting accordingly; and employers and states will need to revamp their healthcare programs to ensure full compliance. I note that at least two courts considering challenges to the individual mandate have thus far denied motions to dismiss on standing and ripeness grounds. See Virginia, supra, 702 F. Supp. 2d at 607-08 (determining that because the individual mandate "radically changes the landscape of health insurance coverage in America," it will be felt by individuals, insurance carriers, employers, and states "in the near future"); Thomas

More Law Center v. Obama, 2010 WL 3952805, at *4 (E.D. Mich. Oct. 7, 2010) ("[T]he government is requiring plaintiffs to undertake an expenditure, for which the government must anticipate that significant financial planning will be required. That financial planning must take place well in advance of the actual purchase of insurance in 2014 . . . There is nothing improbable about the contention that the Individual Mandate is causing plaintiffs to feel economic pressure today.")[11]

The Supreme Court and the Eleventh Circuit, as noted, have not hesitated to consider pre-enforcement challenges to the constitutionality of legislation when the complained of injury is certainly impending and more than a hypothetical possibility. Because the issues in this case are fully framed, and the relevant facts are settled, "[n]othing would be gained by postponing a decision, and the public interest would be well served by a prompt resolution of the constitutionality of [the statute]." See Thomas, supra, 473 U.S. at 582. Therefore, the case is ripe for review.[12]

Because the defendants' jurisdictional challenges fail, I will now turn to their arguments for failure to state a claim upon which relief can be granted under Rule

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[11] The defendants have recently filed a notice of supplemental authority in which they have attempted to distinguish Thomas More Law Center by claiming that the standing analysis in that case "hinge[d] on allegations not present here;" specifically, according to the defendants, the plaintiffs alleged in that case that "they were being compelled to 'reorganize their affairs,' and 'forego certain spending today, so they will have the funds to pay for health insurance when the Individual Mandate takes effect in 2014" (doc. 78 at 1-2). The defendants allege that "[t]he individual plaintiffs here make no comparable assertion." See id. That does not appear to be so. Ms. Brown has alleged that the individual mandate will force her to "divert resources from [her] business" and "reorder [her] economic circumstances" in order to obtain qualifying coverage. Am. Comp. ¶ 62.

[12] Further strengthening the conclusion that the public interest would be best served by a prompt resolution, I recognize that this court is but the first of probably several steps this case will take. Because that process will likely take another year or two, and because this court "will be in no better position later than we are now" to decide the case, see Blanchette, supra, 419 U.S. at 145, it would not serve the public interest to postpone the first step of this litigation until at least 2014.

12(b)(6), Fed. R. Civ. P.

C. Rule 12(b)(6) Challenges for Failure to State a Claim Upon which Relief Can be Granted

A motion to dismiss for failure to state a claim under Rule 12(b)(6) will be granted if the complaint alleges no set of facts that, if proved, would entitle the plaintiff to relief. Blackston v. Alabama, 30 F.3d 117, 120 (11th Cir. 1994). On a motion to dismiss, the court must accept all the alleged facts as true and take all the inferences from those facts in the light most favorable to plaintiff. See Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 31 L. Ed. 2d 263 (1972); Hunnings v. Texaco, Inc., 29 F.3d 1480, 1484 (11th Cir. 1994). Although the Federal Rules do not require plaintiffs to set out in detail the facts on which they base their claim --- Rule 8(a) only requires a "short and plain statement" showing that the plaintiff is entitled to relief --- the complaint's "factual allegations must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); accord Ashcroft v. Iqbal, --- U.S. ---, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (explaining that "the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation'"). Thus, "to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, supra, 129 S. Ct. at 1949 (quoting Twombly, supra, 550 U.S. at 570). This does not "impose a probability requirement at the pleading stage." See Twombly, 550 U.S. at 556. Rather, the test is whether the complaint "succeeds in 'identifying facts that are suggestive enough to render [the claim] plausible.'" See Watts v. Florida Int'l University, 495 F.3d 1289, 1296 (11th Cir. 2007) (quoting Twombly, supra, 550 U.S. at 556).

The defendants claim that all counts in the amended complaint are deficient under Rule 12(b)(6); in other words, no cause of action is "plausible." Each claim

must be both factually and legally plausible. This requires me to examine each of the claims factually and to "take a peek" at the status of the applicable existing Constitutional law. Several of the plaintiffs' claims arise under Constitutional provisions for which the Supreme Court's interpretations have changed over the years. But, of course, the court is bound by the law as it exists now. Each count will be discussed below, in reverse order.

(1) Interference with state sovereignty as employers and performance of governmental functions (Count VI)

For this count, the plaintiffs object to the Act's employer mandate which requires the states, in their capacities as large employers, to offer and automatically enroll state employees in federally-approved insurance plans or else face substantial penalties and assessments. These "extensive new benefits," the plaintiffs contend, will "impose immediate and expensive requirements on the States that will continue to increase," see Pl. Mem. at 55-56, and "burden[ ] the States' ability to procure goods and services and to carry out governmental functions," see Am. Compl. ¶ 90. The employer mandate allegedly exceeds Article I of the Constitution and also runs afoul of state sovereignty in violation of the Ninth and Tenth Amendments.

Regardless of whether the employer mandate will be costly and burdensome to the states in their capacity as large employers (which at this stage of the case is assumed to be true), it is a "generally applicable" law that reaches both public and private employers alike. Although a law of general applicability, as opposed to one directed only at the states, is not per se Constitutional, it is a factor that the Supreme Court and the courts of appeal have consistently found to be significant. In the landmark case of Garcia v. San Antonio Metro. Transit Auth., the Supreme Court held that a city's transit authority (SAMTA) was bound by the minimum wage and overtime pay provisions in the Fair Labor Standards Act ("FLSA"). During the course of its decision, the Court stated:

> [W]e need go no further than to state that we perceive

> nothing in the overtime and minimum-wage requirements of the FLSA, as applied to SAMTA, that is destructive of state sovereignty or violative of any constitutional provision. SAMTA faces nothing more than the same minimum-wage and overtime obligations that hundreds of thousands of other employers, public as well as private, have to meet.

469 U.S. 528, 554, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985); see also Reno v. Condon, 528 U.S. 141, 151, 120 S. Ct. 666, 145 L. Ed. 2d 587 (2000) (generally applicable law upheld that regulated the entire "universe of entities" in the market, both in the public and private realm, and applied "to individuals as well as States"); see also Oklahoma Dep't of Public Safety v. United States, 161 F.3d 1266, 1271 (10th Cir. 1998) (noting the "logical distinction" that the Supreme Court has drawn between generally applicable laws that "incidentally apply to states" and those that apply only to states; explaining that "because generally applicable laws are not aimed at uniquely governmental functions," and because such "laws affecting both private and public interests are subject to stricter political monitoring by the private sector," a law is less likely to be found oppressive "where the law is aimed at both private and public entities"). The Seventh Circuit has thus stated:

> Neutrality between governmental and private spheres is a principal ground on which the Supreme Court has held that states may be subjected to regulation when they participate in the economic marketplace --- for example, by hiring workers covered by the Fair Labor Standards Act. So long as public market participants are treated the same as private ones, they enjoy the protection the latter have been able to secure from the legislature; and as Congress is not about to destroy private industry (think what that would do to the tax base!) it can not hobble the states either.

Travis v. Reno, 163 F.3d 1000, 1002-03 (7th Cir. 1998) (citations omitted). I find these cases to be instructive. Although a law of general applicability may not be per se Constitutional, see Condon, supra, 528 U.S. at 151 (leaving the question

open), the fact that the employer mandate is generally applicable goes a long way toward sustaining it.

Further, in this case, the mere fact that the states will be required to provide the same healthcare benefits to employees as private employers does not, by itself, implicate or interfere with state functions and sovereignty. In Maryland v. Wirtz, 392 U.S. 183, 88 S. Ct. 2017, 20 L. Ed. 2d 1020 (1968), the Supreme Court rejected the argument that extending FLSA wage and overtime pay provisions to the states would violate state sovereignty by telling public hospitals and schools how to carry out their sovereign functions:

> The Act establishes only a minimum wage and a maximum limit of hours unless overtime wages are paid, and does not otherwise affect the way in which school and hospital duties are performed. Thus appellants' characterization of the question in this case as whether Congress may, under the guise of the commerce power, tell the States how to perform medical and educational functions is not factually accurate. Congress has "interfered with" these state functions only to the extent of providing that when a State employs people in performing such functions it is subject to the same restrictions as a wide range of other employers whose activities affect commerce, including privately operated schools and hospitals.

Id. at 193-94. The state plaintiffs allege that the employer mandate will interfere with their sovereignty and impede state functions insofar as it will be financially burdensome and that, if it is allowed to stand, the state's authority "to define the conditions of its officeholders and employees and to control appropriations [will be] usurped." Pl. Mem. at 57; see also id. at 56 n.59 (contending that "Congress may [not] decree the basic terms of the employment relationship with State officers and employees and usurp the States' authority over their budgets and resources").

However, virtually any and all attempts to regulate the wages and conditions of employment in the national labor market (which Congress has long done) will

result in similar restrictions and adversely impact the state fisc. The minimum wage and overtime pay provisions in the FLSA, which the Supreme Court upheld against the states in Wirtz and Garcia, supra, certainly had much the same effect, as the dissenters in those cases made it a point to emphasize. See Garcia, supra, 469 U.S. at 528 ("The financial impact on States and localities of displacing their control over wages, hours, overtime regulations, pensions, and labor relations with their employees could have serious, as well as unanticipated, effects on state and local planning, budgeting, and the levying of taxes.") (Powell, J., dissenting); Wirtz, supra, 392 U.S. at 203 (stating that "[t]here can be no doubt" that if the FLSA is extended to the states it could "disrupt the fiscal policy of the States and threaten their autonomy in the regulation of health and education") (Douglas, J., dissenting). The majority opinions in those two cases control here, unless there is a discernable reason to treat healthcare benefits differently than compensation and conditions of employment.

I see no persuasive reason why healthcare benefits --- which are generally viewed as a condition of employment and part of an employee's compensation package[13] --- should be treated differently than other aspects of compensation and conditions of employment that the Supreme Court has already held Congress may regulate and mandate against the states (such as wages, hours, overtime pay, etc). This is particularly so in light of the fact that, as the defendants correctly point out,

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[13] Cf., e.g., Owen v. McKibben, 78 Fed. Appx. 50, 51 n.3 (10th Cir. 2003) (compensation package at issue included healthcare insurance); United States v. City of New York, --- F. Supp. 2d ---, 2010 WL 1948562, at *1 (S.D.N.Y. May 13, 2010) (same); Portugues-Santa v. B. Fernandez Hermanos, Inc., 614 F. Supp. 2d 221, 228 (D.P.R. 2009) (same); Laselva v. Schmidt, 2009 WL 1312559, *1 (N.D.N.Y. May 7, 2009) (same); Plitt v. Ameristar Casino, Inc., 2009 WL 1297404, at *1 (E.D. Mo. May 6, 2009) (same); Perrotti v. Wal-Mart Stores, Inc., 2006 WL 146232, *1 (D.N.H. Jan. 19, 2006) (same); Hudson v. International Computer Negotiations, Inc., 2005 WL 3087865, at *1 (M.D. Fla. Nov. 16, 2005) (same).

to some extent Congress already regulates health benefits for state employees, for example, with respect to COBRA's temporary continuation of coverage provisions and HIPAA's restrictions on the ability of group plans to deny coverage due to pre-existing conditions. See Def. Mem. at 22. If the employer mandate in the Act is unconstitutional as applied to the states, for the reasons claimed by the plaintiffs, then the FLSA (and arguably COBRA and HIPAA) are likewise unconstitutional as applied to the states. The plaintiffs tried to distinguish Garcia during oral argument by contending that the case was justified because Congress there was trying to ensure that workers "were, in effect, not going to be abused with regard to hours or inadequate wages." Tr. at 79. Whether the plaintiffs feel that Congress had a more noble and well-meaning purpose in passing the FLSA is irrelevant. The power that Congress asserted (and the effect it would have on the state fisc) is essentially the same as here.

For the foregoing reasons, I believe Wirtz and Garcia control. I recognize that Wirtz (state employers subject to the FLSA) was overruled by National League of Cities v. Usery, 426 U.S. 833, 96 S. Ct. 2465, 49 L. Ed. 2d 245 (1975) (state employers not subject to the FLSA), which was in turn overruled by Garcia (state employers once again subject to the FLSA). Accordingly, in light of this "unsteady path" of Supreme Court jurisprudence, New York v. United States, 505 U.S. 144, 160, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992), the plaintiffs would most likely have stated a plausible claim if it had been brought between 1975 and 1985. But, of course, I am required to apply the law as it now exists.

Because the Act's employer mandate regulates the states as participants in the national labor market the same as it does private employers, and because the Supreme Court has held in this context that adversely impacting the state fisc (by requiring a minimum level of employment-based benefits) does not interfere with state sovereignty and impede state functions, the employer mandate does not violate the Constitution as a matter of law --- under the current law. Therefore,

Count Six does not state a plausible claim upon which relief can be granted and must be dismissed.[14]

(2) Coercion and commandeering as to healthcare insurance (Count V)

The Act provides for the creation of health benefit exchanges to foster and provide "consumer choices and insurance competition." The Act gives the states the option to create and operate the exchanges themselves, or have the federal government do so. The plaintiffs acknowledge that they have a choice, but they claim it is tantamount to no choice because the Act forces them to operate the exchange "under threat of removing or significantly curtailing their long-held regulatory authority" (see Am. Compl. ¶ 88), which will "displace State authority over a substantial segment of intrastate insurance regulation . . . that the States have always possessed under the police powers provided in the Constitution." See id. ¶ 44. This is improper "coercion and commandeering" in violation of the Ninth and Tenth Amendments, according to the plaintiffs.

The plaintiffs' argument for this claim is directly foreclosed by Hodel v. Virginia Surface Min. & Reclamation Association, Inc., 452 U.S. 264, 101 S. Ct. 2352, 69 L. Ed. 2d 1 (1981). That case involved a pre-enforcement challenge to the Surface Mining Control and Reclamation Act, which was a comprehensive statute designed to "'establish a nationwide program to protect society and the

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[14] The plaintiffs argue that the employer mandate runs afoul of the inter-governmental-tax-immunity doctrine, see Pl. Mem. at 58-60, but the defendants persuasively respond that the claim has not been pled in the amended complaint and that, in any event, it must fail as a matter of law, see Reply in Support of Defendants' Motion to Dismiss ("Reply Mem."), at 8-11 (doc. 74). Indeed, under the current state of the law, it is unclear if the inter-governmental-tax-immunity even retains any viability. See South Carolina v. Baker, 485 U.S. 505, 518 n.11, 108 S. Ct. 1355, 99 L. Ed. 2d 592 (1988) (noting the inter-governmental-tax-immunity doctrine has "shifted into the modern era," and declining to decide "the extent, if any, to which States are currently immune from direct nondiscriminatory federal taxation") (emphasis added).

environment from the adverse effects of surface coal mining operations.'" Id. at 268. Pursuant to the statute, "any State wishing to assume permanent regulatory authority over the surface coal mining operations" was required to submit a "proposed permanent program" demonstrating compliance with federal regulations. Id. at 271. If any state chose not to do so, the statute provided that the Secretary of the Interior would "develop and implement" the program for that particular state. Virginia filed suit and alleged that the statute violated the Constitution in that "the threat of federal usurpation of their regulatory roles coerces the States into enforcing the Surface Mining Act." Id. at 289. The district court agreed, reasoning that while the statute "allows a State to elect to have its own regulatory program, the 'choice that is purportedly given is no choice at all' because the state program must comply with federally prescribed standards." Id. at 285 n.25. However, the Supreme Court flatly rejected the argument and reversed. In doing so, the Court explained that the statute merely established "a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs." Id. at 289. It "prescribes federal minimum standards governing surface coal mining, which a State may either implement itself or else yield to a federally administered regulatory program." Id. The Supreme Court further stated that:

> A wealth of precedent attests to congressional authority to displace or pre-empt state laws regulating private activity affecting interstate commerce when these laws conflict with federal law. Although such congressional enactments obviously curtail or prohibit the States' prerogatives to make legislative choices respecting subjects the States may consider important, the Supremacy Clause permits no other result.
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> * * *

> Thus, Congress could constitutionally have enacted a statute prohibiting any state regulation of surface coal mining. We fail to see why the Surface Mining Act should become constitutionally suspect simply because Congress chose to allow the States a regulatory role.

Id. at 290 (citations omitted). Notably, the Court made it a point to emphasize that its conclusion applied even though --- as the plaintiffs maintain in this case --- "the federal legislation displaces laws enacted under the States' 'police powers.'" Id. at 291.

Commandeering was found in New York, supra, 505 U.S. at 144, where Congress passed a statute requiring state legislatures to enact a particular kind of law, and that holding was later extended in Printz v. United States, 521 U.S. 898, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997), to apply to individual state officials. Id. at 935 (holding that "Congress cannot circumvent [the prohibition in New York] by conscripting the State's officers directly"). The plaintiffs rely heavily on these two decisions for their argument, but both cases are factually and substantively different from the one here. The plaintiffs have not identified any provision in the Act that requires the states to enact a particular law or regulation, as in New York, nor have they identified any provision that requires state officials to enforce federal laws that regulate private individuals, as in Printz. "[T]he anti-commandeering rule comes into play only when the federal government calls on the states to use their sovereign powers as regulators of their citizens." Travis, supra, 163 F.3d at 1004-05 (emphasis added); see also id. at 1004 (noting that states may be objects of regulation but "cannot be compelled to become regulators of private conduct"). Indeed, both New York and Printz cited Hodel with approval and distinguished it from the facts presented in those two cases. See Printz, supra, 521 U.S. at 925-26 (explaining "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs," which the legislation at issue in Hodel did not do "because it merely made compliance with federal

standards a precondition to continued state regulation in an otherwise pre-empted field"); New York, supra, 505 U.S. at 161, 167 (the statute at issue in Hodel was an example of "cooperative federalism" that did not commandeer the legislative process because the states were not compelled to enforce the statute, expend any state funds, or participate in the program "in any manner whatsoever"; they could have elected not to participate and "the full regulatory burden will be borne by the Federal Government"). Because the health benefit exchanges are voluntary and do not compel states to regulate private conduct of their citizens, Count Five does not state a claim upon which relief can be granted. The Act gives the states the choice to establish the exchanges, and is therefore the type of cooperative federalism that was authorized in Hodel, supra.[15]

(3) Coercion and commandeering as to Medicaid (Count IV)

For this claim, the state plaintiffs object to the "fundamental changes in the nature and scope of the Medicaid program" that the Act will bring about. See Am. Comp. ¶ 86. They have described these changes at length in their complaint, see Am. Comp. ¶¶ 39-60, and they need not be repeated here in any great detail. It is sufficient to say that the state plaintiffs maintain that the Act drastically expands and alters the Medicaid program to such an extent they cannot afford the newly-imposed costs as it will force them to "run [their] budgets off a cliff." Tr. 72. The Medicaid provisions in the Act allegedly run afoul of Congress's Article I powers; exceed the Commerce Clause; and violate the Ninth and Tenth Amendments.

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[15] The plaintiffs appear to suggest that our case is distinguishable from Hodel because, unlike the statute under review in that case, the federal government here has not accepted the "full regulatory burden" of the health benefit exchanges. For this, the plaintiffs rely on six statutory provisions that they maintain "conscript and coerce States into carrying out critical elements of the insurance exchange program." See Pl. Mem. at 51-54. As the defendants correctly point out, however, see Reply Mem. at 6-7, upon close and careful review, each challenged provision is voluntary and generally applicable only if the state elects to establish the exchange.

The defendants do not appear to deny that the Act will significantly alter and expand the Medicaid program as it currently exists (although they do point out that the federal government will be absorbing 100% of the new costs for the first three years[16]). Rather, the defendants rest their argument on this simple and unassailable fact: state participation in Medicaid under the Act is, as it always has been, entirely voluntary. When the freedom to opt out of the program is considered in conjunction with the fact that Congress has expressly reserved the right to alter and amend the program, see 42 U.S.C. § 1304 ("The right to alter, amend, or repeal any provision of this chapter is hereby reserved to the Congress."), and, in fact, it has done so numerous times over the years, see Def. Mem. at 10, the defendants contend that the state plaintiffs have failed to state a claim. See Harris v. McRae, 448 U.S. 297, 301, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980) (noting "[a]lthough participation in the Medicaid program is entirely optional, once a State elects to participate, it must comply with the requirements" that Congress sees fit to impose).

The state plaintiffs assert that they do not actually have the freedom to opt out. They note that "'Medicaid is the single largest Federal grant-in-aid program to the States, accounting for over 40 percent of all Federal grants to states.'" See Pl. Mem. at 50 (quoting Bipartisan Comm'n on the Medicaid Act of 2005, H.R. 985, 109th Cong. § 2(13) (2005)). They further note that in Florida, for example, 26% of its budget is presently devoted to Medicaid outlays, and because the federal government contributes an average of 55.45% of Medicaid costs, Florida's outlays would have to be more than doubled (to the point of consuming more than 58% of its state budget) to offer the same level of benefits that its Medicaid enrollees now receive. In short, the plaintiffs contend that the Act imposes a Hobson's Choice.

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[16] One could argue, however, that the "federal government" will not really be absorbing the costs as the government has little money except through taxpayers, who almost exclusively reside within the states.

They must either: (1) accept the Act's transformed Medicaid program with all its new obligations and costs that the states cannot afford; or (2) exit the program altogether and lose federal matching funds that are necessary and essential for them to provide healthcare to their neediest citizens (along with other Medicaid-linked federal funds). Either way, they contend that their Medicaid systems will eventually collapse, leaving millions of their neediest residents without any health insurance. Consequently, they claim that they are being forced into accepting the changes to the Medicaid program --- even though they cannot afford it and doing so will work an enormous financial hardship --- because they "effectively have no choice other than to participate." See Am. Comp. ¶ 84. Although this claim has intuitive appeal, the status of existing law makes it a close call as to whether it states a "plausible" claim upon which relief can be granted.

The underlying question presented is whether the Medicaid provisions satisfy the Spending Clause. There are four "general restrictions" on Congress's spending power: (1) the exercise of spending power must be for the general welfare; (2) the conditions must be stated clearly and unambiguously; (3) the conditions must bear a relationship to the purpose of the program; and (4) the conditions imposed may, of course, not require states "to engage in activities that would themselves be unconstitutional." See generally South Dakota v. Dole, 483 U.S. 203, 207-10, 107 S. Ct. 2793, 97 L. Ed. 2d 171 (1987). The plaintiffs do not appear to dispute that the Act meets these restrictions. Rather, their claim is based principally on a single sentence near the end of Dole, where the Supreme Court speculated that "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" Id. at 211. For that statement, the Court relied upon an earlier decision, Steward Machine Co. v. Davis, 301 U.S. 548, 57 S. Ct. 883, 81 L. Ed. 1279 (1937), which likewise speculated that there may be a point at which Congressional pressure turns into impermissible coercion. However, the Steward Machine Court made no attempt to define exactly

where that line might be drawn and, in fact, suggested that no such line could be drawn. Justice Cardozo cautioned that any spending measure (in that case, in the form of a tax rebate) "conditioned upon conduct is in some measure a temptation. But to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties." Id. at 589-90.

Accordingly, the coercion theory has been often discussed in case law and scholarship, but never actually applied. While it appears that the Eleventh Circuit has not yet been called upon to consider the issue, the courts of appeal that have considered the theory have been almost uniformly hostile to it. See, e.g., Doe v. Nebraska, 345 F.3d 593, 599 (8th Cir. 2003) (acknowledging what the Supreme Court said in Dole, but going on to note that the "circuits are in accord" with the view that no coercion is present if a state --- even when faced with the possible "sacrifice" of a large amount of federal funding --- voluntarily exercises its own choice in accepting the conditions attached to receipt of federal funds; noting that a "politically painful" choice does not compulsion make); Kansas v. United States, 214 F.3d 1196, 1201-02 (10th Cir. 2000) ("The cursory statements in Steward Machine and Dole mark the extent of the Supreme Court's discussion of the coercion theory. The Court has never employed the theory to invalidate a funding condition, and federal courts have been similarly reluctant to use it"; the theory is "unclear, suspect, and has little precedent to support its application."); Nevada v. Skinner, 884 F.2d 445, 448 (9th Cir. 1989) ("The coercion theory has been much discussed but infrequently applied in federal case law, and never in favor of the challenging party. . . . The difficulty if not the impropriety of making judicial judgments regarding a state's financial capabilities renders the coercion theory highly suspect as a method for resolving disputes between federal and state governments."); Oklahoma v. Schweiker, 655 F.2d 401, 413-14 (D.C. Cir. 1981) (pre-Dole) (coercion argument rejected because courts "are not suited to evaluating whether states are faced here with an offer they cannot refuse or merely a hard

choice. Even a rough assessment of the degree of temptation would require extensive and complex factual inquiries on a state-by-state basis. We therefore follow the lead of other courts that have explicitly declined to enter this thicket when similar funding conditions have been at issue."); State of New Hampshire Dep't of Employment Sec. v. Marshall, 616 F.2d 240, 246 (1st Cir. 1980) (pre-Dole) ("Petitioners argue, however, that this option of the state to refuse to participate in the program is illusory, since the severe financial consequences that would follow such refusal negate any real choice . . . . We do not agree that the carrot has become a club because rewards for conforming have increased. It is not the size of the stakes that controls, but the rules of the game.").

Perhaps the case most analogous to this one is California v. United States, 104 F.3d 1086 (9th Cir. 1997), where California challenged the Medicaid program, in pertinent part, because it conditioned the receipt of federal matching funds on the provision of emergency medical services to illegal aliens. Because illegal aliens comprised 5% of its population, the state was having to spend $400 million each year on providing health care to the aliens. California objected to having to spend that money and argued, like plaintiffs here, that it was being coerced into doing so because, while its initial decision to participate in Medicaid was voluntary, "it now has no choice but to remain in the program in order to prevent a collapse of its medical system." In rejecting this argument, the Ninth Circuit questioned the "viability" of the coercion theory, as well as the possibility that any "sovereign state which is always free to increase its tax revenues [could] ever be coerced by the withholding of federal funds." The Court of Appeals concluded --- as have all courts to have considered the issue --- that the state was merely presented with a "hard political choice." See generally id. at 1089-92; accord Padavan v. United States, 82 F.3d 23, 28-29 (2d Cir. 1996) (holding same and noting that "Medicaid is a voluntary program in which states are free to choose whether to particulate. If New York chose not to participate, there would be no federal regulation requiring

the state to provide medical services to illegal aliens").

The Fourth Circuit appears to be the one circuit where the coercion theory has been considered and "is not viewed with such suspicion." West Virginia v. U.S. Dep't of Health & Human Servs., 289 F.3d 281, 290 (4th Cir. 2002) (referencing a prior decision of that court, Commonwealth of Virginia Dep't of Education v. Riley, 106 F.3d 559 (4th Cir. 1997), where six of the thirteen judges on the en banc panel stated in dicta that coercion theory may be viable). Notwithstanding that the theory may be available in the Fourth Circuit, West Virginia acknowledged that because of "strong doubts about the viability of the coercion theory"; in light of the fact that it is "somewhat amorphous and cannot easily be reduced to a neat set of black-letter rules of application"; and given the "difficulties associated with [its] application," there is "no decision from any court finding a conditional grant to be impermissibly coercive." Therefore, "most courts faced with the question have effectively abandoned any real effort to apply the coercion theory" after finding, in essence, that it "raises political questions that cannot be resolved by the courts." See id. at 288-90. All this to say, if the coercion theory stands at all, it stands on extremely "wobbly legs." See Skinner, supra, 884 F.2d at 454.

In light of the foregoing, the current status of the law provides very little support for the plaintiffs' coercion theory argument. Indeed, when the "pressure turns into compulsion" theory is traced back, its entire underpinning is shaky. In Steward Machine Co., supra, the Supreme Court held that there was no coercion because "[n]othing in the case suggests the exertion of a power akin to undue influence, if we assume that such a concept can ever be applied with the fitness to the relations between state and nation." 301 U.S. at 590 (emphasis added). Thus, in addition to being left undefined, the theory appears to stem from a "what if" assumption. Nevertheless, while the law does not provide much support for the plaintiffs' argument, it does not preclude it either (at least not in this circuit).

Further, I cannot ignore that, based on the allegations in the complaint, the

plaintiffs are in an extremely difficult situation. They either accept the sweeping changes to Medicaid (which they contend will explode their state budgets), or they withdraw from the system entirely (which they allege could leave millions of their poorest and neediest citizens without any medical coverage). The plaintiffs have argued that this is tantamount to no choice at all, which can perhaps be inferred from the fact that Congress does not really anticipate that the states will (or could) drop out of the Medicaid program. To be sure, since the Act seeks to reduce costs, reduce uncompensated care, and reduce the number of uninsured, it would make little sense for Congress to expect that objecting states would opt out of Medicaid and leave millions of the country's poorest citizens without medical coverage, and thus make each of those stated problems significantly worse.

In addition, if the state plaintiffs make the decision to opt out of Medicaid, federal funds taken from their citizens via taxation that used to flow back into the states from Washington, D.C., would instead be diverted to the states that have agreed to continue participating in the program.[17]

If the Supreme Court meant what it said in Dole and Steward Machine Co. (and I must presume that it did), there is a line somewhere between mere pressure and impermissible coercion. The reluctance of some circuits to deal with this issue because of the potential legal and factual complexities is not entitled to a great deal of weight, because courts deal every day with the difficult complexities of applying

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[17] See, e.g., Lynn A. Baker, The Spending Power and the Federalist Revival, 4 Chap. L. Rev. 195, 213-14 (2001) ("[S]hould a state decline proffered federal funds because it finds a condition intolerable, it receives no rebate of any tax dollars that its residents have paid into the federal fisc. In these cases, the state (through its residents) contributes a proportional share of federal revenue only to receive less than a proportional share of federal spending. Thus, when the federal government offers the states money, it can be understood as simply offering to return the states' money to them, often with unattractive conditions attached.").

Constitutional principles set forth and defined by the Supreme Court. Because the Eleventh Circuit (unlike the other circuits) has apparently not directly addressed and foreclosed this argument, and because, in any event, "the location of the point at which pressure turns into compulsion, and ceases to be inducement, would be a question of degree, at times, perhaps, of fact," Steward Machine Co., supra, 301 U.S. at 590 (emphasis added), the plaintiffs have stated a "plausible" claim in this circuit.

(4) Violation of constitutional prohibition of unapportioned capitation or direct tax (Count III)

For this count, the plaintiffs object to the individual mandate penalty. They make an "alternative" claim that, if the penalty is a tax (which they do not believe it is, and some Constitutional authorities have concluded it could not be[18]), it is an unconstitutional capitation or direct tax, prohibited by Article I, Section 9, Clause 4 of the Constitution.[19] Although the argument is not only plausible, but appears to have actual merit, as some commentators have noted, see, e.g., Steven J. Willis and Nakku Chung, Constitutional Decapitation and Healthcare, Tax Notes (2010), I need not be concerned with the issue. As previously explained, it is quite clear that Congress did not intend the individual mandate penalty to be a tax; it is a penalty.

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[18] See, e.g., Randy Barnett, Commandeering the People: Why the Individual Health Insurance Mandate is Unconstitutional, N.Y.U. J.L. & Liberty (forthcoming), at 27 (stating that the argument for the penalty being justified under Congress's broad taxing authority is based on a "radical" theory that, if accepted, would authorize Congress "to penalize or mandate any activity by anyone in the country, provided it limited the sanction to a fine enforced by the Internal Revenue Service," which would "effectively grant Congress a general police power").

[19] This is the same Constitutional provision under which the Supreme Court held that the first attempt to impose a federal income tax was unconstitutional to the extent it was not apportioned. See generally Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S. Ct. 673, 39 L. Ed. 759 (1895). Subsequently, passage of the Sixteenth Amendment in 1913 authorized the imposition of an income tax without the need for apportionment among the states.

It must be analyzed on the basis of whether it is authorized under Congress's Commerce Clause power, not its taxing power. Therefore, Count Three will be dismissed as moot.

(5) Challenge to individual mandate on due process grounds (Count II)

The plaintiffs next allege that the individual mandate violates their rights to substantive due process under the Fifth Amendment. Again, this claim would have found Constitutional support in the Supreme Court's decisions in the years prior to the New Deal legislation of the mid-1930's, when the Due Process Clause was interpreted to reach economic rights and liberties. See Lochner v. New York, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905); see also Coppage v. Kansas, 236 U.S. 1, 35 S. Ct. 240, 59 L. Ed. 441 (1915), Adkins v. Children's Hospital, 261 U.S. 525, 43 S. Ct. 394, 67 L. Ed. 785 (1923); Jay Burns Baking Co. v. Bryan, 264 U.S. 504, 44 S. Ct. 412, 68 L. Ed. 813 (1924). However, "[t]he doctrine that prevailed in Lochner, Coppage, Adkins, Burns, and like cases --- that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely --- has long since been discarded." Ferguson v. Skrupa, 372 U.S. 726, 730, 83 S. Ct. 1028, 10 L. Ed. 2d 93 (1963); see also New Motor Vehicle Bd. v. Orrin W. Fox Co., 439 U.S. 96, 106-07, 99 S. Ct. 403, 58 L. Ed. 2d 361 (1978) (since the demise of substantive due process in the arena of economic regulation, legislatures have "broad scope to experiment with economic problems").

Therefore, as the law now exists, if a challenged statute does not implicate the very limited and narrow class of rights that have been labeled "fundamental," courts reviewing legislative action on substantive due process grounds will accord substantial deference to the legislative judgments. In the absence of a fundamental right, the question is not whether the court thinks the legislative action is wise, but whether the legislature could reasonably conclude that the measure at issue is "rationally related" to a legitimate end. As the Eleventh Circuit has explained:

> Substantive due process claims not involving a fundamental right are reviewed under the rational basis test. The rational basis test is not a rigorous standard [and] is generally easily met. A searching inquiry into the validity of legislative judgments concerning economic regulation is not required. . . . The task is to determine if "any set of facts may be reasonably conceived to justify" the legislation. . . . To put it another way, the legislation must be sustained if there is any conceivable basis for the legislature to believe that the means they have selected will tend to accomplish the desired end. Even if the court is convinced that the political branch has made an improvident, ill-advised or unnecessary decision, it must uphold the act if it bears a rational relation to a legitimate governmental purpose.

TRM, Inc. v. United States, 52 F.3d 941, 945-46 (11th Cir. 1995) (citations omitted).

The plaintiffs contend that the individual mandate does, in fact, implicate fundamental rights to the extent that people have "recognized liberty interests in the freedom to eschew entering into a contract, to direct matters concerning dependent children, and to make decisions regarding the acquisition and use of medical services." See Pl. Mem. at 43-44; accord Tr. at 82 ("The fundamental interest involved here, aside from the liberty of contract, is the right to . . . bodily autonomy and use of medical care . . . the right to run your family life as you see fit with some limited intrusions available"). Fundamental rights are a narrow class of rights involving the rights to marry, have children, direct the education of those children, marital privacy, contraception, bodily integrity, and abortion; and the Supreme Court is "very reluctant to expand" that list. See Doe v. Moore, 410 F.3d 1337, 1343 (11th Cir. 2005). There is, to be sure, a liberty interest in the freedom to be left alone by the government. We all treasure the freedom to make our own life decisions, including what to buy with respect to medical services. Is that a "fundamental right"? The Supreme Court has not indicated that it is --- at least not

yet. That is the current state of the law, and it is not a district court's place to expand upon that law.

Congress made factual findings in the Act and concluded that the individual mandate was "essential" to the insurance market reforms contained in the statute. This is a "rational basis" justifying the individual mandate --- if it does not relate to a fundamental right, which only the Supreme Court can recognize. In the absence of such a recognized fundamental right, that stated "rational basis" is sufficient to withstand a substantive due process challenge. This count must be dismissed.

(6) Challenge to individual mandate as exceeding Commerce Clause (Count I)

Under the Commerce Clause, Congress may regulate: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities "affecting" interstate commerce. Perez v. United States, 402 U.S. 146, 150, 91 S. Ct. 1357, 28 L. Ed. 2d 686 (1971). Only (3) is at issue here.

For this count, the plaintiffs maintain that the individual mandate does not regulate activity affecting interstate commerce; instead, it seeks to impermissibly regulate economic inactivity. The decision not to buy insurance, according to the plaintiffs, is the exact opposite of economic activity. Because the individual mandate "compels all Americans to perform an affirmative act or incur a penalty, simply on the basis that they exist and reside within any of the United States," the plaintiffs contend that it will deprive them of "their rights under State law to make personal healthcare decisions without governmental interference." Am. Comp. ¶¶ 70, 75. Thus alleged, the individual mandate exceeds the Commerce Clause, and violates the Ninth and Tenth Amendments.

The defendants, of course, have a different take. They contend that "[t]he appearance of inactivity here is just an illusion" because the people who decide to not buy insurance are participating in the relevant economic market. See Tr. at 30. Their argument on this point can be broken down to the following syllogism: (1) because the majority of people will at some point in their lives need and consume

healthcare services, and (2) because some of the people are unwilling or unable to pay for those services, (3) Congress may regulate everyone and require that everyone have specific, federally-approved insurance. Framed this way, the defendants insist that the individual mandate does not require people to pay for a service they do not want; rather, it merely tells them how they must pay for a service they will almost certainly consume in the future.

It is, according to the defendants, no different than Congress telling people "you need to pay by cash instead of check or credit card." Tr. at 88; accord Def. Mem. at 43 ("[Individuals who choose not to buy insurance] have not opted out of health care; they are not passive bystanders divorced from the health care market. Instead, they have chosen a method of payment for services they will receive, no more 'inactive' than a decision to pay by credit card rather than by check."). Also, because the individual mandate is essential to the insurance market reforms in the Act, the defendants argue that it is sustainable for the "second reason" that it falls within the Necessary and Proper Clause. See Def. Mem. at 44-48.

At this stage in the litigation, this is not even a close call. I have read and am familiar with all the pertinent Commerce Clause cases, from Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 6 L. Ed. 23 (1824), to Gonzales v. Raich, 545 U.S. 1, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005). I am also familiar with the relevant Necessary and Proper Clause cases, from M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316, 4 L. Ed. 579 (1819), to United States v. Comstock, --- U.S. ---, 130 S. Ct. 1949, 176 L. Ed. 2d 878 (2010). This case law is instructive, but ultimately inconclusive because the Commerce Clause and Necessary and Proper Clause have never been applied in such a manner before. The power that the individual mandate seeks to harness is simply without prior precedent. The Congressional Research Service (a nonpartisan legal "think tank" that works exclusively for Congress and provides analysis on the constitutionality of pending legislation) advised Congress on July 24, 2009, long before the Act was passed into law, that "it is unclear whether the

[Commerce Clause] would provide a solid constitutional foundation for legislation containing a requirement to have health insurance." The analysis goes on to state that the individual mandate presents "the most challenging question . . . as it is a novel issue whether Congress may use this clause to require an individual to purchase a good or service." Congressional Research Service, Requiring Individuals to Obtain Health Insurance: A Constitutional Analysis, July 24, 2009, at 3. Even Thomas More Law Center, supra, 2010 WL 3952805, which recently upheld the individual mandate, seems to recognize that the individual mandate is without any precedent. See id. at *8 ("The Supreme Court has always required an economic or commercial component in order to uphold an act under the Commerce Clause. The Court has never needed to address the activity/inactivity distinction advanced by plaintiffs because in every Commerce Clause case presented thus far, there has been some sort of activity").[20]

The defendants "firmly disagree" with the characterization of the individual mandate as "unprecedented" and maintain that it is "just false" to suggest that it breaks any new ground. See Tr. 31, 33. During oral argument, as they did in their memorandum, see Def. Mem. at 44, they attempted to analogize this case to Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964), which held that Congress had the power under the Commerce Clause and the Civil Rights Act to require a local motel to rent rooms to black guests; and Wickard v. Filburn, 317 U.S. 111, 63 S. Ct. 82, 87 L. Ed. 122 (1942), which held that Congress could limit the amount of wheat grown for personal consumption on a private farm in an effort to control supply and avoid surpluses or shortages that

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[20] The district court, however, went on to adopt the government's argument that the Commerce Clause should not only reach economic activity --- which had "always" been present in "every Commerce Clause case" decided to date --- but it should be applied to "economic decisions" as well, such as the decision not to buy health insurance.

could result in abnormally low or high wheat prices. The defendants have therefore suggested that because the motel owner in Heart of Atlanta was required to rent rooms to a class of people he did not want to serve, Congress was regulating inactivity. And, because the farmer in Wickard was limited in the amount of wheat he could grow for his own personal consumption, Congress was forcing him to buy a product (at least to the extent that he wanted or needed more wheat than he was allowed). There are several obvious ways in which Heart of Atlanta and Wickard differ markedly from this case, but I will only focus on perhaps the most significant one: the motel owner and the farmer were each involved in an activity (regardless of whether it could readily be deemed interstate commerce) and each had a choice to discontinue that activity. The plaintiff in the former was not required to be in the motel business, and the plaintiff in the latter did not have to grow wheat (and if he did decide to grow the wheat, he could have opted to stay within his allotment and use other grains to feed his livestock --- which would have been most logical, since wheat is usually more expensive and not an economical animal feed --- and perhaps buy flour for him and his family). Their respective obligations under the laws being challenged were tethered to a voluntary undertaking. Those cases, in other words, involved activities in which the plaintiffs had chosen to engage. All Congress was doing was saying that if you choose to engage in the activity of operating a motel or growing wheat, you are engaging in interstate commerce and subject to federal authority.

But, in this case we are dealing with something very different. The individual mandate applies across the board. People have no choice and there is no way to avoid it. Those who fall under the individual mandate either comply with it, or they are penalized. It is not based on an activity that they make the choice to undertake. Rather, it is based solely on citizenship and on being alive. As the nonpartisan CBO concluded sixteen years ago (when the individual mandate was considered, but not pursued during the 1994 national healthcare reform efforts): "A mandate requiring

all individuals to purchase health insurance would be an unprecedented form of federal action. The government has never required people to buy any good or service as a condition of lawful residence in the United States." See Congressional Budget Office Memorandum, The Budgetary Treatment of an Individual Mandate to Buy Health Insurance, August 1994 (emphasis added).

Of course, to say that something is "novel" and "unprecedented" does not necessarily mean that it is "unconstitutional" and "improper." There may be a first time for anything. But, at this stage of the case, the plaintiffs have most definitely stated a plausible claim with respect to this cause of action.[21]

IV. CONCLUSION

The Supreme Court has said:

> Some truths are so basic that, like the air around us, they are easily overlooked. Much of the Constitution is concerned with setting forth the form of our government, and the courts have traditionally invalidated measures deviating from that form. The result may appear "formalistic" in a given case to partisans of the measure at issue, because such measures are typically the product

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[21] Starting in the First World War, there have been at least six attempts by the federal government to introduce some kind of universal healthcare insurance coverage. At no point --- until now --- did it mandate that everyone buy insurance (although it was considered during the healthcare reform efforts in 1994, as noted above). While the novel and unprecedented nature of the individual mandate does not automatically render it unconstitutional, there is perhaps a presumption that it is. In Printz, supra, 521 U.S. at 898, the Supreme Court stated several times that an "absence of power" to do something could be inferred because Congress had never made an attempt to exercise that power before. See id. at 905 (stating that if "earlier Congresses avoided use of this highly attractive power, we would have reason to believe that the power was thought not to exist"); see id. at 907-08 ("the utter lack of statutes imposing obligations [like the one at issue there] (notwithstanding the attractiveness of that course to Congress), suggests an assumed absence of such power") (emphasis in original); see id. at 918 (stating "almost two centuries of apparent congressional avoidance of the practice [at issue] tends to negate the existence of the congressional power asserted here").

> of the era's perceived necessity. But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.

New York, supra, 505 U.S. at 187. As noted at the outset of this order, there is a widely recognized need to improve our healthcare system. How to accomplish that is quite controversial. For many people, including many members of Congress, it is one of the most pressing national problems of the day and justifies extraordinary measures to deal with it. However, "a judiciary that licensed extraconstitutional government with each issue of comparable gravity would, in the long run, be far worse." See id. at 187-88. In this order, I have not attempted to determine whether the line between Constitutional and extraconstitutional government has been crossed. That will be decided on the basis of the parties' expected motions for summary judgment, when I will have the benefit of additional argument and all evidence in the record that may bear on the outstanding issues. I am only saying that (with respect to two of the particular causes of action discussed above) the plaintiffs have at least stated a plausible claim that the line has been crossed.

Accordingly, the defendants' motion to dismiss (doc. 55) is GRANTED with respect to Counts Two, Five, and Six, and those counts are hereby DISMISSED. The motion is DENIED with respect to Counts One and Four. Count Three is also DISMISSED, as moot. The case will continue as to Counts One and Four pursuant to the scheduling order previously entered.

DONE and ORDERED this 14th day of October, 2010.

/s/ *Roger Vinson*
ROGER VINSON
Senior United States District Judge

Case No.: 3:10-cv-91-RV/EMT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NICHOLAS E. PURPURA, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 3:10-CV-04814 (FLW)
v.	)	
	)	Motion Day: February 22, 2011
KATHLEEN SEBELIUS et al..,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS

Defendants, Kathleen Sebelius, Secretary of Health and Human Services, Timothy Geithner, Secretary of the Treasury, and Hilda Solis, Secretary of Labor, move to dismiss plaintiffs' complaint in its entirety under Federal Rule of Civil Procedure 12. Attached are a Memorandum in Support of the Motion to Dismiss and a proposed order.

DATED: January 17, 2011

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NICHOLAS E. PURPURA, et al., Plaintiffs, v. KATHLEEN SEBELIUS et al.., Defendants.	Case No. 3:10-CV-04814 (FLW) Motion Day: February 22, 2011

MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION FOR DEFAULT SUMMARY JUDGMENT
AND IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR
LACK OF JURISDICTION

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INTRODUCTION

The pro se plaintiffs in this case—Nicholas E. Purpura and Donald R. Laster, Jr.—claim to represent "We the People." In fifteen meandering counts, they ask this Court to take the extraordinary step of striking down an Act of Congress. These counts include allegations that the tax on tanning salons imposed by the Patient Protection and Affordable Care Act ("ACA") discriminates against white people in violation of the Fourteenth Amendment, Title VII, and the antitrust laws because African-Americans have no need for tanning services and, therefore, only white people are taxed; that the ACA creates a "private Presidential Army" in violation of Article I, Section 8 and the Posse Comitatus Act; and that the ACA amounts to "involuntary servitude" in violation of the Thirteenth Amendment. But this Court need not cut through plaintiffs' thicket of meritless claims, as the complaint plainly does not establish their standing to bring this challenge. Indeed, the complaint literally reveals nothing about plaintiffs other than their names, their addresses, their affiliations with various political groups in New Jersey, and their disapproval of the challenged statute. Even construed with leniency because plaintiffs are proceeding pro se, this foray beyond Article III should be dismissed for lack of subject-matter jurisdiction.

BACKGROUND

Plaintiffs, pro se, sued defendants Kathleen Sebelius, Secretary of Health and Human Services, Timothy F. Geithner, Secretary of the Treasury, and Hilda L. Solis, Secretary of Labor on September 20, 2010. The complaint describes plaintiffs as "the citizens of the STATE OF NEW JERSEY, by and through NICHOLAS E. PURPURA and DONALD R. LASTER JR, *Pro se*," Compl. at 2, and expressly asserts that Mr. Purpura and Mr. Laster "represent[]" a separate list of citizens, *id.* That list, which is attached to the end of the complaint, includes the names of seven individuals and three organizations, and states that "[t]his document will updated [sic] as new litigants request they be added." *Id.* at 44. As of December 6, 2010, the list had been expanded to include two more organizations and 199 more individuals. Dkt. # 14 at 3-8.[1]

On October 1, 2010, before properly serving the United States, plaintiffs filed a petition for a temporary restraining order barring implementation of the ACA. Dkt # 4. On October 19, defendants filed a letter opposing the petition. Dkt. # 8. This Court denied the petition for a TRO the following day. Dkt. #9. Five days later, plaintiffs filed a document styled "REPLY AFFFIDAVIT [sic] IN

[1] As this Court has observed, *see* Dkt. # 15, the rules governing the practice of law forbid non-lawyers from acting as advocates for other parties. *See Elizabeth Teachers Union, AFT Local 733 v. Elizabeth Bd. of Educ.*, 1990 WL 174654, at *5 (D. N.J. 1990). The proper remedy in this situation is to "dismiss the complaint sua sponte as to all defendants without prejudice to refiling by an attorney." *Id.*

SUPPORT ORDER TO SHOW CAUSE FOR A RESTRAINING ORDER and/or REARGUMENT FOR AN IMMEDIATE STAY (Recall and Vacate prior denial) OR SUMMARY JUDGMENT VIOLATION Title 28 U.S.C. 1331 & CIVIL RIGHTS Request for Declaratory Judgment." *See* Dkt. #10. Treating this document as a request for reconsideration, defendants responded on October 28, *see* Dkt. #11, and this Court denied plaintiffs' petition for the second time on October 29. Dkt. #12. In two letters to the Court, plaintiffs then demanded that Judge Wolfson recuse herself. *See* Dkt. #13 (referring to an informal letter sent by plaintiffs); Dkt. #14. On December 7, Judge Wolfson informed the parties that she would not respond to an informal request for recusal. Dkt. #15.

Plaintiffs then filed a motion for "default summary judgment" on December 9, contending that defendants had failed to respond to the complaint within 60 days as required by Federal Rule of Civil Procedure 12(a)(2). Dkt. # 16, 18. On December 15, the U.S. Attorney's Office received a mailing from plaintiffs containing plaintiffs' "Request for Declaratory Judgment" as well as a copy of the complaint filed in Civil Action No. 10-91 in the United States District Court for the Northern District of Florida. On December 23, defendants moved to stay plaintiffs' motion for summary judgment pending a decision on defendants' forthcoming motion to dismiss. Dkt. # 20. Plaintiffs opposed the request for a stay. Dkt. # 21. On January 4, 2011, this Court denied defendants' request for a

stay but extended the time to respond to plaintiffs' motion for default summary judgment to January 17, 2011. Dkt. # 23.

ARGUMENT

I. Standard of Review

Defendants move to dismiss this action for lack of subject-matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). This Court must resolve subject-matter jurisdiction at the earliest possible stage of the litigation. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 96 (1998). Moreover, plaintiffs "bear[] the burden of demonstrating subject matter jurisdiction." *Lightfoot v. United States*, 564 F.3d 625, 627 (3d Cir. 2009). To be sure, this Court must construe "a *pro se* complaint" with the "requisite latitude," *Deutsch v. United States*, 67 F.3d 1080, 1091 (3d Cir. 1995), but Article III sets the constitutional boundaries for the jurisdiction of federal courts. No plaintiff—*pro se* or not—can invoke the powers of an Article III court without establishing that his claim falls within those boundaries. *See Trinsey v. Mitchell*, 851 F. Supp. 167, 170 n.6 (E.D. Pa. 1994).

II. Plaintiffs Lack Standing

Federal courts sit to decide cases and controversies, not to resolve disagreements on policy or politics. Indeed, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies."

DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006) (citation and internal quotation omitted). Plaintiffs' slew of disparate challenges to the ACA do not satisfy the most basic prerequisite of a case or controversy under Article III, a claimant with standing to sue.

To establish standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984). As the Supreme Court has explained, "to invoke judicial power the [plaintiff] must have a personal stake in the outcome, or a particular, concrete injury . . . in short, something more than 'generalized grievances.'" *United States v. Richardson*, 418 U.S. 166, 179-80 (1974)) (internal quotations and citations omitted). To this latter point, the Supreme Court has consistently admonished that "'a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in [the] proper application of the Constitution and laws, and seeking relief that no more directly [or] tangibly benefits him than it does the public at large—does not state an Article III case or controversy.'" *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

Plaintiffs' complaint plainly asserts only generalized grievances. Instead of alleging particularized facts that demonstrate a present, concrete injury, plaintiffs

allege that they are "We the people"—the "true voice of government." Compl. ¶ 2. According to plaintiffs, the "people feel they can no longer depend upon public officials that have been repeatedly usurping the will of the people." *Id.* They pronounce that "[t]he time is long overdue for the Federal Courts and States to return the General Government to its boundaries established by the Constitution." *Id.* at ¶ 10. They characterize this lawsuit as an exercise of their right to "*petition the Government for redress of grievances*." *Id.* at 3 (italics in original). And they declare themselves the "sovereigns and protectors of the freedom, public health, and welfare of the citizens and residents." *Id.* ¶ 138(ii). Nowhere, however, does the complaint recite how plaintiffs themselves are affected, let alone injured, by any of the ACA's allegedly unconstitutional features.

This is no surprise. One of the central provisions that plaintiffs challenge—the requirement that non-exempted individuals maintain a minimum level of health insurance coverage or pay a penalty—does not take effect until January 1, 2014. *See* Pub. L. No. 111-148, § 1501(b). The complaint provides no reason to believe that, even then, this minimum coverage provision will injure plaintiffs. Indeed, plaintiffs leave countless questions about themselves unanswered. Do they currently have health insurance? If they do, that insurance may satisfy the minimum coverage provision once it takes effect. Are they 65 or older? If so, they are likely to have automatic Medicare Part A coverage, which would satisfy the

provision. Do plaintiffs now or will they in 2014 qualify for Medicaid, which would also satisfy the minimum coverage requirement? Even if plaintiffs are not currently eligible for Medicaid, or are not otherwise insured, is it reasonably possible that they could encounter between now and 2014 changes in their health, financial, employment, or other personal circumstances such that plaintiffs would have or want insurance even if they do not have or want it now? The answers are unknown and, with respect to future circumstances, unknowable at this time. For example, plaintiffs could obtain employment that offers health insurance as a benefit, which would also satisfy the minimum coverage provision.[2] Plaintiffs could also fall under the exemption for individuals who cannot afford coverage. *See* ACA § 1501(b). Plaintiffs identify no current, individualized injury, and even any hypothetical injury is "too remote temporally" to support standing. *McConnell v. FEC*, 540 U.S. 93, 226 (2003), *overruled in part on other grounds by Citizens United v. FEC*, 130 S. Ct. 876 (2010).

[2] *See Baldwin v. Sebelius*, No. 10-1033, 2010 WL 3418436, at *3 (S.D. Cal. Aug. 27, 2010) ("[Plaintiff] does not indicate whether he has health insurance or not. But that is of no moment because, even if he does not have insurance at this time, he may well satisfy the minimum coverage provision of the Act by 2014: he may take a job that offers health insurance, or qualify for Medicaid or Medicare, or he may choose to purchase health insurance before the effective date of the Act."). Two district court decisions finding standing to challenge the minimum coverage provision, by contrast, involved more detailed allegations that the plaintiffs were currently reorganizing their financial and personal affairs in anticipation of being subject to the provision. *See Thomas More Law Ctr. v. Obama*, 720 F. Supp. 2d 882, 889 (E.D. Mich. 2010); *Liberty Univ. v. Geithner*, 2010 WL 4860299, at *6-7 (W.D. Va. Nov. 30, 2010).

Indeed, plaintiffs' allegations frame policy objections, not particularized injuries. Although they adequately reveal plaintiffs' distaste for the ACA, federal courts may not adjudicate "'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared," as those questions are most "appropriately addressed in the representative branches.'" *Kerchner v. Obama*, 612 F.3d 204, 208 (3d Cir. 2010) (citing *Valley Forge Christian Coll. v. Am. United for Separation of Church & State*, 454 U.S. 464, 474-75 (1982)); *see also Allen*, 468 U.S. at 754 ("[The] right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court."); *Smelt v. County of Orange*, 447 F.3d 673, 685 (9th Cir. 2006) ("[M]oral outrage, however profoundly and personally felt, does not endow [plaintiff] with standing to sue.").[3] Plaintiffs' recourse for their policy objections to the ACA is at the ballot box, not in federal court. This case should plainly be dismissed for lack of jurisdiction.

III. Plaintiffs' Motion For "Default Summary Judgment" Should Also Be Denied

Plaintiffs insist that defendants failed to respond to the complaint within the 60 days specified by Fed. R. Civ. P. 12(a)(2) and that plaintiffs are entitled to a

[3] Indeed, another judge in this district recently dismissed a challenge to the ACA for lack of standing, in a case involving far more detailed allegations than those at issue here. *See New Jersey Physicians, Inc. v. Obama*, 2010 WL 5060597 (D. N.J. Dec. 8, 2010).

"default summary judgment" as a result. *See* Dkt. # 18. This is frivolous. Although the complaint was filed on September 20, 2010, it was not even arguably properly served until December 15. Rule 4(i)(1)(A)(i) specifies that, to "serve the United States, a party must . . . deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought." Fed. R. Civ. P. 4(i)(1)(A)(i). And Rule 12(a)(2) states that a responsive pleading is due "within 60 days *after service on the United States attorney*." Fed. R. Civ. P. 12(a)(2) (emphasis added). Even assuming that the December 15 mailing to the U.S. Attorney's Office—which did not include a summons—constituted proper service, defendants' responsive pleading would not even arguably be due until February 14, 2011. Although plaintiffs may prefer to abide by their own set of procedural rules, defendants abide by those set forth in the Federal Rules of Civil Procedure and in this Court's Local Rules.

Moreover, even if plaintiffs somehow could establish standing, their claims would fail on the merits. First, Count I should be dismissed because the ACA does not violate the Origination Clause. *See* Compl. ¶ 12-21; U.S. Const. art. I, § 7 ("All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."). The bill that became the ACA originated in the House as H.R. 3590. After the bill passed the House, the Senate amended it by striking its text and substituting the provisions

that ultimately became the Act. After passage in the Senate, the House agreed to the bill as amended, and the enrolled bill was submitted to the President, who signed it into law. This commonplace procedure satisfied the minimal constraints of the Origination Clause; the Senate may adopt any amendment it deems advisable to a bill relating to revenues, even an amendment that is a total substitute. *See Flint v. Stone Tracy Co.*, 220 U.S. 107, 143 (1911) (Senate amendment substituting a corporation tax for an inheritance tax was valid), *overruled on other grounds by Garcia v. San Antonio Metropolitan Transit Auth.*, 469 U.S. 528, 542 n.6 (1985).

Second, plaintiffs are wrong in Count II that the minimum coverage provision exceeds Congress's Commerce Clause authority. Compl. ¶ 22-32. The Act as a whole is an important advance that builds on prior reforms of the interstate health insurance market over the last 35 years. Focusing in particular on insurance industry practices that have prevented millions of Americans from obtaining affordable insurance, the Act bars insurers from denying coverage to those with pre-existing conditions, or from charging discriminatory premiums on the basis of medical condition or history. Congress recognized that these reforms of business practices in the insurance industry were required to protect consumers and to correct a pervasive failure in the interstate health insurance market. Such reforms are indisputably within Congress's power under the Commerce Clause. Congress

also rationally found—indeed, the evidence overwhelmingly corroborates—that the minimum coverage provision is necessary to ensure that these guaranteed-issue and community-rating reforms succeed; without the provision, only the sickest would purchase health insurance, possibly leading to the collapse of the insurance industry. Congress has the authority under the commerce power to take measures to ensure the success of its larger reforms of the interstate market. *Gonzales v. Raich*, 545 U.S. 1, 18 (2005). The same result follows if the provision is analyzed under the Necessary and Proper Clause, given that, if Congress has the power to enact a regulation of interstate commerce, "it possesses every power needed to make that regulation effective." *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 118-19 (1942).

Even considered in isolation, the minimum coverage provision easily falls within the commerce power, for it regulates economic decisions about how to pay for health care services that have substantial effects on interstate commerce. Whatever their status in the health insurance market, the uninsured, as a class, are active participants in the *interstate health care market*. They receive tens of billions of dollars in health care services for which, in many cases, they do not or cannot pay. In the aggregate, Congress found that the uninsured shifted $43 billion in the cost of their care annually to other market participants in 2008. 42 U.S.C.A. § 18091(a)(2)(F). These costs are borne by providers, patients (in the form of

higher costs), insurers, and the insured population (in the form of higher premiums), among others. Congress has the power to address these substantial effects on the interstate market, by regulating how individuals in that market pay for health care—in advance through insurance, or out-of-pocket, which often means not at all. *See Raich*, 545 U.S. at 17.

Finally, the minimum coverage provision also falls easily within Congress's independent authority to lay taxes and make expenditures for the general welfare. It is in the Internal Revenue Code. Its penalty operates as an addition to an individual's income tax liability on his annual tax return, which is calculated by reference to income. It is enforced by the Internal Revenue Service. And it will raise a projected $4 billion annually for general revenues when it is fully in effect. *See* Letter from Douglas W. Elmendorf, Director, CBO, to the Hon. Nancy Pelosi, Speaker, U.S. House of Representatives, table 4 (Mar. 20, 2010).

Third, the ACA's provisions creating a Ready Reserve Corps do not violate Article I, Section 8, paragraphs 12, 14, 15, 16 or the Posse Comitatus Act. *See* Compl. ¶ 33-42; U.S. Const. art. I, § 8 (involving Congress's power to raise and support armies and to establish rules governing the militia); Posse Comitatus Act, 18 U.S.C. § 1385 (limiting the use of the military for law enforcement); ACA § 5210. The Ready Reserve Corps is part of the U.S. Public Health Service (USPHS) Commissioned Corps, which has promoted public health for more than

200 years. *See* http://www.usphs.gov/aboutus/history.aspx.[4] And courts have recognized that, while the USPHS Commissioned Corps is a uniformed service, it has characteristic differences that "significantly and sufficiently distinguish members of the PHS from members of the armed forces . . . ." *Milbert v. Koop*, 830 F.2d 354, 358 (D.C. Cir. 1987). These differences render the cited constitutional provisions and the Posse Comitatus Act inapplicable. Count III should therefore be dismissed.

Fourth, the tax penalty established by the minimum coverage provision for non-exempted individuals does not constitute an unconstitutional direct or capitation tax. *See* Compl. ¶ 43-46. The limits that Article I, Section 9 imposes on Congress's power to tax and spend for the general welfare do not apply here, as the minimum coverage provision is independently justified under the Commerce Clause. *See Rodgers v. United States*, 138 F.2d 992, 995 (6th Cir. 1943). Even if the ACA were *only* an exercise of the taxing power, it has long been understood that only a narrow category of taxes qualifies as "direct" for purposes of this apportionment requirement—those imposed on the ownership of property, or on an individual without any variation for his particular circumstances. *See, e.g.,*

[4] The Ready Reserve Corps will allow additional Commissioned Corps personnel to be available on short notice "to assist Regular Commissioned Corps personnel to meet both routine public health and emergency response missions." *See* USPHS Commissioned Corps Ready Reserve Corps Fact Sheet at http://www.usphs.gov/pdf/USPHS_COMMISSIONED_CORPS_READY_RESERVE_CORPS_Fact_Sheet.pdf.

Springer v. United States, 102 U.S. 586, 602 (1880); *Veazie Bank v. Fenno*, 75 U.S. (8 Wall.) 533, 543 (1869); *Hylton v. United States*, 3 U.S. (3 Dall.) 171 (1796). And a capitation tax is one imposed "simply, without regard to property, profession, or any other circumstance." *Hylton*, 3 U.S. at 175 (opinion of Chase, J.); *see also Pac. Ins. Co. v. Soule*, 74 U.S. (7 Wall.) 433, 444 (1868); *Veazie Bank*, 75 U.S. at 540-44. But the minimum coverage provision does not fall within either of these narrow definitions. It does not impose a flat tax without regard to the taxpayer's circumstances. To the contrary, among other exemptions, the Act excuses persons with household incomes below the threshold for filing a tax return, as well as those for whom qualifying coverage would cost more than 8% of their household income. 26 U.S.C. § 5000A(e)(1), (2). And, of course, the penalty does not apply at all so long as the individual obtains qualifying coverage. 26 U.S.C. § 5000A(a), (b)(1). Count IV should be dismissed.

Fifth, the ACA does not violate the Fourth Amendment or the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191, 110 Stat. 1936 (Aug. 21, 1996). Plaintiffs do not cite any provision of the ACA, nor does any such provision exist, that "grants access to the General Government unconditionally authority [sic] 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 funds transfer." Compl. ¶ 68-74. Count XIII should therefore be dismissed.[5]

Sixth, the ACA does not constitute a taking in violation of the Fifth Amendment, nor does it impose involuntary servitude in violation of the Thirteenth Amendment. *See* Compl. ¶ 75-81. "Requiring money to be spent is not a taking of property." *Atlas Corp. v. United States*, 895 F.2d 745, 756 (Fed. Cir. 1990); *accord Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1340 (Fed. Cir. 2001); *see also Swisher Intern., Inc. v. Schafer*, 550 F.3d 1046, 1054 (11th Cir. 2008) ("[T]he takings 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. Count IX should be dismissed.

Seventh, the ACA does not grant "special exemptions and treatment to selected classes of citizens based upon religious affiliations and/or State of residence" in violation of the Fourteenth Amendment. *See* Compl. ¶ 82-87. This count of the complaint does not cite any specific provision of the ACA, and should be dismissed for failing to satisfy the pleading requirements of Federal Rule of Civil Procedure 8. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) ("mere conclusory statements" do not suffice to state a claim). In any event, "[p]roof of

[5] It is also not the case that a statute is unlawful if it is viewed as (or even actually is) at odds with another statute.

. . . discriminatory intent or purpose is required to show a violation of the Equal Protection Clause," *Hunter v. Underwood*, 471 U.S. 222, 227-28 (1985) (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-65 (1977)), and plaintiffs have cited none. Count X should be dismissed.

Eighth, the ACA does not violate the Establishment Clause. *See* Compl. ¶ 88-91. The Supreme Court "has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 144-45 (1987). Indeed, "there is room for play in the joints between" the Free Exercise and Establishment Clauses, such that government can accommodate religion beyond what the Free Exercise Clause mandates, without violating the Establishment Clause. *Locke v. Davey*, 124 S. Ct. 1307, 1311 (2004) (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 669 (1970)). The two religious exemptions to the minimum coverage provision pass constitutional muster under this rationale. *See* ACA § 1501(b); *Liberty Univ.*, 2010 WL 4860299, at *18-22 (rejecting an Establishment Clause challenge to the two religious exemptions to the minimum coverage provision). Count XI should be dismissed.

Ninth, contrary to the allegations in Count XV, the ACA does not violate the Tenth Amendment. *See* Compl. ¶ 121-138. The ACA is a proper exercise of Congress's commerce power and, independently, its authority under the General

Welfare Clause. There accordingly can be no violation of the Tenth Amendment: "If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that 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 not conferred on Congress." *New York v. United States*, 505 U.S. 144, 156 (1992). To the extent plaintiffs challenge the ACA's expansion of Medicaid eligibility in 2014 as 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. *See Tenn. Elec. Power Co. v. Tenn. Valley Auth.*, 306 U.S. 118, 144 (1939) (private parties had "no standing . . . to raise any question under the [Tenth A]mendment" "absent the states or their officers" as parties to the litigation).

Plaintiffs' remaining claims should be dismissed because they are baseless and largely incoherent, and because plaintiffs plainly lack standing to raise them as well. *See* Count V (alleging a violation of the Export Clause and art. I, U.S. Const. art. I, § 9, cl. 5); Count VI (alleging that the President is not a natural born citizen of the United States because his father was not an American citizen); Count VII (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"); Count XII (alleging a violation of the antitrust laws); Count XIII (alleging a

violation of the Equal Protection Clause based on allegedly unconstitutional student loan programs and the tax on tanning salons); Count XIV (alleging a violation of the Oath of Office Clause).

CONCLUSION

If these plaintiffs have standing to challenge any provision of the ACA, so would any of the more than 285 million American citizens. This action presents the paradigm of a generalized grievance, which this Court does not have jurisdiction to adjudicate. The government's motion to dismiss should be granted, and plaintiffs' motion for summary judgment should be denied.

DATED: January 17, 2011

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NICHOLAS E. PURPURA, et al., Plaintiffs, v. KATHLEEN SEBELIUS et al.., Defendants.	Case No. 3:10-CV-04814 (FLW) Motion Day: February 22, 2011

PROPOSED ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFFS' MOTION FOR DEFAULT SUMMARY JUDGMENT

Upon consideration of defendants' motion to dismiss and plaintiffs' motion for default summary judgment, and any response or reply thereto, it is hereby

ORDERED that defendants' motion to dismiss is GRANTED and that plaintiffs' motion for default summary judgment is DENIED.

Dated: _____

_____
FREDA L. WOLFSON
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the methods of service noted below, true and correct copies of (1) defendants' notice of motion to dismiss, (2) memorandum in support of defendants' motion to dismiss and in opposition to plaintiffs' motion for "default summary judgment," and (3) proposed order granting defendants' motion to dismiss and denying plaintiffs' motion for "default summary judgment" were served on the following:

Served Electronically through CM/ECF:

NONE

Served by FedEx Mail:

Nicholas E. Purpura
1802 Rue De La Port
Wall, NJ 07719

Donald R. Laster, Jr.
25 Heidl Avenue
West Long Branch, NJ 07764

DATED: January 17, 2011

/s/ Ethan P. Davis
ETHAN P. DAVIS
Trial Attorney
U.S. Department of Justice

United States
District of New Jersey

----------x

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

Plaintiffs,

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

v.

KATHLEEN SEBELIUS et al..,

Motion Date February 22, 2011

Defendants.

----------x

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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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.

----------x

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 *defendant*. 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. See 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)

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[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.

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[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. The exemption is based not on individuals but on the sects.

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.

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[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

Why Barack H. Obama Jr is not eligible to be President and is not President of these United States of America

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Replace the " < at > " with an "@" as appropriate.

Why Barack H Obama Jr is not eligible to be President and is not President of these United States of America

It does not matter whether or not Barack Obama Jr was born in Hawaii or not. Because his father was not a citizen of the USA he, Barack Obama Jr, is not a natural born citizen and therefore is not eligible and is therefore not the President of these United States of America. His election was illegitimate as was his name being placed on the ballot. He does not meet the qualifications to hold the office.

Now someone is going start screaming "Birther" and ignore the simple and publicly acknowledged facts and issues. I started looking into this out of curiosity back in the January/February 2010 time frame because of all of the attacks on anyone who questioned Barack Obama Jr's eligibility to exercise Presidential authority. I started with a simple search on the INTERNET and eventually found the web site http://www.theobamafile.com/ and looked at the various documents and links that were available from the site. Here is what I discovered from doing simple research of the available links along with information I have known for a long time.

In order for a person to be eligible and to be President the following qualifications have to be met first, in reverse order of specification in Article 2, Section 1, Paragraph 5 of the USA Constitution, which is a contract :

1. The person must have been a resident in the United States for the last 14 years or more.

2. The person must have attained the age of 35 or be older than 35.

3. The person must be a natural born citizen or be a citizen of the United States at the time the US Constitution was adopted - i.e. be at least 222 or 223 years old (I don't know anyone who comes close to meeting the grandfather clause).

We know Barack Obama Jr has been a resident of the United States for more than the last 14 years and we know he is more than 35 years old. So the question is "Is Barack Obama Jr "natural born citizen". For the "Birther" who claim Barack Obama Jr was not born in Hawaii the question is moot.

But what does the term "natural born citizen" mean? When one does the research we find the treatise "Law of Nations" written by Monsieur De Vattel and published in 1758 is the source and legal definition of the term. This is the document that was known to those who wrote the Constitution of the United States of America. In Book 1, Chapter 19, Paragraph number 212 it states in French

> Les Naturels, ou Indigènes font ceux qui font nés dans le pays, de Paren Citoyens.

In the 1760 English translation of this work this sentence is translated as

> Its *natives* are those who are born in the country parents who are citizens.

The later translations translate this sentence as

> The natives, or natural-born citizens, are those born in the country, of parents who are citizens.

Why Barack H Obama Jr is not eligible to be President and is not President of these United States of America

The word French word "Indigènes" is the English "Indigenous". The word was adopted in to the English language and "anglicized". The word has the meanings

1. Native; born in a country; applied to persons.

2. Native; produced naturally in a country or climate; not exotic; applied to vegetables.

when one examines the dictionaries[1] of the time.

This is the first indication of what the term "natural born citizen" means. Now some are going to say that Law of Nation was not in use. But the following excerpt from Ben Franklin's letter to Charles Dumas clearly show the Law of Nation was known to the founders.

> PHILADELPHIA, December 19, 1775
>
> DEAR SIR:
>
> . . . . **I am much obliged by the kind present you have made us of your edition of Vattel. It came to us in good season, when the circumstances of a rising State make it necessary frequently to consult the law of nations. Accordingly, that copy which I kept (after depositing one in our own public library here, and sending the other to the College of Massachusetts Bay, as you directed) has been continually in the hands of the members of our Congress now sitting, who are much pleased with your notes and preface, and have entertained a high and just esteem for their author.** . . . .
>
> *Letter to American diplomat Charles Dumas*
>
> ***Memoirs of Benjamin Franklin***
>
> reprinted in 1859, v.1, p. 297
>
> . . . . **This copy [presented by Dumas to the Philadelphia library] undoubtedly was used by the members of the Second Continental Congress, which sat in Philadelphia; by the leading men who directed the policy of the United Colonies until the end of the war; and, later, by the man who sat in the Convention of 1787 and drew up the Constitution of the United States, for the library was located in Carpenters' Hall, where the First Congress deliberated, and within a stone's throw of the Colonial State House of Pennsylvania, where the Second Congress met, and likewise near where the Constitution was framed.**
>
> Introduction to Vattel's book, edition of Carnegie Endowment, v. iii, p. xxx, note 1.

It is also clear that Vattel's work was cited when one looks at the records from the Constitutional Convention[2]. This is further reinforced with when the significance of the term is considered with the letter written to George Washington by John Jay during the Constitutional Convention that created the contract represented by the US Constitution

> Permit me to hint, whether it would be wise and reasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Commander in Chief of the American army shall not be given to nor devolve on, any but a natural born Citizen.

What we find is that a special significance in regards to the type of citizenship that is accorded to a

1 http://www.1828-dictionary.com/d/search/word,indigenous

2 http://rs6.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(fr003452))

person born in a country when both of the person's parents are citizens of the country.
In a 1789 article, David Ramsay[3] explained who the "original citizens" were and then defined the "natural born citizens" as the children born in the country to citizen parents. He said concerning the children born after the declaration of independence :

> "[c]itizenship is the inheritance of the children of those who have taken part in the late revolution; but this is confined exclusively to the children of those who were themselves citizens…."
>
> "citizenship by inheritance belongs to none but the children of those Americans, who, having survived the declaration of independence, acquired that adventitious character in their own right, and transmitted it to their offspring…."
>
> "as a natural right, belongs to none but those who have been born of citizens since the 4th of July, 1776…."

Congress in 1790 extended the definition of natural born citizen to include persons born to parents who were citizens of the US. The law stated

> And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens; *Provided*, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States; *Provided also*, That no person heretofore proscribed by any state, shall be admitted a citizens as aforesaid, except by an act of the legislature of the state in which such person was proscribed.(a)"[4]

This law was repealed in 1795.[5] And children born under the circumstances were simply declared citizens and not natural born citizens.

In addition to the historical record of Founders referencing Law of Nation including George Washington's failure to return his borrowed library copy back to the library.

The record is clear those who helped found the United States and those who wrote the U.S. Constitution both knew of and used Monsieur De Vattel's treatise Law of Nation. Research indicates that the text is in fact the "common law" of the United States. In the early history of the country Monsieur De Vattel's treatise Law of Nation has even been referenced by the United States Supreme Court.

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3 David Ramsay (April 2, 1749 to May 8, 1815) was an American physician, patriot, and historian from South Carolina and a delegate from that state to the Continental Congress in 1782-1783 and 1785-1786. He was the Acting President of the United States in Congress Assembled. He was one of the American Revolution's first major historians. A contemporary of Washington, Ramsay writes with the knowledge and insights one acquires only by being personally involved in the events of the Founding period. In 1785 he published History of the Revolution of South Carolina (two volumes), in 1789 History of the American Revolution (two volumes), in 1807 a Life of Washington, and in 1809 a History of South Carolina (two volumes).

4 See http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=226 and http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=227

5 See http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=538

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The Supreme Court reference the definition of natural born citizen in 1814 in the opinion The Venus, 12 U.S. 253 (1814)[6]. Justice J. Washington of the Supreme Court stated

> "The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives or indigenes are those born in the country of parents who are citizens. Society not being able to subsist and to perpetuate itself but by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights."

In this case Justice J. Washington just used the English version of the word "indigenes" meaning

> "One born in a country; a native animal or plant."[7].

Justice J. Washington translated the French text of Monsieur De Vattel's The Low of Nations Book 1, Chapter 19, Paragraph Number 212 himself according to the records of the time.

In the Supreme Court decision Shanks v. Dupont, 28 U. S. 242 (1830)[8] we find that the Court directly references the The Law of Nation in the following paragraphs and the concepts of that text.

> If she was not of age then, under the circumstances of this case, she might well be deemed to hold the citizenship of her father, for children born in a country, continuing while under age in the family of the father, partake of his natural character as a citizen of that country.
>
> It is of importance here that it should be held in view that we are considering political, not moral, obligations. The latter are universal and immutable, but the former must frequently vary according to political circumstances. It is the doctrine of the American court that the issue of the Revolutionary War settled the point, that the American states were free and independent on 4 July, 1776. On that day, Mrs. Shanks was found under allegiance to the State of South Carolina as a natural born citizen to a community, one of whose fundamental principles was that natural allegiance was unalienable, and this principle was at no time relaxed by that state by any express provision, while it retained the undivided control over the rights and liabilities of its citizens.

The Supreme Court in Scott v Sanford, 60 U.S. 393 (1857)[9] Justice Daniel in a separate opinion quoted The Law of Nations extensively in his pre-Amendment 14 opinion.

> Thus Vattel, in the preliminary chapter to his Treatise on the Law of Nations, says:
>
> Nations or States are bodies politic, societies of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their mutual strength. Such a society has her affairs and her interests, she deliberates and takes resolutions *in common,* thus becoming a moral person who possesses an understanding and a will peculiar to herself.
>
> Again, in the first chapter of the first book of the Treatise just quoted, the same writer, after

6 http://supreme.justia.com/us/12/253/case.html
7 http://www.1828-dictionary.com/d/search/word,indigene
8 http://supreme.justia.com/us/28/242/case.html
9 http://www.law.cornell.edu/supct/html/historics/USSC_CR_0060_0393_ZX2.html

> repeating his definition of a State, proceeds to remark that,
>
> from the very design that induces a number of men to form a society which has its common interests and which is to act in concert, it is necessary that there should be established a public authority to order and direct what is to be done by each in relation to the end of the association. This political authority is the *sovereignty.*
>
> Again, this writer remarks: "The authority of *all* over each member essentially belongs to the body politic, or the State."
>
> By this same writer it is also said:
>
> The citizens are the members of the civil society, bound to this society by certain duties, and subject to its authority; they *equally* participate in its advantages. The natives or natural-born citizens are those born in the country of parents who are citizens. As society **[p477]** cannot perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their parents, and succeed to all their rights.
>
> Again:
>
> I say, to be *of the country,* it is necessary to be born of a person who is a *citizen,* for if he be born there of a foreigner, it will be only the place of his *birth,* and not his *country.* The inhabitants, as distinguished from citizens, are foreigners who are permitted to settle and stay in the country.
>
> Vattel, Book 1, cap. 19, p. 101.

Once again the term "natural born citizen" is distinctly referenced.

The Supreme Court in Minor v. Happersett (1874) 21 Wall. 162, 166-168[10] Chief Justice Waite wrote

> The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first.

In United States v Wong Kim Ark 18 S. Ct. 456 (1898) the Supreme Court

> That in the year 1890 the said Wong Kim Ark departed for China, upon a temporary visit, and with the intention of returning to the United States, and did return thereto on July 26, 1890, on the steampship Gaelic, and was permitted to enter the United States by the collector of ustoms, upon the sole ground that he was a native-born citizen of the United States.
>
> That, after his said return, the said Wong Kim Ark remained in the United States, claiming to be a citizen thereof, until the year 1894, when he again departed for China upon a temporary visit, and with the intention of returning to the United States, and did return thereto in the month of August,

10 See http://www.law.cornell.edu/supct/html/historics/USSC_CR_0088_0162_ZO.html

> 1895, and applied to the collector of customs to be permitted to land; and that such application was denied upon the sole ground that said Wong Kim Ark was not a citizen of the United States. That said Wong Kim Ark has not, either by himself or his parents acting for him, ever renounced his allegiance to the United States, and that he has never done or committed any act or thing to exclude him therefrom.'

Because of Amendment 14 Wong Kim Ark wasa citizen of the United States. Even though his parents where not U.S. Citizens.

In Perkins, Secretary of Labor, et al. v Elg. 59 S.Ct. 884 (1939) we find a different scenario. Marie Elizabeth Elg was born to parents who were naturalized citizens who later returned to their country of origin and renounced their US Citizenship. Her mother became a US Citizen due to the naturalization of her husband in accordance with the laws of the time. In this case she was declared to be a "natural born citizen".

What has happened over the years is that often the difference between a natural born citizen, or a person who is born in the country of parents who are citizens; and a native born citizen, or a person who has 1 citizen parent or is born under the provisions of Amendment 14 has been obscured by the misuse of the terms. The Supreme Court ruling Elk v Wilkins, 112 U.S. 94 (1884)[11] contains a detailed discussion of Amendment 14 citizenship and the operation of the clause "and subject to the jurisdiction thereof".

When one looks at the various types of citizenships that exist in the United States one finds there are three types. A person at birth can be one of two types of citizens in the United States. The third type of citizenship only applies to foreign nationals who become a citizen. The three types are

- A natural born citizen is both parents are citizen of the country and the child is born in the country. In the case of the United States you have to be born in one of the 50 States. Remember, Washington, DC is part of the State of Maryland that is on loan to the general government under the provisions of Article 1, Section 8, Paragraph 17. The territories and possessions are not part of the United States. Only the States are actually part of the United States. Congress in 1790 extended this definition and then restored the original definition in 1795. The key is both parents have to be citizens at the time of birth of the child and the child has to be born in the country. And bases in the USA itself are still part of the State in which they are located.

- A naturalized citizen is a foreign national who becomes of a citizen of the country. These are people who are covered under the basic rules established by Congress using Article 1, Section 8, Paragraph 4. When Hawaii became a territory of the USA under Title 8, Section 1405 the citizens of the Republic of Hawaii were declared citizens. They key is the person was never a citizen before and became a citizen. Or you were a citizen and then gave it up and then became a citizen again. I know a case where a women left the USA, became a citizen of Mexico and has been denied US citizenship and is not allowed back in except for short visits to her family. She is extremely anti-USA. I heard about the case in the 1990s.

11 See http://supreme.justia.com/us/112/94/

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- A native born citizen basically covers all of the other variations. These are the examples and descriptions I have read from the various cases and descriptions.

  A child born out of the country of parents who are citizens of the country. This sometimes can create a dual-citizenship status depending upon the country the child is born in. This is John McCain's situation. And yes this means John McCain was not eligible to be President either.

  A child born out of the country where one parent is not not a citizen of the country and the other parent is. This is classic dual-citizenship status. Some people claim this is Barack Obama Jr's situation and say his mother was too young to pass on USA citizenship. I have not found anything to support this view and in fact have found law indicating she still would have given Barack Obama Jr citizenship - the age is 14 in the law. The evidence at best indicates she was visiting Kenya and had not taken up residence. Even if this is Barack Obama Jr situation he would still not be eligible to be President of the United States of America.

  A child born in the country where one parent is not a citizen of the country and the other parent is a citizen. Another case of dual-citizenship. This appears to be Barack Obama Jr's situation based upon the currently publicly available information. Which means he is not eligible to be President. The definition of "natural born citizen" requires both parents be citizens of the country in question.

  A child born in the country where both parents are not citizens. This is the normal situation for children born to immigrant parents. The child may have dual-citizenship. This does not apply to children born to illegal aliens or visitors. Amendment 14 has a conditional clause that excludes children born to illegal aliens and visitors. You have to be "subject to the jurisdiction" and illegal aliens and visitors are not. Think of diplomats - same rules. Some writings have indicated the 1965 immigration laws might grant citizenship to children born to illegal aliens or visitors. The specific sections of the current law have not been specified in these writings. But this would be an Article 1, Section 8, Paragraph 4 issue and not a Amendment 14 related issue.

What we find is that because Barack Obama Sr was a British Citizen, or National, at the time of Barack Obama Jr birth Barack Obama Jr was both an USA and British citizen. That means Barack Obama Jr can never be natural born citizen. A natural born citizen can never hold more than a single citizenship at the time of birth. Even if Barack Obama Jr was born in Hawaii the fact that his father is a British citizen precludes Barack Obama Jr from being a natural born citizen.

A natural born citizen requires both parents be citizens of the country and the person be born in the country. We also know that Barack Obama Jr was a dual citizen and that he was both a British and US citizen. The evidence indicates that before age 21 Barack Obama Jr actually held the citizenship of four (4) different countries. That is citizenship of the countries of the United States, Great Britain, Kenya and Indonesia (due to adoption by an Indonesian citizen).

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Barack Obama Jr did not lose his British/Kenyan citizenship until he turned 21 when he failed to declare himself a British/Kenyan citizen. The simple fact he has more than one (1) citizenship at birth clearly precludes Barack Obama Jr from being a natural born citizen since the definition of natural born citizen itself precludes the ability to have citizenship of more than one (1) country. Therefore one has no choice but to conclude Barack Obama Jr can not be President of the United States, his placement on the ballot was unconstitutional, and thus his selection by the Electoral College was fraudulent and is null and void.

So since Barack Obama can never be a natural born citizen and never legitimately be President what does that mean for his exercise of Presidential authority and his selection for the Presidency? Any bill he signs, executive order issued, treaty signed or appointment made is null and void. Anything he or a person he delegates authority to is not valid either - nothing he does is valid. After all if a person was never was eligible to exercise the authority and power in the first place the acts the person does are invalid as well. Barack Obama Jr's election is no different from a British House of Commons' election where a US citizen who have never stepped foot in the UK and is not eligible to hold office in the UK is placed on the ballot and wins the election. I doubt any one in UK would accept such as election as valid.

But we then have to ask the next question. If Barack Obama's election is invalid, is Joseph Biden actually Vice-President of the United States? The answer is no. Under Amendment 12 of the United States Constitution the President and Vice-President are elected as a team. If one can not be elected the other can not be elected either. So who is President and Vice-President. In this case the Speaker of the House is not in line to take the Presidency. This is because during the last election no eligible candidate was running who received the required number of elector college votes. The United States of America is in an Amendment 20 situation.

Since neither Barack Obama Jr or John McCain are legitimate under the requirements of Article 2, Section 1, Paragraph 5, and the corresponding Vice-President candidates are not valid under Amendment 12 and 20. It is now up to the Congress of the United States to elect a President and a Vice-President in accordance with the rules of Amendment 20.

Welcome to the Constitutional Crisis that has been created by the failure to follow the Constitutional contract.