UNITED STATES COURT OF APPEALS
FOR THIRD CIRCUIT

CASE No. 11-2303

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

3:10-CV-04814-GEB-DEA

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Deprivation of Articles, Amendments and Statutes

1. Justice Joseph Storey's great Commentaries on the Constitution say;

> "*That although the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from the letter. It would be dangerous in the extreme to infer from extrinsic circumstances that a case, for which the words of an instrument expressly provide, shall be exempt from its operation…. No construction of a given power is to be allowed which plainly defeats or impairs its avowed objectives…. This rule results from the dictates of mere commonsense, for every instrument ought to be constructed as to succeed, not fail…. While, then. we may well resort to meaning of single words to assist our inquires, we should never forget…that must be truest exposition which best harmonizes with the instrument of governments' design, objects, and general structure."*

2. Effectively, if this denial of Plaintiffs' Petition is allowed to stand, the Third Circuit Court of Appeals is saying: any District Court Judge can by judicial fiat void the United States Constitution and Statutory law as outlined in the FRCP, to include erasing established Circuit and Supreme Court precedent, becoming a law unto itself.

3. Indisputable and not addressed nor denied is that Petitioners' Natural, Sovereign, Constitutional and Civil Rights were and are violated by implementation of the "*Patient Protection and Affordable Care Act*" "H.R.3590", which the District Court by its own admission refused to address.

4. When any branch of government encroaches upon the Rights of the People, regardless whether it be one individual or an entire State, it is the fiduciary duty of the Federal Courts to rectify that wrong. What will become of this Republic if justice is denied by usurpers of Natural, Sovereign, Constitutional and Civil Rights (Rights) if judges with a political ideology, or whatever reason, align themselves with oppressors and become oppressors themselves?

STATEMENT OF FACTS

Only when the laws of government are applied to all equally can we as a free people truly enjoy the fruits of a Republic. If the Rights of just one individual are abused, the Rights of all are endangered.

5. Before this Circuit Court, as a threshold matter, does Article 1, Section 7, Paragraph 1; Article 1, Section 8, Paragraphs 1, 3, 12, 14, and 15; Article 1, Section 9, Paragraph 4, 5 and 6; and Article 1, Section 8; Article 2, Section 1, Paragraph 5 and Article 6; Amendments 1, 4, 5, 9, 10, 13, 14, and 16; the "*Posse Comitatus*" Act, Title VII, HIPAA, and the Anti-Trust Laws still have meaning?

6. Petitioners alleged and proved that each of the above Articles and Amendments, as well as statutory laws, are and have been violated. The U.S. Constitution succinctly spells out explicit guarantees of fundamental Individual Rights and what power and authority the general government has been granted. In the matter at bar, the District Court behaved as if Petitioners had no Rights, Constitutional, Natural or otherwise, effectively erasing the Constitution, Statutes, and proper "*due process*", reminiscent of the *Jim Crow* days.

7. The question is, did the "Act" also violate U.S.C.A. 1985 (conspiracy to interfere with civil rights) *see, Griffen v. Breckenridge*, 1971, S. Ct. 1790, 403 U.S. 88, 29 L.Ed2d 338; Note, The scope of section 1985(3) Since, *Griffin v Breckenridge*, 1977, 45 Geo. Wash. L. Rev. 239:

> *"Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State …, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity* ***or other proper proceedings for redress***." [Emphasis Added]

Legal Note: The United States Supreme Court, in *Monroe v. Pape*. 81 S. Ct. at 476, 365 U.S. at 172, held:

> "*… an action under the "color of law" even when authorized by the state and is indeed prohibited by the state. Section 1983 reaches those "who carry a badge of authority of a State and represent it in capacity, whether they act in accordance with their authority or misuse it" The S, Ct. refers to, Lugar v. Edmondson Oil Co.,* 1982, 102 S. Ct. 2744, 2753, U.S. 73 L.Ed2 482."

8. The District Court's "Opinion and Order" has and finds no basis in law, reason, logic, and contradicts prior public policy, rules of procedure, precedent, and procedural "*due process*" as well as "*equal protection*" previously held by the Circuit Courts and Supreme Court to support the outcome. Consequently, equity and justice was and is non-existent!

9. To remove all doubt, the District Court's "Opinion and Order" issued on April 21, 2011 contradicts law as well as fact and contains numerous prejudicial fabrications; **Petitioners will present a complete analytical breakdown of the "Opinion and Order" below (Argument Section) in support an immediate reversal in the interest of substantial justice for Petitioners and for all Americans.**

ARGUMENT

A. STANDING:

10. The District Court says: page 1, in pertinent part said:

> "*Presently before the Court …(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 goes on to say on Page 2:

> "*…Defendants filed the instant Motion to dismiss under Fed. R. Civ. P. 12 (b) (1) arguing the Complaint does not establish Plaintiffs' standing to challenge the Act. Specifically, Defendants contend the Complaint "reveals nothing about plaintiffs other than their names, the addresses, their affiliations with various political groups in New Jersey, and their disapproval of the statute."*

11. The above conclusion distorts established law, and must be reversed, since the District Court as a finder of fact failed to conduct a straightforward investigation into the Petition itself and therefore is without validity. To grant Defendants motion to Dismiss based upon lack of "*subject matter jurisdiction*" pursuant to Fed. R. Civ. P. 12 (b) (1) flies in the face of judicial procedure and established law.

Please Take Judicial Notice: Generally, any case brought pursuant to a federally-enacted statute that raises a Federal question requires adjudication. In this action Petitioners alleged and proved violations 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, Petitioners alleged and proved violations of

Amendments 1, 4, 5, 9, 10, 13, 14, and 16, the "*Posse Comitatus*" Act, Title VII, HIPAA, and the Anti-Trust Laws are present.

12. The District Court ignored ***Fed. R. Civ. P. 12(h) (3)***, that grants a Federal Court *subject-matter jurisdiction* if any case brought before it raises a Federal question. The *Fed. R. Civ. P.* grants a Federal District Court original jurisdiction over "*all civil actions arising under the Constitution, laws of the United States*" pursuant to Title 28 *U.S.C.* s 1331.

13. The District Court's dismissal based upon the lack of *subject matter jurisdiction* pursuant to Fed. R. Civ. P. 12(b) (1) is preposterous and contradicts statutes, and precedent. The District Court failed/refused to recognize, Rule 12 (b) (1) is only valid: "*only if there is no federal question at issue.*" see, *Marbury v. Madison*, 1 Cranch 163 (1803) makes clear to deny standing is to close the court house to a litigant who seeks justice under rule of law.

Please Take Judicial Notice: What is more disconcerting on the District Court's part, is that Petitioners proved incontrovertibly that the "Act" "H.R. 3590" was implemented by intentional fraud by the leadership of the House of Representatives and the Senate in the passage, notwithstanding the proven fact that the entire "Act" violates the Constitution of the United States.

14. If there be any question whether the District Court had "subject matter jurisdiction", Petitioners draw the Court's attention to the Supreme Court of the United States in *Bell v. Hood*, 327 U.S. 678, 66 S. Ct. 733 90 L.Ed. 939 that 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."*

15. Constitutionally, Article 1, Section 8, Paragraph 9, Congress vested the District Court with "Original jurisdiction of all civil actions arising under the Constitution, laws, …" Furthermore Article 3, Section 2, of the U.S. Constitution states in relevant part:

> "*The judicial powers shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; … ; -- to Controversies to which the United States shall be a party; …"*

16. The 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 the courts, as well as other departments, are bound by that instrument."

17. The District Court was required to grant "subject matter jurisdiction" as a matter of right. The denial of jurisdiction denies Petitioners' "*due process*" to maintain their constitutional protections in a court of law. See, *Cohens v Virginia*, 19, U.S. 264 (1821). To do otherwise than grant such jurisdiction nullifies the Constitution.

Clarification Concerning Ruling by District Court:

18. In the matter at bar, the only issue before the District Court to be heard on February 22, 2011 was Petitioners' Amended Motion for Summary Judgment for Default (A-48). Previously the District Court acting in connivance with Defendants' attorneys repeatedly violated the *Fed. R. Civ. P.*. Without judicial authority the Court granted unlawful extensions of time to Defendants after they had by law, defaulted:

- By law, the Defendants were required to reply within 60 days. Failing to do so mandated the District Court grant a Summary Judgment in Petitioners' favor pursuant to *FRCP* 56 (a) –(b). Petitioners came before the District Court requesting declaratory relief, in the form of a Summary Judgment.

- No statute exists that would abrogate Rule 8(b) and 8(d) that requires a response with particularity as both Rules must be read in harmony with one another. Failure to do so deems to have admitted all averments.

- The District Court repeatedly violated *Fed. R. Civ. P.* 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*."[Emphasis Added]

- At no time did the District Court throughout these proceedings allow Petitioners an opportunity to object, or to reply, to the repeated procedurally infirm acts by the Defendants as well as the Court's repeated inexcusable violation of judicial procedure.

- The District Court granted Defendants an extension after they had forfeited for a second time, based upon improper letters (no motion, proper or otherwise, for an extension of time exists in the Court file). On, January 3, 2011, after time had expired Defendants requested another extension of time void any proper motion being submitted following their forfeiture. The following day, January 4th, 2011 the Court granted a third improper Stay, that contradicted the Court's own order explicitly stating in its Order that a Stay was denied. Thereafter, saying, in the same Order *"…the court noting that Plaintiffs' Motion for a Summary Judgment will be decided at the same time as Defendants' forthcoming Motion to dismiss.*" The Defendants were required to answer the Summary

Judgment no later than January 3, 2011, but even that date violated proper judicial procedure. Under what made-up Rules or Procedures is an untimely and illicit "Motion to Dismiss" to be allowed to be submitted? Especially after Defendants had already defaulted by willfully neglecting to respond.

- If one looks at the District Court ORDER (Document 23, A-35 to A-36) which states:

> "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."

19. As can plainly be seen, the January 4th Order contains two conflicting findings: (1), the request for a Stay was denied; (therefore Defendants should have forfeited, since the Court had no "Opposition" in the Court file to consider. (2), Defendants, were granted Permission by Order to respond to the "Summary Judgment for Default" by January 17, 2011, nothing else!

20. Nowhere does the District Court Order grant Defendants Permission to submit an untimely Motion to Dismiss against the original Petition. By law, Defendants forfeited, since their Opposition was due in November 2010. By law, the Court itself lacked authority to rule on an *anticipated* motion, see *Fed. R. Civ. P.*, Rule 6. Clearly the District Court was creating its own rules and law, abrogating existing law by judicial fiat.

21. Let the record show, no "Motion to Dismiss for Lack of Jurisdiction" exists in the Court record prior to the untimely Motion submitted by the defense. By law, an after-the-fact submission has no validity or standing to be considered, since no "Motion" or "Order" granting such permission was ever submitted in compliance with the *Fed. R. Civ. P.* The Rules require a timely submission based upon a Motion for an Extension of Time for "good cause". That too does not exist in the Court file. And if it did, Petitioners by law had to be given time to oppose such a motion, which was never allowed throughout these legal proceedings.

Please Take Judicial Notice: District Court's "Opinion" Page 2, Note 2 Judge Freda L. Wolfson denied Petitioners a proper hearing in relationship to an issue of finality as required by law. As an excuse for violating proper judicial procedure. The Court cited four (4) Circuit Court citations, all of no moment, to justify its unlawful denial in violation of "*due process*" concerning oral argument. Each authority relied upon by the Court abrogated established

Supreme Court precedent concerning an issue of finality, that requires Courts to hold oral argument. Petitioners repeatedly alerted the District Court citing the citations below:

22. Supreme Court precedence. The fundamental requisite of *due process* of law is the opportunity to be heard. *See* Grannis v Ordean, 234 U.S. 385, 394, Milliken v. Meyer, 311 U.S. 467; Priest v Las Vegas, 232 U.S. 604; Roller v. Holly, 176 U.S. 398 all of which held:

> "*An elementary and fundamental requirement "due process of law" in any proceeding which is accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and most importantly afford them an opportunity to be present to present their objections*."

Also see,

> "Parties whose rights are to be affected are entitled to be heard", Baldwin v. Hale, 68 U.S.(1Wall.) 223, 233 (1863). The notice of hearing and opportunity to be heard" must be granted at a meaningful time and in a meaningful manner. Armstrong v Manzo, 380 U.S. 545, 552 (1965). "*The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possessions*." No full and fair hearing took place, in the District Court at any time, see U.S. 304 U.S. 1, 58 S. Ct 773, 776, 777, 82 L.Ed 1129. The District Court refused to give Petitioners a reasonable opportunity to present and counter the claims of opposing counsels and the Courts from a standpoint of justice and law, see Akron, C.Y. R.Y. Co. v. U.S.,184, 43 S. Ct. 270, 67 L. Ed. 605; Boston Y M.R.R. v U.S.D.C. Mass, 208 *F. Supp*. 661, 669. To Plaintiffs' knowledge this is the only case in involving "H.R. 3590" that did not have any hearings or oral arguments that would establish a record.

Please Take Judicial Notice: Surely, a Motion for Summary Judgment for Default qualifies and/or a Motion to Dismiss, that is if it was properly submitted following proper procedures according to the *FRCP*, would constitute finality.

The District Court's intentional avoidance of a written record that would have required the defendants to answer Petitioners' objections whether the "Act" contained repeated unconstitutional provisions allowed the Defendants to avoid addressing the violations so that no factual record was ever developed. The facts demonstrated by the Defendants' attorneys' failure to answer any of the allegations on submission was a means of protection to avoid answering in an open courtroom on the record. The District Court from the onset of these proceedings protected Defendants by repeatedly violating proper judicial procedure. Clearly contradicting required judicial procedure. *See, Flu-Cured Tobacco Co-op Stabilization F. Supp* 2137, 1145, *Corp. v United States EPA*, 857

23. The District Court put forth an incomplete, distorted, and prejudicial history of the "Act" making unsubstantiated statements to be taken as fact. Petitioners will expose the "Opinion" issued by the Court that reeks of lies. See, District Court Notes (page 4) below.

24. The District Court, *see* pages 4 and 5, puts forth an incomplete and unintelligible description of the allegations, co-mingling individual Counts of the Petition out of context saying, "*Petitioners put forth a litany of conclusory allegations*". Thereafter, the District Court's "Opinion" admits it didn't bother to address the allegations in the 15 Counts:

On page 4, Note 5 (A-10), the District Court says:

"Because this Court grants Defendants' motion, Plaintiffs motion is denied as moot."

Page 4, Note 6 (A-10):

"..., and the Court will refrain from commenting on the accuracy of these allegations".

In the "Opinion" II, Standard of Review

Page 6 (A-12), the Court says:

"*…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 defendants 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 pleading to decide the dispute. Cestonaro v. United States 211 F3d 749, 749, 752 (3d Cir. 2000) (Mortensen, 549 F.2d at 891).* ***Because the defendants argue that plaintiffs have not adequately alleged standing, the Court will consider this facial challenge to this Court's subject matter jurisdiction***."

Please Take Notice:

- Simple logic dictates that the three authorities cited by the District Court are of no moment. First, the Defendants failed to answer the Complaint, and then the Court as a "finder of fact" by its own admission failed/refused to address Constitutional violations, thus how could the two authorities have Merit?

- To apply *Turicentro, 303 F.3d at 300* Defendants would have had to prove the Petitioners' allegations were without merit. They failed to do so as required by the *Fed. R. Civ. P* Rules 8(b) and 8(d).

- To rely on *Cestonaro v. United States 211 F3d 749, 749, 752 (3d Cir. 2000) (Mortensen, 549 F.2d at 891)* the Court, before it could look beyond the pleading, would first have to had address whether the Defendants adequately presented an argument. In the case at bar, the allegations were based upon violations of Petitioners' fundamental Constitutional and Natural Rights. Ignoring that fiduciary duty, the Court arbitrarily suspended the

fundamental Constitutional and Natural Rights guaranteed by the Constitution by failing to address whether Defendants adequately disproved the allegations, or presented a proper argument. What is more disconcerting is that the District Court appears to contradict itself. The Court on page 5 (A-11) of the "Opinion" said: "*the Court will accept these facts* [alleged harm] *as true for the purpose of deciding this motion*." If the Court accepts the facts, how then can the Court justify not addressing the facts or allegations and the effect that the violations in the "Act" constitute. Regardless how monstrous or minimal the harm to Petitioners, if the "Act" contains unconstitutional provisions, the Court was obligated to rectify the damage.

Point III the DICUSSION OF STANDING in the "Opinion",

Please Take Special Judicial Notice: Notwithstanding the many valid arguments to be presented, this Circuit Court must recognize Defendants' failure to address Count 6, therefore conceded, that Mr. Obama is/was not authorized to sign into law "H.R.3590" under Article II of the U.S. Constitution and does not qualify as a "natural born Citizen". The District Court failed to recognize that the dismissal was based upon a wrong perception of what constitutes the actual injury to Petitioners, an injury which automatically constitutes "standing". Petitioners are taxpayers and "H.R.3590" without consent of the required political class of citizens allows the government to make demands upon the labor (taxes) of the Petitioners to pay for the privileges and benefits of Healthcare for those whom the bill does apply to, or who will receive benefits from the bill.

25. The District Court (ref. p.7, A-13) fails to understand Article III of the United States Constitution and/or the controversy concerning the issue at bar that by law automatically requires adjudication. Specific violations of the Constitution set forth in provisions of "H.R. 3590" violate the Constitution. The *Fed. R. Civ. P.* 12(h) (3) grants jurisdiction: "*Original jurisdiction of all civil actions arising under the constitution…",* as does Amendment 1. Petitioners addressed this above see, paragraphs 17 – 21, in relationship to the nonsensical use of Fed. R. Civ. P. 12 (b)(1) concerning jurisdiction. Clearly the use of *Summers v. Earth Island Inst.*, 129 S. Ct 1142, 1149 (2009), by the District Court only supports and favors Petitioners.

26. The District Court totally distorts and misapplies *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Followed by *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Both these authorities if scrutinized demonstrate that Petitioners more than met the requisite requirements for standing, as stated in the cited cases which the District Court referenced related to the Supreme Court's finding.

27. The use of *Lujan* by the District Court is bewildering since Petitioners throughout the Petition set forth concrete injury-in-fact. As to the citing *Toll Bros., Inc., v. Twp. of Readington*, 555 F.3d 131, 138 (3rd Cir. 2009) concerning standing that states had to particularize, it must: "…*affect the plaintiff in a personal and individual way*".

28. Also interestingly, referencing *Lujan* (citation omitted) as a standing matter says nothing of substance. The fact is, that there is injury-in-fact throughout the Petition due to unconstitutional provisions in the "Act" [conduct]. More on the point, the District Court's use of these citations contradict the Court's own "Opinion" since the Court itself said, see page 5 (A-12): "…*the Court will accept these facts as true for the purpose of deciding the motion*" in the Court's discussion of how Petitioners are "personally affected".

Please Take Special Judicial Notice: Due to the many discrepancies and misstatements by the District Court in the "Opinion", Petitioners will address the faults in chronological order. Petitioners will present to this Circuit Court massive uncontested proof concerning each allegation not contested that proves Petitioners in no way presented "generalized grievances". The District Court, for whatever reason, ignored its fiduciary duty to conduct a proper adjudication of the Petition. No excuse exists for the Court to turn a blind eye to Natural Rights, positive laws, rules, and facts. In short, the District Court's "Opinion" is meaningless, arbitrary and capricious, and if allowed to stand it would suspend both Natural Rights and "positive" fundamental Rights guaranteed to every Citizen by the United States Constitution.

29. The misapplication of *Lujan v. Defenders of Wildlife*, *Warth v. Seldin*, *Toll Bros., Inc., v. Twp. of Readington*, *United States v. Richardson*, and *Lance v Coffman*, is a fallacious justification for rejecting the Petitioners' case which adequately satisfied the constitutional/statutory requirements. It is inarguable that Petitioners' injury is concrete. "H.R. 3590" violates Articles 1,2,3,4,5, and 6, Amendments 1,4,5,8,9,10,13,14 and 16 to include Statutes set forth throughout the Petition; which is threat to life, liberty, safety, security, and property that is neither conjectural, hypothetical, nor a "*generalized grievance*". The Constitution recognizes these Rights that require the Federal Courts to protect the people from such abuses.

30. Petitioners explicitly identified, pointing to provisions in the "Act" that disprove the District Court, Judge Wolfson, false and unsupported misleading findings in the "Opinion"

which were used to justify denying adjudication of the Petition. See "Note 6, page 4 (A-10)", in which Judge Wolfson falsely says:

> *"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*."

The above quotation is not merely misleading but totally dishonest. Petitioners are compelled to correct that false assertion by the District Court: *See,* the following provisions listed by Petitioners:

- Count 4, Provision, Section 10907 Article 1, Section 9 (unauthorized Capitation Tax) (A-227 to A-228);
- Count 8, Provisions, Section 1128J, pp. 1687-1692ff, also see Title XVIII, XIX, A & B, Section 1128B (f) notwithstanding. "Notwithstanding any other provisions of law". Warrantless searches and seizures. Violation of HIPAA Act (A-82 to A-83, A-232 to A-233);
- Count 9, Violation of Due Process, in which judicial review is not an option, clearly rendering the judiciary irrelevant See, "H.R.3590" (pp. 630, 653, 676, 680, 725, 738, 772, 831, 1013, 1415, 1679, and 2303). So much for Amendment 5 (A-234 to A-236);
- Count 10, Provisions, Section 1402 (g) (A-237 to A-239);
- Count 11, Provisions, pp. 326 and 2105 also see, sections 1402 (g) (1) and (II) (A-239 to A-242);
- Count 12, Sections 1869, 1878, pp. 630, 653, 676, 680, 725, 738, 772, 831, 1013, 1415, 1512, 1679, and 2302 to include violation of the Anti-trust laws (A-242 to A-244);
- Count 1, demonstrates outright fraudulent intent in bringing the bill up for a vote , Counts 2, 3, 5, 6, 7, 13, and 15 demonstrate incontrovertible violation of the Constitution, and statutory law that is abrogated by "H.R. 3590" (See A-66 to A-67, A-221 to A-222).

31. More perplexing, the District Court, page 8 (A-14), cites *Babbit v. UFT Nat'l Union*, 442 U.S. 289, 298 (1979); it is inexplicable how this would serve the District Court's purpose for dismissal. This is the very same authority which was set forth by the Petitioners in their Reply Brief pp. 13, 23-24 (A-216 to A-217, A-228) that incontrovertibly support Petitioners, which says:

> "*…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."

32. The District Court continued in a duplicitous manner, relying on Pennsylvania v. West Virginia, 262 U.S. 553, 593, (1923) O'Shea v. Littleton, 414 U.S. 488, 494 (1974; and Massachusetts v. Mellon, 262 U.S. 447, 488 (1923), fallaciously claiming the danger had to be immediate or sustained.

33. It is mystifying as to why the District Court would give any validity to the same argument Defendants unsuccessfully put forth 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 relying on those same authorities**.

34. Clearly, the precedent set by the Supreme Court's in Babbitt, (citations omitted) would abrogate the above findings. What is more disingenuous in the twisted application of the above authorities by the District Court. Petitioners had in their Reply Opposition, pages 12 and 13 (A-216 to A-217) and cited the same authority among others. A review makes obvious Babbitt v. United Farm Workers Nat'l Union, (citation omitted) 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 colloquial sense of soon or precisely within a certain number of days, weeks, or months."

35. 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 injury… is likely in the future, the fact that [the complained of harm] may be deferred does not prevent federal litigation now*."

36. Petitioners also quoted Judge Vinson's citation in Village of Bensenville v. FAA, 376 F.3d 114 (D.C. Cir 2004) (A-217), 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.*"

37. Petitioner again cited Judge Vinson's use of *Pierce v. Society of Sisters*, 268 U.S. 510, 450, 45 S. Ct 571, 69 L. Ed.2d 1070 (1925) (A-217) 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 the District Court are without merit and moot, having no relationship to the unconstitutional allegations presented and verified in each allegation.

INCONTROVERTIBLE PROOF OF STANDING

38. Any violation of the Constitution grants automatic "standing" that mandates the Federal Courts rule and rectify, to do otherwise is to render the Constitution irrelevant. No Jurist has authority or discretion to say: "Citizens are no longer full and equal under the law". Nor are Judges free to interpret the Constitution and/or statutes as they see fit. To do so, would erase guaranteed Constitutional, Natural, Sovereign, and Civil Rights, and would rewrite statutory authority. Such unauthorized action is treacherous.

39. Common sense dictates that if any law, falling outside the bounds of the Constitution's encompassing strict limitations on government, devalues the entire structure of our Republican form of government, then the judiciary is oath-bound to nullify said law. Any unconstitutional law is therefore void and of no moment, and it is up to this Circuit Court to declare that so. If not our judiciary, then who? Not to do so, nullifies the checks and balances that guarantee a limited government. To claim Petitioners (or even States) are "without standing" strips the Natural Rights from the People that are reserved to the People.

40. The District Court's "*Opinion and Order*", of the 21st day of April 2011, disenfranchises Petitioners' Natural, Constitutional and Political Rights as natural born Citizens of these United States.

41. Amendment 1 is positive law that protects the Rights of all citizens to Petition their government for grievances. No statute or Amendment has been enacted into law that would abrogate that sacred Right. The controlling jurisdiction is the Constitution that secures these Natural and Political Rights. Supreme Court precedent mandates that any violation of the Constitution must be addressed, whether it be a law, treaty, or statute. If it usurps the Constitution, it must be rendered "null and void"! *See*, Article III, Section 2:

> "*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*."

42. The controversy is whether Petitioners' Natural, Constitutional, Sovereign and Civil Rights were invalidated by the enactment of "H.R. 3590" and/or whether this "Act" did in-fact-injure Petitioners. The denial by the District Court to adjudicate the matter openly violates Petitioners' Constitutional and other Rights, as do the provisions in the "Act" itself. The Court's distortion and fabricated findings are tantamount to stripping Petitioners of their Natural, Sovereign, Constitutional and Civil Rights.

Please Take Special Judicial Notice: Petitioners Nicholas E. Purpura, and Donald R. Laster, Jr, are spokepersons for numerous individuals (many of whom are Honorably Discharged Military), as well as groups list in the Petitioned. Many of us **swore an oath before God to defend the Constitution against all enemies domestic and foreign**. That oath didn't end when we were Honorably Discharged. Our military is now in battle defending our Constitutional way of life. We remind the Court, this is the same oath **You** swore to uphold. Whenever the Constitution is usurped, it becomes an immediate present danger of **direct injury** and harm to our person, families, as well as to our Constitutional Republic. The jurisdiction to adjudicate is the Constitution that was won by the blood of Americans that created this Republic. From 1776 to the present, that blood is still being shed, such is the fundamental basis for "**standing**".

If there is any doubt as to what your duty is: see, *Marbury v. Madison*, that 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*."

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

> "*The Constitution was designed to bring government under the rule of law, as opposed to achieving any specific purposes…it is primarily a structural and procedural document, specifying who is to exercise what powers and how. It is a body*

> *of law,* ***designed to govern, <u>not the people</u>, but government itself****; and it is written in language intelligible all, that all might know whether it is being obeyed*."

43. Again, if there be any question whether the Courts have "subject matter jurisdiction", Petitioners draw this Circuit Court's attention to the Supreme Court of the United States in <u>*Bell v. Hood*</u>, 327 U.S. 678, 66 S. Ct. 733 90 L. Ed. 939 that 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."*

[This also establishes and re-enforces Petitioners' "standing" to bring the Petition before the Federal Courts].

44. Aside from the above, the question is also whether Mr. Obama had the Constitutional authority to sign "H.R. 3590" into law <u>that must be addressed</u> due to the specific requirements of Article 2, Section 1, Paragraph 5. It must be noted Defendants failed and refused to address this legal question, in violation of Fed. R. Civ. P. Rule 8(b) and 8(d) which is an automatic admission that the assertion of the Count in the Petition is correct.

<u>COURT'S (B). OTHER CHALLENGES TO THE ACA</u>:

45. The District Court, Pages 9 through 14 of the "Opinion" (A-14 to A20), attempts to claim relevancy between Petitioners' complaint and the other complaints submitted by individuals and groups that failed to allege and prove the concrete injury and harm set forth in provisions of ACA "H.R.3590". What this Honorable Circuit Court must question, is how could the District Court even make such a comparison, when by its own admission it refused/failed to address the merits? Especially, since Petitioners submitted the most comprehensive challenge to "H.R. 3590" seen so far in the Courts. Unlike any other complaint, Petitioners alleged and proved that each of the 15 Counts violated the Supreme Law of the Land, the United States Constitution and Statutes. No other Complaint alleges these same violations.

46. The District Court states: "Before turning to the merits of the matter before me, this Court will survey the relevant decisions of the other District Courts that have considered standing"

[thereafter ref. to Note 7 (A-15)].[1] Whether or not any of those cases were granted or denied standing is again irrelevant, those 4 pages (pp 9-14 - A-15 to A20) of the 'Opinion' were an exercise in futility, since the Court failed to recognize the *threshold matter* before it. Nor did any of those cases present the Constitutional violations set forth by pointing to provisions in the "Act" that were unconstitutional.

47. Denying Petitioners standing was/is to disenfranchise every "natural born Citizen" of the United States allowing the Constitution and four (4) existing statutes to be abrogated by the usurpation of the Constitution of the United States – the Supreme Law of the country. Especially since no Constitutional authority exists to enact "H.R. 3590" by those in office.

48. Also relevant, the District Court was fully briefed that the "Act" violated specific Articles and Amendments of the Constitution that were not included in any of the authorities the District Court relied upon.

49. The Court totally disregarded the fact that Defendants failed to address the claims as required by FRCP 8(b) and 8(c) with specificity, and instead submitted unsubstantiated diatribe. By the District Court's incompetence in failing to address Count 6, Petitioners are disenfranchised as a "political class of citizens" from our government, thus creating law valid for one political class of citizens, but that is not valid for all classes.

50. Petitioners, pursuant to Amendment 1, had/have justification to be spokespersons for all those signing onto this Petition to set forth their grievance, as no law Positive or Natural has authority to abrogate Amendment 1, without first repealing Amendment 1. Clearly this case is a dispute of *first impression*. This is the first time the question has been raised that the Amendment 1 does not apply *to petition one's government for redress of grievance*. Or whether Article II has any validity.

[1] Incapable of being truthful, using deceptive sophistry, the District Court says: "However, the Court notes that some of the challenges to the Act have been brought by various States as plaintiffs… 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 analysis. *See, e.g*. Massachusetts v. EPA, 549 U.S. 49, 520 (2007). Because neither of the Plaintiffs here are States, such reasoning is inapplicable.

51. The attempt to draw a similarity (to authorities of other challenges to ACA) cited by the District Court is comparing apples to oranges. The Plaintiffs in those other complaints failed to specifically particularize the injury stemming from the provision in the "Act", or how those provisions violated their individual freedoms. Nor did they state the unconstitutional nature of the provisions as Plaintiffs did in this Petition. Petitioners will reiterate below, citing the same unconstitutional provisions before the District Court that falsely claimed that such were not pointed to. See, Opinion Note 6, page 4 (A-10).

52. Also, unlike the other Complaints brought before the District Courts in relationship to the "Act" "H.R. 3590", not a single one contained the 15 Counts that allege and address unconstitutional violations outside of the "Commerce Clause" and Amendment 10. Violations that cause immediate as well as long-term harm, not only to Petitioners, but to all Americans. More disturbing, there is no similarity between Petitioners' case and those cases cited by the District Court.

53. By design, the District Court ignored the fact that Defendants utterly failed to dispute any of the allegations with particularity or specificity. Nor did Defendants even try to answer six (6) individual Counts, thereby conceding to Petitioners' accuracy. In Count 6, Defendants did not even bother to argue whether Mr. Obama was eligible as a "natural born Citizen" to sign "H.R.3590" into law. See *FRCP* Rule 8(d).

54. Even the ridiculous note on page 9 of the "Opinion" (A-9) demonstrates the ineffective review of the authorities the Court is referencing, to say nothing of their relevance to Petitioners' standing. This was a vain attempt to deny standing, saying: "*Because neither of the Plaintiffs here are States, such reasoning is inapplicable.*"

55. Once again, Defendants' failure to reply by Positive Law warranted a Summary Judgment for Petitioners. What legally cannot and must not be overlooked by this Circuit Court, is that Petitioners indisputably proved that the underlying "Act" being unconstitutional law makes it *ipso facto* void. Thus, the only logical and legal conclusion and remedy is for this Court to protect the people from enforcement of such an unconstitutional law.

C. THE PRESENT MATTER

Please Take Judicial Notice: The District Court begins this section on page 14 (A-20) of its "Opinion" stating: "*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*."

To reply to each specious finding set forth in pages 14 through 20 (A-20 to A-26) of the Opinion would be a waste of paper and ink, as are the fetid conclusions drawn by the District Court. Therefore Petitioners will briefly demonstrate the unconstitutionality of the "Act" "H. R. 3590", by listing provisions that violate Constitutional protections; to include statutes and precedent reiterating each Count and violation[s] in chronological order for this Honorable Circuit Court that the District Court failed/refused to recognize.

VIOLATIONS IGNORED BY THE DISTRICT COURT

56. COUNT 1, On (page 4 - A-10) the Court said: "*the Senate bills were originated completely independent of any House bill [and] the Senate may not originate revenue raising bills*," Taken on its face the District Court is correct, except that the District Court ignored Petitioners' conclusive proof that the Senate unconstitutionally originated "H.R.3590" in violation of Article 1, Section 7, Paragraph 1. A complete explanation was presented to the District Court and can be found on pages 17-18 of Petitioners' Reply (A-221 to A-222) to Defendants Motion. Petitioners explicitly revealed how the "Act" was fraudulently presented, voted upon and unconstitutionally signed into law:

- Petitioners set forth inarguable proof, that is also supported by the Hon. Chief Judge Vinson from Document 79, Case 3:10-cv-00091-RV-EMT. Defendants themselves requested the history of said "Act" be examined, specifically requesting Chief Judge Vinson to examine the origination history of the "Act" in question.[2]

- Congress itself recently rejected S-510 because it contained "revenue-raising" provisions. There is no difference in either instance, it is without argument that the Senate lacks the Constitutional authority to create any revenue-raising "Act". Their lawful authority

[2] 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 are prohibited by Article 1, Section 7, Paragraph 1.

allows them only to confirm or modify a revenue-raising "bill" created by the House of Representatives.

57. On Page 5, the District Court ridiculously says:

> "*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. (the Court omitted references) yet, says: Counts Two , Three, Four, Seven, Nine, Ten, and Fourteen, Glaring absent from the Complaint, however, are any factual allegations concerning how Plaintiffs Purpura and Laster will be affected by the Act or any provisions*."

58. Any violation of the U.S. Constitution or Amendment attached thereto ultimately affects Petitioners, their families and Country.

59. COUNT 2, As far as standing and proof of the unconstitutionality of the "Act", Petitioners alleged the same argument in its entirety, see Petitioners' Exhibit 1 attached to the original Petition, as did the Attorneys General [*Cuccinelli v. Sebelius*] in their multi-state action Case 3:10-cv-00091-RV-EMT. As this Circuit Court is aware, Chief Judge Vinson found the "Act" violated the "*Commerce Clause*" of the Constitution, as did the Hon. Judge Hudson (Va.).

60. Not only was the same argument presented, Petitioners enhance upon the individual States' arguments by citing violations of Article 1, Section 8, addressing the "General Welfare" provision. First and foremost, nowhere does the "commerce clause" grant authority to Congress to dictate, order, or force any person, company, or State to engage in any form of commerce. Nor does the contract between the 13 Nation-States that created the federal government give Congress the authority to create vehicles of commerce, especially for a non-activity:

- In addition, Petitioners set forth Supreme Court precedent citing the *United States v. Lopez*, 515 U.S. 549, 115 S. Ct. 1624, 2131 L.Ed.2d 626 (1995) and *U.S. v Morrison*, (citation omitted). (See pages A-222 to A-224, for complete argument). It is important to note that individuals were the plaintiffs in those cases.

- Unlike those Complaints related to the "Act", Petitioners address unaddressed issues in the argument further, addressing the "*General Welfare*" provision of the "Act" that established "*Specific Welfare*", for which no provision exists in the U.S. Constitution and is clearly prohibited. *See, United States v. Butler*, 297 U.S. 1 (1936) that prohibits the very type of activities being promulgated by the "Act" "H.R. 3590" which levies taxes, fines and fees specifically to supply a product or products to one specific group by taxing other specific groups. These unconstitutional penalties violate the individual sovereignty of individuals as well as the States.

61. COUNT 3, Inarguably the "Act" "H.R.3590" violates Article 1, Section 8, Paragraph 15 of the U.S. Constitution in regards to the appropriations provision. The Constitution, by law, grants Congress the authority to fund any Army for a period no longer than two years at any one time. As set forth in Petitioners' Petition, the "Act" funds a Ready Reserve Corp for four years. Also totally ignored by the District Court was the blatant violation of the "*Posse Comitatus*" Act:

- The District Court conveniently ignored the indisputable fact that the "Act" allows the President to deploy his Ready Reserve into any State for what he alone decides is an emergency, without the specific request or permission of a State governor;

- It grants the President unfettered permission to activate a State's National Guard, bypassing Congressional approval, and/or to institute a draft without a "Declaration of War", placing them into his Ready Reserve Corp.

Note: The State National Guard is under the direct command of the Governor of each individual State. That is of course in absence of a military invasion or insurrection. The power to call forth the Guard by the Executive Branch through provisions in the "Act" cannot exist pursuant to the delegated powers in the Constitution, or without a formal declaration of war from Congress.

[For complete details See, Pages A-225 to A-227 of Petitioners' Reply].

62. COUNT 4, It is without contradiction, that the "Act" violates Article 1, Section 9, Paragraph 4, that reads: "*No capitation or other direct, Tax shall be laid, unless in Proportion to Census or Enumerated herein before directed to be taken*". Petitioners demonstrated that the "Act" explicitly taxes individuals discriminately devoid of proportionality to various States apart from population. See, complete argument pages A-227 to A-228 Petitioners' Reply. Again, Petitioners are individuals that are affected as the Court clearly noted on page 5: "***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 deciding this motion***".

- It must also be noted in the same vein as outlined in Count 1 above that the Senate and House of Representatives lack the Constitutional authority to levy such taxes.

- Please note that the Honorable Chief Judge Vinson found in Case 3:10-cv-00091-RV-EMT and referred to Sec. 10907 of the "Act" saying "*There is hereby imposed on any indoor tanning service a tax*". It must be noted that tax is applied to the person **NOT** the service.

- "H.R.3590" as written levies a tax on incomes without apportionment! "Capitation" taxes are not on incomes but taxes on individuals, discriminately devoid of proportionality to various States regardless of population, such automatically renders this "Act" *null and*

void. Regardless, even if the District Court or Defendants had been able to conjure up some magical justification, it would not alter the legal fact as presented above concerning Count 1, "the authority of the Senate to create a revenue-raising bill".

Special Judicial Notice Warranted: Conspicuously missing from the District Court's "Opinion and Order" is the undeniable fact that Defendants failed to present any denial or an affirmative defense to Counts 5, 6, and 7, in defiance of the Fed. R. Civ. P. 8(b) and 8(d). By law, supported by established precedent, Defendants automatically are "deemed to have admitted all averments thereby forfeited on each of these Counts".

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

FRCP 8(d): See *Phelps v. McCellan*, 30 F3d 658, 663 *Lockwood v Wolf Corp*. 629 F2d 603, 611 (9th Cir) **by law, each allegation was to be treated as if defendants do not deny the allegations**. When defendants fail to submit an affirmative defense supported by "documented proof", such as the case at bar, each allegation **must be treated as if defendants admitted to them**!

63. COUNT 5, Violation of Article 1, Section 9, See complete argument pages 24-25 Petitioners' Reply (A-228 to A-229), though unnecessary since they forfeited by not setting forth any argument in "Opposition". *Fed. R. Civ. P*. states: "failure to set forth an affirmative defense deemed to have admitted all averments." 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.*"

- "H.R.3590" declares a citizen guilty of a crime without a trial, and clearly states no judicial review allowed! And the idea of a "Bill of Attainder" is clearly hinted at, since the penalties imposed for not having the government-mandated insurance result in fines automatically without a trial or conviction. This will be discussed further in Count 12,

which Defendants also failed to answer, concerning violation of Amendment 5 *due process* by the elimination of any judicial review.

- "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" levies 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; this 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.

- "H.R. 3590" places taxes on medical devices exported from the individual States, clearly discriminating against the exports of the States that said devices are manufactured in.

64. COUNT 6, The District Court makes a flippant statement on page 4 (A-10), absent any legal finding or conclusion of law in reference to Count 6, saying:

> "*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 United States*".

65. Petitioners are compelled to compliment the Court for understanding the assertion and issue by reiterating this very important fact that requires adjudication. But that does NOT alter the fact that Defendants failed to dispute the allegation, thus acknowledging its accuracy. See pages 25–26 (A-229 to A-230). Most importantly see, Petitioners Exhibit 5 attached to Reply (Document 28), which is indisputable.

66. Strangely, the District Court failed to articulate where the Petitioners were mistaken. Petitioners will in detail conclusively demonstrate for this Circuit Court, if Defendants chose to set forth an argument, how the signing of the "Act" "H.R. 3590" violates Article 2 of the Constitution that requires only a "natural born Citizen" to hold the Office of the Presidency. In response to the District Court's opinion concerning standing, please refer to pages 6 and 7 (A-12 to A-13), Section III of the 'Opinion'. Clearly, Vattel's "*Law of Nations*" clarifies that to be recognized as a "natural born Citizen" one must have at least a citizen father.[3]

[3] See, Emmerich de Vattel, *The Law of Nations*; or *The Law of Nature applied to Conduct and Affairs of Nations and Sovereign*, Book I, Chapter 19, Paragraph Number 212. Clearly this dispute qualifies as an issue of "first impression".

67. The men who wrote the Constitution and used the phrase "natural born Citizen" as a requirement of Office intended that future U.S. presidents would not have "divided loyalties" or even the appearance of "divided loyalties". In other words, the type of person becoming President they were trying to avoid via this language is the very type of person represented by Barack Hussein Obama II. This is the heart of the argument concerning this Count and Natural Law as well as Positive Law. Only a person of a specific type of citizenship, a natural born Citizen, may be President or Vice-President. Individuals who do not naturally inherit their citizenship from at the very least a citizen father but instead derive their citizenship under the provisions of Article 1, Section 8, Paragraph 4, or Amendment 14 are not eligible to hold or exercise the authority of President or Vice-President.

Please Take Judicial Notice: At no time did Petitioners question whether Mr. Obama was born in the United States or whether he was a citizen. The argument goes to whether Mr. Obama is a "natural born Citizen", and in fact, whether this question has been previously adjudicated and settled, rendering the question of his eligibility "*stare decisis et no movere*" due to prior Supreme Court decisions.

68. COUNT 7, Defendants failed to address the allegation, and by law, see, Fed. R. Civ. P. 8(b) and 8(c), required an automatic forfeiture. Petitioners alleged and proved "H.R. 3590" violates the Amendment 16 by creating multiple taxes not authorized within the meaning of the Amendment as was demonstrated. See, complete argument pages 26–27, also see Petitioners Reply (Document 28). In short:

- Petitioners' proved, that the provision in 'Act" by the "Senate's 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.

- Plaintiffs never questioned Amendment 16's validity, but a provision inserted within the "Act" itself puts a tax on 'gross income twice' based upon phantom income that does not exist. It is inarguable that this results in double taxation on any income of the individual or 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, exceeds the provision set forth in Amendment 16.

- This Circuit Court must also address what the District Court failed to; 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, by imposing "*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."

- The District Court as a fact-finder had the fiduciary duty to decide: if the penalty is a tax, how it would apply, and to clarify what constitutes "income"; how often the government may tax it; under the proper authority granted by the Constitution. The question becomes: is it "double taxation?" Tax protestors have repeatedly argued that the tax on dividend income which the dividend payer, usually a regular 'Subchapter C' corporation or group, has previously listed as income on its own tax return, becomes "double taxation" when the dividend receiver is then taxed on the dividend again.

- Any diligent jurist or judicial body can readily see that this unconstitutional "Act" has opened a Pandora's Box. The Court is charged with the task of undoing so many wrongs that require immediate answer, but to do any less would be a violation of "proper judicial procedure" if such legal questions were left undecided.

69. COUNT 8 Oddly, the District Court makes no mention of Count 8, discounting the importance of the abrogation of Amendment 4, as well as the "*Health Insurance Portability and Accounting Act*" (HIPAA). Petitioners explicitly identified violations, pointing to provisions in the "Act" that proves that the District Court, Judge Wolfson, repeatedly and intentionally put forth false and misleading conclusions in her "Opinion." "Note 6, page 4 (A-10)," says:

> *"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*."

- It must be noted, Petitioners proved to the District Court that Defendants outright lied in their argument [As does the District Court conclusion in Note 6 (A-10)]. In Defendants' argument they falsely claim that 'H.R. 3590" contained no such provision that violates Amendment 4, nor that the *Health Insurance Portability and Accounting Act, (HIPAA) includes access to individual's bank accounts.*

- Clarification: "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:

  [Warrantless seizures by big brother of individual citizens' records, (our emphasis)]

(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.***" Section 1128J provides for warrantless searches and seizures. Amendment 4 protection no longer exists. Now the People request this Circuit Court take special notice of the key phrases to follow which allow access to the peoples' records and allows the usurpation of not only the HIPAA legislation but also Amendment 4:

  Defendants had dishonestly told the District Court:

  "... 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 transfer". (A189 to A190)

- 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", **without any judicial warrant**:

  "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 individual's financial responsibilities with respect to penalties and fees prior to or at the point of care as outlined in the bill. This clause gives the government the ability to transfer funds electronically to or from an individual's bank account for the purposes of debiting his/her account for fees and penalties.

70. Count 9, Petitioners proved violations of Amendments 5 and 13; in short, "H.R.3590" mandates that every citizen purchase "Healthcare Insurance" under threat 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 an individual's property without "*due process*" we have what's called a "*taking*."[4] A "*taking*" may be effected by **persuasion, enticement, or inducement**. It implies a transfer of a possession.[5] 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 or fines of any kind.

- 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 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 convicted criminals to adhere to demands, not free American citizens;

- The District Court appears to be unfamiliar with Amendment 13, 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";

- 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 undisputedly 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.**

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[4] As a matter of law, in pretrial and even discovery the issue of fact must be resolved in order to determine whether the "Act" itself violated clearly established federal law. see *Hunter v Bryant*, 502 US (1991) *See also Anderson v Creighton*, 483 US 635, 646, n:6 (1987). It cannot be denied anyone not being given a hearing; their constitutional civil rights will have been abrogated therefore has been denied his property without "*due process*" of law, in violation of his the Fifth and Fourteenth Amendment Rights.

[5] 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.*

Special Note: To simplify the above, the natural reality formed from the facts outline above [and to follow] prove that the injury resulting from implementation of "H.R.3590" is in fact one of involuntary servitude, which is the essence of slavery, forced upon the political class of citizens who are by definition "natural born Citizens" in violation of both Amendment 13, as well as Amendment 5. That is indisputably actual injury and by **all rights grants standing**. The District Court dismissed this case by omitting the fact that defendants by their own admission by failing to address Count 6, conceded Mr. Obama is not a "natural born Citizen" and had no authority to sign to bill into law.

71. Of importance, Defendants mocked Petitioners when it was alleged "H.R. 3590" did not 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.

72. The citizens of these United States are free, and no government official, whether in the legislature or executive branch can violate the U.S. Constitution by the enactment of any bill that usurps the U.S Constitution. 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 Circuit Court is obligated to render "H.R. 3590" unconstitutional and overturn the District Court and grant the Summary Judgment for Default to Petitioners.

Special Note to Every Sitting Judge: The Judicial Branch of Government has now become irrelevant with the enactment of the unconstitutional provision set forth in "H.R. 3590" - so much for "checks and balances" under this present administration. As individual citizens as of right we Petitioned our government. If we are to be denied our Constitutional, Natural, Sovereign and Civil Rights how long before our Courts become irrelevant and become rubber stamps for a rebellious run-a-way legislature and executive branch? No longer will the judiciary have any meaning or place in the Republic? Will we be a Republic or a "Mobocracy"?

Count 10, Violation of Article 4, Section 2, and Amendment 14 concerning this allegation the attorneys for the Defendants, as did the District Court by its "Opinion and Order" claimed Petitioners' failed to present a "*specific-enough claim*". These same vacuous individuals 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*".

73. Obviously we are dealing with individuals who have no understanding or comprehension of the English language or the U.S. Constitution. Amendment 14 in relevant part reads: "*No State shall…deny to any person within its jurisdiction the equal protection of the laws."* Article 4, Section 2 of the Constitution that states: "*The citizens of each state shall be entitled to all the Privileges and Immunities of the Citizens in the several states*."

- Amendment 1 of the U.S. Constitution prohibits Congress from making laws regarding religion (respecting one religion over another). "H.R. 3590" grants exemptions specifically exempting select religious sects from the mandate to purchase Healthcare Insurance without penalty. This provision violates Amendments 1 - *"Congress shall make no law respecting an establishment of religion"*, and Amendment 14's "*Equal protection and treatment*";

- "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.

- 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**. Clearly such discrimination violates Amendment 14. [Also see Count 13 for other violation of Amendment 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.** [6]

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.

[6] 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.

- Additional violation of Amendment 14: Unions exempt, e.g. SEIU promoted thereafter an estimated 45,000 workers represented by seven SEIU locals received waivers. At this moment there are over 182 unions 'waiver recipients'; where's the equal treatment?

Total waivers exceed 1000 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's healthcare czar Nancy-Ann DeParle Single-employer union plans that have received a waiver. In totaling in the hundreds collectively-bargained plans have received waivers.
- And just recently, the Ex-speaker of the House has the HHS, granting waivers to high end restaurants and nightclubs in her district,

Let the District Court and/or Defendants explain how these exceptions do not violate Amendment 14.

- In short, this is outright political corruption: This bill 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 citizens and residences of the United States.

74. Count 11, Violation of Amendment 1, "H.R. 3590" violate the "Establishment Clause":

- For factual edification see provision and sections, page 326 and page 2105, in 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, it says in relevant part:

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

- 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 official State religion (for example The Church of England in the United Kingdom). 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 is granted.

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

- *or abnegation of religion. Mr. Justice Goldberg's concurring opinion in [p695] Abington, which I joined, set forth these* 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 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*."

75. As this Honorable Circuit Court well knows, any law must apply with equal force to everyone. "H.R. 3590" abridges Petitioners' Rights in direct violation of Amendments 1 and 14. The "Act" does favor and respects one or more religions over others 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 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.

A Note of Caution: 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 Amendments 5 and 14. Again as case of *first impression*.

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]

76. 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."

77. Petitioners' draw the Court's attention to the provisions in question 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.

78. The consequence of this challenge will not only effect the issue at bar, the "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: Also ignored by the District Court was that Defendants failed to respond to Counts 12, 13, and 14. Each of which violates Constitutional law and statutory legislation and in most case various other amendments therein. Petitioners will briefly review the violations for this Circuit Court though it should not be necessary since no defense

was presented *thereby Defendants forfeiting automatically* according to the FRCP. See authorities cited above related to Counts 5, 6, and 7.

79. Count 12, consisted of violations of the Anti-Trust Acts, in a manner that resulted in blatant violations of Amendments 5 and 14 of the U.S. Constitution. The provisions cited by Petitioners also demonstrated that again **the "Act" rendered the Judiciary irrelevant** that makes a mockery of the "Separation of Powers" by the removal of "due process". Before the District Court Petitioners presented Sections of the Act and page number[s].

Please Take Judicial Notice: The District Court on page 4 (A-10), of her "Opinion" Judge Wolfson acted with "*deliberated indifference*" falsely claims: see, Note 6, "*The Court is compelled to note that Plaintiffs have not pointed to any particular provision of the Act in support of their allegations, and the Court will refrain from commenting on the accuracy of the allegations*."

80. Petitioners are compelled to alert this Honorable Circuit Court, where necessary the Petitioners explicitly cited provisions i.e. Count 3, Paragraphs 34, 39, 41 (Section 203 of "H.R. 3590"), Count 4, Paragraph 45, Count 12, 13, and 14. More importantly, Petitioners described how provisions in the bill arbitrarily suspended Natural, Constitutional, and Fundamental Rights guaranteed by our Constitution, to include the abrogating of statutory law.

81. The "*People*" alleged in Count 12 "*Violation of the Anti-Trust laws that resulted in violation of Amendment 5 of the U.S. Constitution*" "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.[7]

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;

[7] It is important for this Circuit 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" "H.R. 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 "*Angels of Death*".

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; and, (2). Determinations of "high-need cures" p.2303."

82. Each of the above involves "price fixing" which violates the Anti-Trust Acts. The federal government will decide just who is entitled to payment. This 'price fixing" erects explicit barriers. All **without judicial review**.

83. Which brings us to the how Congress enabled the federal government to violate the Anti-Trust[8] Laws. The "Act" exempts the federal government from the Anti-Trust laws by allowing the federal government to create a monopoly by price fixing that will force out of business all private entities related to Healthcare.[9] Rationing or denial of treatment is clearly ***reckless endangerment*** to Petitioners as well as all United States Citizens, Residents and Visitors.

- **What we have within this legislation is nothing less than a grand extortion scheme established under the "color of law" 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 and treatment**" see next bullet;

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[8] Can the District Court or 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 will force all provides of medical care and insurance out of business, multiple providers are already ceasing to do business, others are seeking waivers.

[9] 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.

- 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 to 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.

84. Count 13, the District Count intentionally ignored Defendants failure to respond as required by the FRCP and requires an immediate forfeiture. *See*, Fed. R. Civ. P. 8 (b) and 8 (d) The Court with "*deliberate indifference*" intentionally ignore Petitioners conclusively proved "HR 3590" violates Title VII and Amendment 14:

- Amendment 14 in relevant part says: "*No State shall… deny to any person within its jurisdiction the equal protection of the laws."'*

- "HR 3590" Title V Sections 5201 and 5202 includes a provision dealing with federally funded student loans. Section 10908 State loans in violation of Title VII of the Civil Rights legislation. The provision set forth in the "Act" specifically maneuvers 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 and 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 or ethnicity is "reverse discrimination" The Supreme Court has held this is unlawful, *see*, Regents U. Cal. v. Bakke,438 US 265, (1978);

- In Ricci et al. DeStefano, (citation omitted) (in which Judge Sotomayor was rightly reversed) in the case of the New Haven, Connecticut Fire Department that passed over several higher scoring firefighters for promotion because they were of the wrong race or ethnicity (i.e. White or Hispanic rather than Black). One could say the divisive hypocrites that initiated this provision are attempting to put a divide between all races.

- 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 only selected individuals who use the service - not the Tanning Salon's service! The language of the "Act" specifically taxes the individual not the service.

That Tax also violates Amendment 14 as well as 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."*

85. Count 14: Defendants again failed to reply, therefore by law, another forfeiture is and was warranted. Defendants will be brief, 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*"

(1) As demonstrated above in the previous 13-counts, the Constitution of the 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";

(2) 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 state: "*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 2409 pages, our 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 not the above statement outright dereliction of their fiduciary duty"? **[Petitioners, *acting pro-se*, read the bill in its entirety and had no problems understanding the language of the bill, its implications and unconstitutional provisions set forth therein.]**

86. The Petitioners respectfully remind this Circuit Court, the above constitutes "***high crimes and misdemeanors***" which are impeachable offense, though not an incarceration offense. Article 6, 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;…."*.

87. 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."

Legal Support: See, *Gracedale Sports & Entertainment Inc v. Ticket Inlet, LLC*,; *Saldana v Riddle*,; *Ponce v. Sheahan*; *Farrell v. Pike;* and *Neitzke v. Williams,* (citations omitted) complete authorities shown related to Defendants failure to reply for Counts 6, 7, and 8.

88. Count 15, Violation of Amendment 10: James Madison, the architect of the Constitution says it all:

"*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*;"

89. 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 and the "*People*", See Amendment 10, the key word being "*People*". Since it is inarguable the "*People*" bear the cost of implementation.

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

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

to raise funds exclusively for "*national defense,*" "*the protection of property*," "*the advancement and regulation of interstate commerce*," and the daily operation of government. Mandating a citizen purchase healthcare insurance for the act of "breathing" does not constitute an act of commerce. Is the next step to tax carbon-dioxide that people exhale as a part of living using the same spurious arguments the "Act" uses?

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

90. Especially relevant, "HR 3590" mandates an appropriation, conveniently exempting itself from providing the necessary funding or recourses to administer this requirement, leaving the costs to be passed on to the citizens and residences (Petitioners) of the State of New Jersey and other 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 regulation, consumer protections, rate reviews, solvency, and reserve fund requirements to include premium taxes.

91. The act converts what had been a voluntary federal-State partnership into a compulsory top-down "command and control" federal program, in which the State no longer enjoys Amendment 10 protections. Total discretion of the State is removed, in derogation of the core Constitutional principle of federalism upon which this Nation was founded. In short, the "Act" exceeds the vested powers granted by the Constitution, violates Article 1, Section 8, and Amendment 10 incorporated therein. The Act contains untold numerous unfunded mandates that will financially burden the Petitioners of the State of New Jersey and our sister States ability to operate significantly.

Please Take Special Judicial Notice: Nowhere does the Constitution grant authority for "*specific welfare*". The Supreme Court delineated between "*General Welfare*" and "*Specific Welfare*" in "*United States v Butler*, 297 U.S. 1 (1936)" which prohibits the type of activities being promulgated by the "Act". The "Act" levies taxes, fines and fees, specifically to supply a product for others not taxed, fined or subject to the fees. The Exchanges, taxes on inferior and superior health care plans and the other provisions of the "Act" are clearly intended to engage in "*Specific Welfare*" and not "*General Welfare*" as authorized by the U.S. Constitution.

CONCLUSION

92. The District Court's preposterous claim that Petitioners failed to demonstrate they have standing to challenge the Constitutionality of the "Act"; and the District Court ludicrous claim it "lacks subject matter jurisdiction" over the claims blackens the integrity of our judicial system, as well as meaning of a Republic governed by law and not men.

93. Whenever the U.S. Constitution is actively being violated it demonstrates harm to all citizens not just Petitioners. As written, the "Act", based upon the Constitution and the facts presented by Petitioners demonstrates those Congressional representatives that passed this abortion have acted beyond the powers delegated to Congress by Article 1, Section 8 and the other grants of Authority in the U.S. Constitution. The Supreme Court has held; *Flast v. Cohen*, 88, S. Ct, at 1954, 392 U.S. at 102 "allows petition of the government for redress of grievances".

94. Nowhere can the District Court demonstrated Petitioners failed to present a set of facts that would warrant a dismissal! The Supreme Court held in *Hughs v. Rowe*, 449 U.S. 5 10, 101 S. Ct 173, 66 L.Ed 2d 163 (1980):

> "***unless it appears beyond a doubt****" that plaintiff can prove no set of facts in support of his claim which entitle him to relief*."

> Also See, *Michigan So. v. Brach & St Joseph Counties Rail Users Ass'n*, 287 F.3d 568, 573 held: "*that a claim generally survives a motion to dismiss if plaintiff shows any arguable basis in law for claims alleged*."

95. In the matter at bar, Petitioners did not put forth "generalized grievances" shared by a large group. This case cites "specific grievances" that are shared by those groups and individuals that have signed on as well as every citizen, resident and visitors of the United States.

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

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

importantly it is the sworn duty of this Court to protect the Constitution of the United States. I'm reminded of the words of Alexander Hamilton:

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

97. We, the Petitioners, can only pray this tribunal think long and hard before rendering their ruling. We pray you put political ideology or affiliations behind and consider the ramifications of the ruling they are going to render. Take a long hard look at your children, grandchildren, friends, neighbors and how your ruling will affect them and our Country. Remember every American servicemen that proudly wore or is wearing the uniform of United States and the Constitution they swore to uphold.

98. The focus must remain on the foundations of the U.S. Constitution (a contract between Sovereign States) and the Rights and Responsibilities of its citizens. This Circuit Court has a fiduciary responsibility to address those allegations that never were decided on their merits after the District Court created a roadblock by determining Petitioners did not have "standing" to demand the Constitution's requirements be followed.

99. This Circuit Court cannot and must not protect the District Court judge or appease the federal government by any inaction dealing with the issues and questions openly in a court of law under the rules of evidence and law. Our Constitutional Republic and legal system has been compromised once too often.

100. A Republic is governed by Constitutional law, not by the whim of a legislative body or the executive branch; neither has the right or authority to shred the Constitution. As a father, and grandfather, as an American I say God forbid. I'm reminded of the words above one of the entrances to the grade school I attended P.S. 204, Brooklyn; the words are written; "*Where law ends tyranny begins*".

WHEREFORE: Accordingly, this case was dismissed for all the wrong stated perception of what actually constitutes real specific injury that has occurred and will occur. The Dismissal Order of

April 21, 2011 issued by Judge Wolfson for lack of standing/jurisdiction must be VACATED to permit Plaintiff the due process rights guaranteed under the Fifth and Fourteenth Amendments;

Let this Honorable Circuit Court hear argument in an open court on Counts 1, 2, 3, 4, 8, 9, 10, 11, and 15 or issue a Decision in favor of the Petitioners as was warranted by the Defendants' failure to respond as required by the FRCP. Let Defendants attempt to dispute each of these Counts set forth by Petitioners (*pro se*), if they are capable of putting forth coherent and relevant arguments. Plaintiffs have observed that that Defendants' submissions to the Court, after being order to respond or forced to respond due to Plaintiffs' filings, have basically been incoherent, illogical, fallacious, entanglement of sentences with no real relevant relationship to any of Petitioners' specific allegations of Constitutional violations by the "Act" and other specific violations identified by the Petitioners. The District Court and Defendants have arrogantly shown a distain for the Law by their failure to take seriously the specific violations of the U.S. Constitution and Statutory Law.

This Court has every Constitutional duty as well as obligation to grant Petitioners a Summary Judgment for Default on all 15-Counts. Let Defendants argue whether the U.S. Constitution was not abrogated by "H.R.3590" on appeal in the Supreme Court of the United States, if they dare;

In any case*, issue an order for default on Counts 5, 6, 7, 12, 13, and 14 as required by law, see,* FRCP pursuant to Rule 8(d) which was an automatic admission that the assertion's of the allegation in these Counts were correct and factual.

Respectfully submitted,

Nicholas E. Purpura, *pro se* Donald R. Laster, *pro se*

June 7, 2011

To: Ethan P. Davis, Esq.,
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