UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

----------x Civil Docket No. 11-2303

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

REPLY OPPOSITION TO APPELLEES BRIEF ON APPEAL

Plaintiffs/Appellants

v.

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

Respondents/Defendants

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PRELIMINARY STATEMENT

Respondents again show contempt for the Court, as well as the *Fed. Rules of Civ. P*., the *Federal Rules of Appellant Procedure*, and the Third Circuit's *Local Rules of Procedure*, by failing to properly respond to the Appellants Appeal. Instead, Appellees choose to misstate the facts, as well as established precedent and law.

In an appeal on the record from a decision in a judicial proceeding, both Appellant and Appellees are bound to base their arguments wholly on the proceedings and body of evidence and questions presented. Those arguments are presented in written briefs, and sometimes in oral argument as necessary, especially in this case since Appellees refer

only to selected opinions issued by other Circuit Courts, that in most instances support Petitioners, or are of no moment as will be shown throughout this Reply Brief.

In this case, Appellees not only ignore conflicting opinions, but attempt to evade the Constitutional issues (all 19 of them) at bar. They do this by attacking the Appellants rather than addressing the issues before the Circuit Court. The seriousness of the issue at bar demands that each party be allowed a brief presentation, thereafter if it pleases the Court each Appellate judge in the interest of justice can questions both sides based on their review of the record below, and the facts submitted in the briefs.

Appellants contend that the District Court, without justification, in its Order (see A-27) accepted Defendants' argument that the Petition should be dismissed "for lack of subject matter jurisdiction pursuant to Fed. R, Civ. P. 12 (b) (1)". That decision by the District Court finds no basis in law, reason, or logic, since it contradicts prior policy, rules of procedure, precedent, and procedural "*due process*" as well as "*equal protection*".

The District Court's error constituted an abuse of the discretion it may have thought it had by making a blanket determination, not based on the factual allegations it was faced with, but on the Court's subjective personal reaction to the horror of the very thought of the wrongdoing alleged, that the Petitioners' claims were absolutely implausible—as a matter of law.

The District Court failed to carry out the mandate, which required it to identify the allegations in the Petition when a constitutional challenge is presented which were "disentitled to the presumption of truth", claiming because they were "conclusory", eliminate these, and then determine whether the remaining allegations would support "plausible" claims of wrongdoing. It failed on all counts.

This was an error of law and/or an abuse of discretion due to the fact that no part of the proper standard procedure of review was fairly applied. This failure to follow procedure was to a degree entitling Defendants to dismissal citing Rule 12(b) (1) as justification in

light of the preponderance of facts, law, and precedent that concretely showed the unconstitutionality of the "Act" "H.R.3590" that finds no basis in law.

In an appeal on the record from a decision in a judicial proceeding, both Appellant and Appellees are bound to base their arguments wholly on the proceedings and body of evidence - as they were presented in the lower Court. Each seeks to prove to the higher court that the result they desired is the just result. Most importantly "Precedent and Case law" must figure prominently in the arguments in order for the appeal to succeed.
Appellants will prove that the District Court committed reversible error, that is, an impermissible action by the Court acted to cause a result that was unjust, and which would not have resulted had the court acted properly.

NATURE OF THE CASE

The question must be asked: Are we no longer a Republic ruled by law? Battles for civil rights are crucial, and often more crucial at times than battles against foreign despots. Are the despots overseas any different from those at home when we allow our Legislature, Executive, and/or the Courts to be run by despots who trample on our Constitution and treat it no better than useless rags to be discarded?

Sadly, in this litigation the District Court failed to address the unconstitutionality of "H.R.3590". By so acting (or failing to act), it rendered the Constitution, statutes, and precedents set down by the Supreme Court irrelevant by ignoring Petitioners' pleas and rights.

Appellees in their Opposition titled "Statement of Facts" (pp. 4-8) [A. STATUTORY BACKGROUND] evince a hubristic attitude set forth in a sales pitch from a side show at a carnival, by trying to explain irrelevant facts concerning the reasoning why the Court should support "H.R. 3590". They cite unsupported legislative findings to be taken as relevant, that have nothing whatever to do with standing, jurisdiction, or the Appeal.
Before this Court is whether the "Act" is or is not constitutional, as well as whether or not Petitioners have standing and the Court has jurisdiction.

The compelling reason for this Petition arises from nineteen (19) violations of the United States Constitution and four (4) existing statutes supported by substantial and incontrovertible evidence. If this "Act", "H.R.3590", is allowed to remain law and the usurpation of our Constitution and laws continue unchecked, it will mean the destruction of our entire fabric of American life, that in and of itself is concrete injury as will be shown below.

The problem with the District Court's dismissal is that, instead of acting to prevent manifest injustice by correcting a clear error of law and fact, the Court intentionally failed to resolve the threshold matters of unconstitutional provisions related to "H.R. 3590" (15-Counts).

Apparently, unjustifiably assuming it impossible for *pro se* litigants to present a *prima facie* action, it created a false 'standing' argument that finds no basis in law or prior precedence. It is also important to reiterate to this Court that throughout this litigation Petitioners were repeatedly denied procedural "*due process*" and "*equal protection*".
Protecting the Constitutional rights of the citizens of this nation is a fiduciary duty that must be paramount to the Court. An honest constitutional ruling is crucial to the public welfare for every citizen in the United States. At this time "H.R.3590" has become law predicated upon the repudiation of guarantees enumerated in the United States Constitution.

Appellees, lacking a cogent argument, attempt to belittle Petitioners and again misstate fact, law, and precedent (authorities cited). Also, Appellees ignore a very important fact, our Amendment 1 right to Petition our government. Petitioners are spoke-persons for the 600-plus individuals and groups that have signed on to this Petition was clearly explained throughout the record (see A-208), which there is no need to reiterate.

JURISDICTION AND STANDING

A Federal District Court has original jurisdiction over "all civil actions arising under the Constitution, and laws of the United States" pursuant to Title 28 *U.S.C.* Section 1331.[1] Article III, Section 2, is unambiguous:

> "*The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,…"*

Appellees expect this Circuit Court to re-interpret the Fed. R. Civ. P. by excluding the most important factor concerning jurisdiction set forth in Rule 12(b)(1) that is valid to be applied; ***"if there is no federal question at issue***". The threshold issue before this Circuit Court are nineteen (19) violations of the U.S. Constitution plus usurpation of laws enacted thereafter.

Appellees make the ridiculous assertion on page 16 of their Brief that: "*Plaintiffs misunderstand standing doctrine. It is standing, not merits of plaintiffs' claims that "is a threshold jurisdictional requirement*."

Appellees are grasping at straws here. Maybe this Court should require Appellees counsel to review the unanimous decision in "*Bond v. United States*" 09-1127, concerning "standing" in relationship to a Constitutional challenge. The Supreme Court's opinion states:

> *Bond has standing to challenge the federal statute on grounds that the measure interferes with the powers reserved to States. (From Summary)*
>
> *In this case, however, where the litigant is a party to an otherwise justiciable case or controversy, she is not forbidden to object that her injury results from disregard of the federal structure of our Government. Whether the Tenth Amendment is regarded as simply a "'truism,'" New York, supra, at 156 (quoting United States v. Darby, 312 U. S. 100, 124 (1941)), or whether it has independent force of its own, the result here is the same.*
>
> *There is no basis in precedent or principle to deny petitioner's standing to raise her claims. The ultimate issue of the statute's validity turns in part on whether the law can be deemed "necessary and proper for carrying into Execution" the President's Article II, §2 Treaty Power, see U. S. Const., Art. I, §8, cl. 18*

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1 *Bell v. Hood*, 327 U.S. 678, 66 S. Ct. 733 90 L.Ed. 939: "where federally protected rights have been invaded, it has been the rule from the beginning that the courts will be alerted to adjust their remedies so as to grant the necessary relief.

> *In short, a law "beyond the power of Congress," for any reason, is "no law at all." Nigro v. United States, 276 U. S. 332, 341 (1928). The validity of Bond's conviction dependsupon whether the Constitution permits Congress to enact§229. Her claim that it does not must be considered and decided on the merits.*

Furthermore, Justice Ginsberg observes in her concurring opinion:

> *For this reason, a court has no "prudential" license to decline to consider whether the statute under which the defendant has been charged lacks constitutional application to her conduct. And that is so even where the constitutional provision that would render the conviction void is directed at protecting a party not before the Court.*

Obviously, "H.R. 3590" directly and specifically affects all Americans. Thus Petitioners have "standing" and has "jurisdiction". Nineteen (19) specific violations of the U.S. Constitution more than satisfies Article III concerning "standing[2].

Existing precedent past and present supports Petitioners' argument. Recently, the Supreme Court's *per curiam*, i.e. unanimous (9-0), ruling in "*Bond v United States*" 09-1127, as well as the recent ruling from the Sixth Circuit, "*Thomas More Law Center v Obama*" 10-2388, that reinforces Appellants "*We the People*" had/have "standing" to challenge "H.R.3590" based upon the unconstitutional provision set forth in the bill/law. Especially the abrogation of guaranteed Constitutional protection afforded to all Americans.

Judicial Legal Note: Appellees cite "*Thomas More Law Center v Obama*" 10-2388, Pp.2, 14 as if the rejection to the minimum coverage provision based upon individual financial harm were the only issue before this Court. If Appellees had read the decision they would have realized this Authority supports Petitioners. See, pages 6-8. It must also be noted the 6th Circuit confirmed that the Plaintiffs did in fact have "standing"!

Judicial Legal Note: In the recent 304 page ruling[3] from the 11th Circuit Court, the Court notes that **the Government admitted that Mary Brown, an individual, has standing** when the Court ruled the Individual Mandate was unconstitutional under the commerce clause. Thus Petitioners *pro se* obviously have standing and the Government is trying "to

2 Why the Courts have jurisdiction of this Petiion in which standing is found, See Flast v. Cohen, 392 US. 83 91968); U.S. v. SCRAP D., 410 U.S. 614 (1973) Japan Whaling Ass'n. v. American Cetacean Soc., 478 U.S.221, 230-231 (1986); Federal Election Commission v. Aklins, 524 U.S. 11, 25 (1998) and Mass. v. EPA (citation omitted)

3 http://www.uscourts.gov/uscourts/courts/ca11/201111021.pdf

have their cake and eat it to". An examination of the various cases over the "Act" indicates **the Government has argued both side of the standing "coin"**. Since when is one allowed to say one thing in one Court and the opposite in another Court? Is this not a form of perjury or fraud?

Obviously, Appellees, failed to read "*Bond v United States*" 09-1127. The Supreme Court emphasized the importance of "Standing and Jurisdiction" and the right of the people to Petition their government. Even prior to "*Bond*", the Supreme Court of the United States emphasized this right. *See*, *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc*., 454 U.S. 464, 470 (1982) held "because" of the "unusually broad and novel view of standing" to litigate a substantive constitutional question in federal courts adopted by the Court of appeals, See, *Massachusetts v. EPA*, 549 U.S. 497, 227 S. Ct. 1439 1447 2007). By law, even Fed. R. Civ. P. 12(b) (1) mandates jurisdiction and standing if a Constitutional question is an issue at bar. Again, there are nineteen (19) specific violation listed to include statutes that effect Petitioners as well as all Americans. A bill/law, such as "H.R. 3590", is by design, intended to affect everyone in a specific way and thus everyone has standing to challenge such a bill/law.

The District Court was required to apply standing, as is this Circuit Court, since to do otherwise would deny Petitioners "*due process*" and their right to maintain their Constitutional rights in a Court of law. See, *Cohens v. Virginia*, 19 U.S. 264 (1821) ***"To do otherwise would be to nullify the Constitution of these United States***". To elaborate further is unnecessary; a complete argument was presented in our reply brief to the District Court that turned a blind eye to the serious Constitution violations.

The only issue that is/was before this Circuit Court is whether the District Court had legal authority to dismiss Petitioners' claims without first identifying the allegations in the complaint. At the same time, said Court, refused to consider evidence that was well-founded, serious and substantial. Appellees chose to have the merits addressed by their distorted referring to the allegations in the Petition. Therefore Petitioners will below clarify those distortions.

In cases where a judge rather than a jury decided issues of fact, an Appellate Court must apply an "*abuse of discretion"* standard of review. Under this standard, the Appellate Court gives deference to the lower court's view of the evidence, and reverses its decision if it were a clear abuse of discretion. This is usually defined as a decision outside the bounds of reasonableness.

Most importantly in this case, it is customary for an Appellate Court to give deference to a lower court's decision except on issues of law, and may reverse if it finds that the lower court applied the wrong legal standard. That is exactly what took place in this action.

APPELLEES MISUNDERSTANDING OF AUTHORTIES

Throughout these proceedings Appellees have repeatedly demonstrated a propensity to misapply, misstate out of context findings and conclusion set forth in the authorities they cite, to deceive or influence the Courts. Therefore Petitioners will briefly address the authorities cited in their brief.

- New Jersey Physicians, Inc. v Obama, No. 10-4600, ____ F.3d, 2011 EL 3366340 (3d Cir. Aug. 3, 2011). In this case the Plaintiffs really complained only about interference in the Patient/Doctor and Payment relationship. It has no relevance to our case.

- *Goudy-Bachman v U.S. Department of Health & Human Services*, No. 1:10-cv-763 (M.D. Pa.). Challenge to the Individual Mandate on the basis that they will not be able to purchase/pay for a new car. Ruling supports us in that individuals had "standing". A separate opinion was to be issues on Commerce Clause issue.

- *Thomas More Law Center v Obama*, No. 10-2388, __F.3d__, 2011 WL 2556039 (6th Cir. June 29,2011), cert petition pending, No. 11-117 (S. Ct.); This case indisputably supports Petitioners "standing" which is what is before this Court. Interesting, Judge Vanaskie and Greenaway were correct in their analysis and decision. But unlike that case, Petitioners' petition deals with fifteen (15) Counts listing nineteen (19) specific violations of the U.S. Constitution.

- *Baldwin v. Sebelius*, No. 3:10-cv-1033, 2010 WL 3418436 (S.D. Cal. Aug. 27, 2010), appeal pending, No. 10-56374 (9th Cir.), cert. before judgment denied, 131 S. Ct. 573 (2010); Generalized issues over privacy, instructions to purchase insurance, and abortion- related issues. Can be re-instituted.

- Liberty University, Inc. v. Geithner, 753 F. Supp. 2d 611 (W.D. Va. 2010), appeal pending, No. 10-2347 (4th Cir.); Abortion, religious freedom, commerce. Skirting of some of the issues. Not specific enough in the claims.

- Commonwealth of Virginia ex rel. *Cuccinelli v. Sebelius*, 728 F. Supp. 2D 768 (E.D. Va. 2010), appeals pending, Nos. 11-1057 & 11-1058 (4th Cir.), petition for cert. before judgment denied, 131 S. Ct. 2152 (2011). Still pending. Most importantly, the Federal Court supports Petitioners action. Amendment 10 issue.

- Florida ex rel. *Bondi v. U.S. Department of Health & Human Services,* No. 3:10-cv-91, __ F. Supp. 2d __, 2011 WL 285683 (N.D. Fla. Jan. 31, 2011), appeals pending, Nos. 11-11021 & 11-11067 (11th Cir.). This case sets precedent that clearly grants petitioners standing and the Court's jurisdiction. The 11th Circuit upheld standing of individuals and invalidated the Individual Mandate.

- *Purpura v Buskin, Gaimes, Gain, Jonas & Stream,* 317 Fed. Appx. 263 (3d Cir. 2009). Totally irrelevant to the Constitutional, standing and jurisdiction issues before the Court.

- Appellees repeatedly, before the District Court attempted to twist the facts in the *Lujan* case; our explanation should suffice (see A-215) that demonstrates *Lujan* supports Petitioners. Distortion of the issues and Lujan and other Supreme Court rulings.

Having or not having insurance is not the issue. Being forced to purchase a product is an issue as are the other 18 specific violations of the U.S Constitution ignored by the District Court in its fabricated "standing" dismissal argument. The 11th Circuit's 304 page ruling clearly states the individual mandate exceed the authority granted by Article 1, Section 8, Paragraph 3.

ARGUMENT

Appellees arrogance knows no bounds, on page 10, saying "As an initial matter, the court "note[d] that the complaint contains a litany of conclusory allegations concerning the Act's allegedly illegal, unconstitutional and fraudulent nature". Thereafter they told this Circuit Court that no reason exists to address the Petitioners contentions: *see*, page 16 of their brief. Maybe they would also like to sit in judgment and issue the decision and Order?

Appellees, unable to set forth any cogent argument or defense, attempt to create a bogus service argument (see, page 17), by twisting the facts, dates and truth to deceive this

Circuit Court, that need not be defended since that issue is not before this Court, therefore of no moment except to demonstrate the Appellees counsels' deceitfulness that was previously addressed in the District Court and found wanting (See A-217-220).

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."*

Petitioners will briefly reiterate how the "Act" "H.R.3590" violates U.S.C.A. 1985[4] by a conspiracy to interfere the Civil Rights of all Americans, supported by evidence and precedent. It is distinguished from judicial review, which refers to the District Court's overriding constitutional or statutory right to determine if a legislative act or administrative decision is defective for jurisdictional or other reasons.

The District Court clearly misapplied its authority and ignored the violations the Rule 8 (b) (d)[5] of the FRCP. The Supreme Court sought to establish precedent in numerous cases that suppressed claims in which a fair reading would have readily shown by myriad factual assertions in the Petition, in abundant details, that the claims formed a web of allegations that are not "conclusory" at all, but perfectly well-grounded in law and are concrete in nature.

Appellees preposterously assert: "Petitioners raise *only a generally available grievance about government*". Therefore it is necessary for Petitioners to present the facts clearly alleged in the Petition, facts that are more than sufficient to properly support their charges against the Defendants at the pleading stage, and now this Circuit Court. Further, the

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4 See, Griffen v. Breckenridge, 1971, S. Ct. 1790, 403 U.S. 88, 29 L.Ed2d 338; Note, The scope of section 1985 (3) see, 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 any 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].

5 See, explanation of supporting Case Law, (A-231); *Gracedale Sports & Entertainment Inc. v. Ticket Inlet, LLC; Saldana v. Riddle; Ponce v. Sheahan: Farrell v. Pike; and, S. Ct. precedent, Neitzke v. Williams*,

assertion should be dismissed without Appellees presenting any argument to the contrary expecting this Court to blindly go beyond the "four corners" of the Petition.

To come to a fair and just conclusion it is imperative the Court review each of the allegations that demonstrate that each averment alleged in the Petition points to a provisions in the "Act". And that each averment identifies a provision that rescinds legally protected interests, by the unconstitutional mandates written into the "Act" "H.R. 3590", deserves plenary consideration, with attendant discovery rights, in the Courts of the United States.

As this Court reviews the issues below, we also remind the Court that Defendants forfeited on four separate occasions and now, again, failed to address the issues or disprove a single averment set forth in the Petition. "*We the People*" pray you adhere to your Oath and uphold our Constitution.

Please take Judicial Notice: Petitioners repeatedly present just how concrete each allegation presented by citing U.S. Constitution and/or statute violated. Appellees/Defendants thus far been unable to refute a single one. Appellants remind the Court of Appellee/Defendants words, "***Defendants will demonstrate in subsequent briefing that each of the fifteen counts of plaintiffs' complaint is meritless***." (See Document 8, District Court file dated October 19, 2010). To date, they have yet to set forth a cogent argument demonstrating that Petitioners are incorrect on a single averment.

Count 1: Petitioner presented the District Court with incontrovertible evidence that the "Act" "H.R. 3590" was implemented by intentional fraud by the leadership of the House and Senate in violation of Article 1, Section 7, Paragraph 1 (Origination clause) (see A-221-222). Most importantly see, Note 13 (A-222) citing the Hon. Judge Roger Vinson that reviewed the origination of the "Act" at Defendants request, thereafter concluding that the "Act" originated in the Senate. Only the House of Representative has the authority to institute Revenue Raising Bills. Also, see Original Petition (See A-66-67) that shows how the act of fraud was implemented. Constitutional challenges automatically grants jurisdiction and standing since Petitioners are injured by the unconstitutional taxing provisions implement by the Senate without authority!

Count 2: There seems to be a split decisions concerning the validity of justification for a basis of 'H.R.3590" in the "*commerce clause*". We argued in kind that inactivity can not qualify for regulation under the "Commerce Clause" see, (A-69-71). In addition, unlike those other actions Petitioners further included Supreme Court precedent that clearly renders this argument *res adjudicata* (see A-223-224) , see U.S. v. Butler, 297 US 1 (1936). H.R.3590 is unconstitutional because it creates "*specific welfare*" which no other action set forth to our knowledge before the District or Circuit Court (see A-224). Again a Constitutional Challenge that automatically grants standing and jurisdiction that adjudication. The 11th Circuit has ruled the Individual Mandate was unconstitutional as well.

Count 3: Appellees on page 3 of their Brief concerning the violations alleged in Count 3, by twisting and misstating what was contained in Petitioners averment by saying as an argument "referring to the Act, " and that it creates a "*private Presidential Army*".
Petitioners pointed to specific provisions in the "Act" which violated Article 1, Section 8, Paragraphs 12, 14, 15, and 16. A main violation in the provision allowed for funding for 4-years in violation of the Constitution. It is unnecessary to reiterate each violation which is set forth in the Appendix (see A-72-74). It is also important for the Court to review the violation of the "*Posse Comitatus"* Act set forth in the "Act" (see Paragraph 37 at A-72-73). Again, a Constitutional violation grants automatic "*standing and jurisdiction*". See the *per curiam* decision handed down by the Supreme Court "*Bond v United States*" 09-1127, see, Justice Kenny's and especially Justice Ginsberg decision.

Count 4: Appellees blathers a litany of incomplete statements, misstating allegations without addressing the Constitutional violation in the provision of the "Act" or the violation of the Amendment 14. The Act" violates the Article 1, Section 9, Paragraph 4 related the "Capitation Tax" set forth in its provision. Nor could Appellees dispute the findings and analysis of the Honorable Judge Vinson that the tax does not tax a business but an individual (see A-227-228). Again, a constitutional challenge that grants stating and jurisdiction went unanswered by Appellees.

Count 5: Is a clear violation of Article 1, Section 9, Paragraphs 3, 5, and 6 also encompasses Count 12. See, Petition (Paragraph 25, A-54) and (A-228-229). What this must take into consideration Appellees/ Defendants failed to address this Count in their reply to our Petition. Rule 8(b) and 8(d) mandated forfeiture and an Order rendering the "Act" "H.R.3590" "null and void". See Appendix (A-231) and authorities *Gracedale Sports & Entertainment Inc. v. Ticket Inlet, LLC; Saldana v. Riddle; Ponce v. Sheahan: Farrell v. Pike;nd, S. Ct. precedent, Neitzke v. Williams*.

Count 6: The Constitutional question the Court must answer; Can a person who is not a "natural born Citizen" legitimately and Constitutionally act as President. Clearly, if one is not eligible to act as President then anything said person does is invalid. Appellees only argument before this Court is to repeat what Petitioners proved without contradiction; "*they* (Petitioners) *allege that President Obama is not a natural born U.S. citizen and thus could not validly sign the bill into law*," Appellees quote about this Count is finally correct! Appellees and the District Court fail to understand the concept of natural sovereignty and rule of law, or the meaning of "natural born citizen". To allow Mr. Obama to hold office is to create a "privileged class" exempt from "natural" as well as "positive" law. Article 2, Section 1, Paragraph 5 of the United States Constitution is unambiguous. Appellees were given the opportunity to dispute said Constitutional challenge during adjudication; they chose to forfeit instead. The District Court was obligated under Rule 8(d) to issue an Order granting Petitioners relief as is this Courts fiduciary duty. *See* Appendix (A-229-230) and more importantly Exhibit 5 (A-249-257) that was ignored by the District Court. In short, this Petition is **"*Stare decisis et non quieta novere*".**

Count 7: Interesting, this Count was never answered by Appellees, therefore, by law, Petitioners were again entitled to a ruling in their favor. Nonetheless, Petitioners demonstrate that the "Act" "H.R.3590" imposes excessive fines in violation of Amendment 8, notwithstanding a violation of Article 1, Section 9, Paragraph 3 (See A-230-231) and Amendment 16. Once again Petitioners set forth a Constitutional challenge that grants standing and jurisdiction!

Count 8: Appellees claim; "*They* [Petitioners] *allege that, under the Act* "*all medical records will be forwarded to a government bureaucracy," that the Act "allows the federal government to have direct, real-time access to all individual bank accounts*". Again, Appellees demonstrate they could read but fail to include the fact that Petitioners cited the sections of the "Act", and page numbers, also quoting the wording in the provision that proved the "Act" violated Amendment 4, and the HIPAA statute. Also Appellees proved that Section 1128J of the "Act" provided for true warrantless searches and seizures (See A-232 233). Again, are these not Constitutional violations? Is this not a Constitutional challenge that must be addressed since it usurps the Bill of Rights?

Count 9: Appellees make no mention of Count 9 that demonstrates the "Act" "H.R.3590" renders the judiciary irrelevant violating Amendment 5, doing away with "*due process*" rendering any and all citizens without judicial redress. Or that "H.R.3590" relegates citizens to servitude violating Amendment 13. No one need elaborate since the facts are presented in the Appendix (see A-233-236). Or that the "Act" "H.R.3590" employs the wrongful use of threatening and fear of economic harm in violation of numerous Third Circuit (see note A-234) and Supreme Court precedents. So can this Court or any Court in the United States say this is not a violation of the Constitution? Or that that a Federal Court lacks subject-matter jurisdiction? Petitioners think not!

Count 10: Appellants demonstrated that "H.R.3590" violates Amendment 14 and Supreme Court precedent concerning a "taking" and goes so far as to deny anyone "due process" as a result of provisions in the "Act" It also grants special privileges to selective religions organizations, corporations, individuals and Unions. This was explained thoroughly to the District Court that refused to address Constitutional violations (see A-236-239). Again Appellees failed to dispute the allegation, and therefore forfeited. Petitioners ask this Court: "Does not the above also violate Article 4, Section 2, Paragraph 1 of the U.S. Constitution?"

Count 11: Violation of Amendment 1. To list here the extensive evidence before the District Court is unnecessary, other than to refer to the Appendix to demonstrate that the District Court failed and refused to consider the Constitutional violations cited in

provisions of the "Act" "H.R.3590" (see A-239-242) that went unanswered by Appellees, violating FRCP 8(d) and therefore forfeited. As regards standing and jurisdiction, Petitioners ask, can there be any dispute whether this Constitutional challenge requires adjudication? If not, our Constitution and laws are nothing but useless rags to be discarded as meaningless!

Counts 12, 13, and 14: Appellees forfeited each of these Counts and each violation is spelled out in our Appendix (see A-239 -247) that was presented before the District Court, before a Judge that not only abrogated her fiduciary duty by failing to review whether "Act" "H.R.3590" adhered to our laws and statutes, but also acted in connivance with Appellees/Defendants counsel to bury the petition. The question Petitioners present to this Circuit Court: "Can justice be served and our Constitution preserved if our federal Courts are unable or unwilling to review Constitutional challenges?" The FRCP 8(d) clearly states: If you fail deny the allegations with specificity you forfeit! It's as simple as that.

Count 15: The final Constitutional challenge has been argued *ad nauseam* and has been found to be unconstitutional by other Circuit Courts. In short, the federal government cannot abrogate Amendment 10, nor can they force States to require insurance or set up insurance exchanges. As regards "standing" and "*subject-matter jurisdiction*" Petitioners as individuals and spoke-persons for the People, refer to "*Bond v. the United States*". It is "*We the People*" that will incur the costs, it is "*We the People*" that suffer injury, and it is "*We the People*" that have every right to argue each of the fifteen (15) Counts before this Circuit Court. To say we don't have standing is to say the United States is no longer a Republic governed by laws and has become a government that subjects its people to the rule of men, who control our judicial system, like Hugo Chavez, Adolf Hitler, and Josef Stalin. Should we name all the despots that render the people subjects of the State? This Federal Court, part of our third branch of government is charged with protecting the Republic, do it!

CONCLUSION

It is without argument the District Court failed to recognize that each violation set forth in the "Act" "H.R.3590" violated the U.S. Constitution. Had Petitioners been afforded a "*full and fair*" proceeding this appeal would have been unnecessary. The growing trend to summarily dismiss cases through the misinterpretation and/or misapplication of case law, for the sole purpose of implementing legislation by judicial fiat, is deeply troubling. It means public policy issues that would normally be guaranteed a full airing for the public good is irrelevant.

Constitutional issues and civil rights violations cannot be bartered for or waived away through a magic wave of a Court wand. This Circuit Court cannot abandon its primary purpose of administering justice equally and fairly. It is indisputable that Petitioners' claim should never have been dismissed so casually.

The pendency of this proceeding is under the jurisdiction of this federal court. It is incumbent for the good of the entire country that each justice considers the Oath they swore to adhere to upholding the Constitution and the laws of this great land.

Each Judge on this Court must ask: Shall I allow <u>any</u> administration that is/was controlled by a single party to shred the Constitution? Can I honestly face myself, family, and my fellow Americans knowing that I allowed the greatest nation and hope to the world to be destroyed? Make no mistake about it: this "Act" "H.R.3590" puts the United States on a slippery slope down the road to total government control of the American people.

"*The People*" respectfully remind each judge: our legislature remained silent, failing to halt the usurpations of the Constitution. This is not the first time this has happened in our history.

During Roosevelt's administration, Supreme Court Justice George Sutherland (1922-38) made a similar observation. Hittinger's, "*First Thing*s", says of Justice Sutherland:

> "*Was one of the 'Four Horsemen' who resisted the economic and social legislation of Roosevelt and the Seventy-Third Congress. The National Industrial Recovery Act was ruled unconstitutional in 1935, and the Agricultural Adjustment*

Act in 1936. Federal judges by 1936 had issued some 1,600 injunctions to restrain federal officials from carrying out various congressional acts."

"*We the People*" ask: Will the Court follow in the footsteps of the Honorable jurist who upheld his Oath of office fulfilling his fiduciary to protect the Republic and its people? May God grant you the wisdom to rule according to the law, putting aside any political ideology for the sake of the Nation?

WHEREFORE, "*We the People*" 600 hundred-plus individuals and organizations pray this Court;

i. Set aside the District Court Order dated 21 April, 2011;
ii. Declare "'H.R.3590" "Patient Protection and Affordable Care Act" "null and void" as Unconstitutional on all 15-counts in violation of Article 1, Sections 7, 8, and 9, Article 2, Section 1, Article 4, Section 2, Article 6, and to include Amendments 4, 5, 8, 10, 13, 14, and 16, "Title VII", "Anti-trust laws", "HIPAA" and "*Posse Comitatus*" Act of the United States.
iii. Declare "H.R.3590" violates the State rights of the citizens of New Jersey as sovereign and protectors of freedom, public health, and welfare, as a foresaid;
iv. Enjoin Defendants and/or any agency or employee acting on behalf of the United States from enforcing the Act against the state of New Jersey, their citizens and residents, and any of their agencies or officials or employees, and take such action as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; rendering "H.R.3590 "*null and void*" and,
v. Award Petitioners their reasonable fees for time expended and costs, and grant such other relief as the Court may deem just and proper.

God Bless America,

Respectfully submitted,

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Nicholas E. Purpura, *Pro se*	Donald R. Laster, Jr. *Pro se*	August 13, 2011