No.11-7275

In the Supreme Court of the United States
TERM, 2011

NICHOLAS E. PURPURA,
PETITIONER

V.

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

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Petition for a Writ of Certiorari
to the United States Supreme Court

MOTION FOR EXPEDITE REARGUMENT
RULE 21 TO RECALL AND VACATE
March 2012 - "*Patient Protection and Affordable Care Act*" "H.R.3590"

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Justice Joseph Storey's great Commentaries on the Constitution says;

"*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."*

QUESTIONS PRESENTED for RE-AGUMENT

"But what end is equivalent for a precedent so dangerous as that where the Constitution is disregarded by the Legislature, and that disregard is sanctioned by the judiciary? Where then, is the safety of the people, or freedom which the Constitution meant to secure? One precedent begets another, one breach will quickly be succeeded by another, and thus the giving way in the first instance to what seems to be the case of public convenience in facts prepares the way for the total overthrow of the Constitution.—State v. -----, Hayw. 28 N.C.1794

The compelling reason for Re-argument asks the question: do we follow the Constitution contract as written[1] or do we discard it in favor of a system of government in which men decide what laws are legal or illegal by not enforcing the law?

Failure to address the 19-specific violations of the United States Constitution, without reasoning, is to say the Constitution is without significant importance. This Court must recognize every American citizen in entitled to procedural due process based upon the rules of the Court. Any denial without reasoning when presented with irrefutable violations of the Constitution that affects every American is to say the law of the land is of no importance.

If the Constitution is to have meaning, this Honorable Court is charged with the positive duty of administering the law as specifically enumerated to protect, preserve and defend the people's unalienable rights! To disregard the law of the land is to open the door to anarchy.

The question each Honorable Justice must ask themselves; if I do not stand by the Constitution then what are the American people to do, blindly accept whatever violations of the law men decide, as if this were some micro infraction? God forbid, the ramifications of the issue at bar, the Constitutionality of "H.R.3590", is a macro destruction of the United States Constitution by the total indifference to the laws of the land.

1 US Supreme Court in 4 Wheat 402: "*The United States, as a whole, emanates from the people… The people, in their capacity as sovereigns, made and adopted the Constitution…"*

If this Honorable Court doesn't stand by the U.S. Constitution adhering to your sworn oath; that entrusts each of you with the task to protect and preserve the Constitution and obligating you to set right the manifold errors set forth that are diametrically opposed to the Constitution known as "*Patient Protection and Affordable Care Act*" "H.R.3590"; who will?

Herein are noted no less than 17 violations of the U.S. Constitution in the specific text of the law that no individual, group, or legal experts have been able to refute.

There are two separate violations of the Constitution outside of the text of the law, and four violations of statutory laws that advance the federal government to a position of unfettered power not granted anywhere in the Constitution. In short, this law does away with limited government and most importantly the separation of powers.

The facts are "H.R.3590" originated in the Senate in violation of Article 1, Section 7, Paragraph 1 of the U.S. Constitution, and secondly, the law was never Constitutionally signed into law, as required by Article 2, Section 1, Paragraph 5 of the Constitution. That allegation must be adjudicated and settled for the sake of the nation.

This Honorable Court has made known its intention to address a limited number of violations alleged by the enactment of the legislation "H.R.3590". Respectfully, the limited issues at bar to be adjudicated are totally inadequate, and deprive the People of the United States a "*full and fair*" hearing concerning the unconstitutionality of "H.R.3590", the "*Patient Protection and Affordable Care Act*". What possible legal or moral explanation exists to ignore the most comprehensive Petition in opposition to "H.R.3590", especially in light of this Honorable Courts prior ruling in *Bond v the United States*, concerning the constitutionality of a piece of legislation?

The questions presented demanded adjudication in their entirety or is this Court saying: it permissible for any branch of government to deviate from or alter any Article or Amendment of the Constitution? This Court is not only vested with the judicial power to correct any and all injustices, but indeed mandated by our law and sworn oath to scrutinize and rule upon all challenges involving violations of the Constitution. That

includes legislation that exceeds the legislative power granted under the Constitution that have not been presented by any other Petition or complaint before this Honorable Court that are to be heard on March of this year. The questions presented are whether:

1. the "*Patient Protection and Affordable Care Act*" "H.R.3590" violates the United States Constitution in 19-specific incidents as cited in the original brief and this Motion of Re-Argument;

2. the "*due process*" clause and Amendment 1 grants any citizen the right to dispute an unconstitutional act that eliminates judiciary enforced boundaries;

3. the District and Circuit Courts arbitrarily and capriciously failed in their fiduciary duty by ignoring statutes and the glaring violations of the Constitution to avoid addressing specific Constitutional challenges and violations of the United States Code, in particular 28 U.S.C 455;

4. Petitioner sufficiently posit actual and imminent injury stemming from the provisions in "Act" "H.R.3590";

5. the lower courts, under the "*color of law*", allow the Constitution to be disregarded for political purposes that will result in radical change to the United States for future generations by the shredding of the Constitution;

6. and, whether a single piece of legislation can obliterate 230 years of freedom with the stroke of a pen that will deprive every citizen to judicial review concerning blatant violations of their Constitutional Rights from contesting or pursuing further litigation.

Battles for civil rights are crucial and are more often crucial than battles against foreign despots. Are the despots overseas any different from those at home if our Legislature, Executive and/or Judiciary to defy and overturn the Constitution can trample upon our Constitution treating it no better than useless rags to be discarded at whim?

Please Take Judicial Notice: A Motion for the Recusal of Justices Sotomayor and Kagan was forward and accepted by this Supreme Court. At no time were Petitioners informed whether each Justice complied with the law. Title 28, United States Code, Section 455 requires Justices Sotomayor and Kagan recuse themselves due to the financial interest in outcome (see Count 6) concerning Mr. Obama eligibility to sign the "Act" into law, or appoint Federal Judges. If either or both Justices participated in any way in the decision making and denial to hear Case No. 11-7275 *Purpura v Sebelius,* to proceed is a violation of the United States Code and said decision by law, must be "recalled and vacated".

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REARGUMENT	i
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
OPINION BELOW	1
JURIDICTION AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT	1
REASONS FOR GRANTING PROVISIONS	2
Point 1	3
Irrefutable Basis for "Amicus Curiae" Standing:	3
POINT II	4
The Analysis of the Legislation Violations:	4
Count 1 "Origination Clause"	5
Count 2 "Commerce Clause"	6
Count 3 Article 1, Section 8 Paragraph 12, "Appropriation" "*Posse Comitatus*"	8
Count 4 Article 1, Section 9, Paragraph 4 "Capitation" "Amendment 14"	9
Count 5, Article 1, section 9 Paragraphs 3,5, and 6 "Amendment 14"	9
Count 6, Article 2, Paragraph 5	10
Count 7, Amendment 5, 8, and 16 Notwithstanding Article 1, Section 9, Paragraph 3 "No bill of Attainder / "expost facto law"	14
Count 8, Amendment 4 and Health Insurance Portability and Accounting Act	13
Count 9, Amendments 5 and 13	15
Count 10, Article 4, Section 2, Amendment 14	17
Count 11, Amendment 1, "Establishment Clause"	18
Count 12, Amendments 5, 14 and Sherman Anti-Trust Act	19
Count 13, Article 4, Section 2, Paragraph 1. Title VII "Civil Rights"	21
Count 14, Article 6, section 3	23
Count 15, Amendment 10	25
Conclusion	26
Relief Requested	29

TABLE OF AUTHORITIES

Cases	**Page**
Abington Scholl district v Schempp, 374 U.S. 203 305 (1963)	18
Aetna Life Ins. C. v. Haworth, 300 U.S. 227, 57 S. Ct. 461, 81 L.Ed. 617, 108 A.L.R. 1000)	12
Anderson v. Creighton, 483 US 635, 646, n.6 (1986).	3
Armstrong v. Manzo, 380 U.S. 545, 552 (1965)	27
Baker v. McCollan, 443 U.S. 137, 144 n. 3, 99 Sc.D. 2689. 2695 n.3 61 L.Ed.2d 433 (1979)	3,16
Balwin v. Hale, 68 U.S. 1 Wall 223 233.	24,27
*Bell v. H*ood, 327 U.S. 678, 66 S. Ct. 733 90 L.Ed. 939	3
Bond v. United States 09-1127 /Quoting *Nigro v. U.S*. 276 US 332, 341 (1928)	1, 26
Butler v. United States, 287 U.S. 1	6, 7, 18, 21
Cary v. Piphus, 435, U.S. 247, 259 (1978)	8, 16
Copperweld Corp v. Independence Tube Corp., 467 U.S. 752, 775, 104 Sc.D. 2731, 81 L.Ed.2d 628 (1984)	19
Cohens v. Virginia, 19 U.S. 264 (1821)	3
Cuccinelli v. Sebelius, 310-cv-91 RV/Emt.	
Dolan v. City of Tigard, 512 U.S. 374, 385 (1994)	18
Elk v. Wilkins, 112 U.S. 94 (1884)	10
*Engel v. Vitale,*370 U.S. 421 (1962)	
Federal Election Commission v. Aklins, 524 U.S. 11, 25 (1998)	3
Flast v. Cohen, 392 U.S. 83 (1968)	3
Florida v. United States HHS, - F.3d ---, 2011 U.S. App. LEXIS 16806, at *26 (11th Cir Aug .12, 2011).	5,7,8, 15
Fuentes v. Shevin, 407 U.S. 67, 81 (1972)	16
Goldberg v. Kelly, 397 U.S. 245, 271, 299	26
Hunter v. Bryant, 502 US (1991)	3
Japan Whaling Assn. v. American Cetacean Society, 478 U.S. 221, 230-231 (1986)	3
Julliard v. Greenman, 110 US 421	4
Kneipp, 95 F.3d at 1204	16
Lehr v. Roberson, 463 U.S. 248 (1983)	21
Marshall v. Jerrico, 446 U.S. 238, 242,(1980)	16
Massachusetts v. EPA, 549 U.S. 497, 227 S. Ct. 1439 1447 (2007)	3
Mathges v. Eldridge, 424 U.S. 319 344	8, 16
Michigan S... RR. V. Brach & St. Joseph Counties Rail Users Assn., 287 F.3 568, 573	3
Minor v. Happersett 88 U.S. 162 (1875)	10,11
Marbury v. Madison, 1 Cranch 163 (1903)	3, 23

Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908, 1912, 68 L.Ed2d 420 (1981) 16
PERKIN, Secretary of Labor, et al V. Elg. 12
Regents U. Cal v. Bakke, 438 US 265 (1978) 21
Ricci et al. v. DeStefano 21
Santosky, 102 S.Ct6. 1396, quote adding 441 U.S. 425, 426, 99 Sc.D. 1808, 1809 2
Scott v. Sandford, 10
Slaughterhouse Cases 11
United States v. Salerno, 481 U.S. 739, 745 (1987) 4
VENUS, 12 U.S. 253 (1814) 10,12
United States v. Bishop, 66 F.3d 569, 576 (3d Cir.1995) 6
U.S. v. SCRAP D., 410 U.S. 614 (1973) 3
United States v. Kenny, 462 F2 1205 (3d Cir.) cet. Denied, 409 U.S. 914, 93 S. Ct. 234, 34 L.Ed.2d 176 (1972) 7, 16
United States v. Whited, 311 F.3d 259, 266 (3d Cir. 2002 6
United States v. Wong Kim Ark, 18 S.D 456 (1898) 10
United States v. Lopez, 515 U.S. 549, 115 Sc.D. 1624, 131 L.Ed.2d 626 (1995) 6
United States v. Morrison, 529 U.S. 598, 607 (2000) 6
United States v. Provenzano, 334 F.2d 678 (3rd Cir.) cert. denied 379 U.S. 212, 80 S. Ct. 270, 4 L.Ed.2d 544 7, 16
United States v. Salerno, 481 U.S. 739, 754 (1987) 4
United States v. Sweeney, 262 F2d 272 (3rd Cir. 1959) 7, 15
United States v. Whited, 311 F.3d 259, 266 (3d Cir. 2002) 6
Village of Willowbrook v. Olech, 528 U.S. 562 20
Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008) 4

OPINIONS BELOW

Decision of the Supreme Court dated January 9th 2012 to deny Certoriari 1254, Certified questions is invoked 28 U.S.C. 1254(1) (2)

JURIDICTION AND STATUTORY PROVISIONS INVOLVED

1. Article 3, Section 2, specific violations of Articles 1, 2, 3, 4, 5, 6, Amendments 1, 4, 5, 9, 10, 13, 14, and 16 of the U.S. Constitution and the U.S. Federal Code.

2. Violations of Title 28 and Title 42, U.S.C.A. 1985 (conspiracy to interfere with civil rights), 42 U.S.C.A. 1983, 1343, (1982) and 1985; judges presiding in violation Title 28 Section 455; Petitioner brings this action pursuant to *inter alia*, Title 28 U.S. Code 1331, and 28 U.S.C. 1332(a). The phrase "law of the land" refers to positive law, as well as compatible common law related to all of the above.

STATEMENT

At no time in our history can compare with the Constitutional Crisis created by the failure to adhere to the Constitutional Contract has taken place by the enactment of "H.R.3590" "Patient Protection and Affordable Care Act"

3. Petitioner previously submitted the most comprehensive Petition in the Nation against "H.R. 3590" "*Patient Protection and Affordable Care Act*" identifying **19-specific violations of the Constitution and 4 pre-existing laws** that disregards law, precedent, and Constitution:

> *"In short, a law "beyond the power of Congress," for any reason, is "**no law at all**." Justice Ruth B. Ginsburg Justice Breyer:* Quoting *Nigro v. United States, 276 U. S. 332, 341 (1928* [*Bond v. United States*].

4. At bar where, Constitutional challenges to laws that unilaterally render the Constitution meaningless that grant unfettered power to the Federal government to abrogate the Civil Rights of all Americans? That has yet to be refuted by any level of the Federal Court system. From the onset, Petitioner thoroughly scrutinized the "*Patient Protective and Affordable Care Act*" and cited with specificity and particularity each provision that conflicted with the United States Constitution.

5. Established precedent is legion, concerning the failure to act on knowledge of actual or constructive knowledge of risk or constitutional injury, which constitutes "deliberate indifference". Before this Supreme Court is the failure of District, Circuit, and now this Court, to remedy said wrongs after being informed of the unconstitutional conduct and in the actions below affirmatively linked to the deprivation of those federal rights throughout "H.R.3590".

REASON TO RECALL AND VACATE THE JANUARY 9th 2012 DISMISSAL

6. Compelling reason is simple: the Court will address the constitutionality of "H.R.3590" based upon inadequate pleadings that failed to address each violation set forth in the "Act" as were cited in *Purpura v Sebelius*, Case No. 11-7275. No Petition thus far submitted addresses with specifically and particularity the violations of statutes, rule of law, Federal Rules of Civil Procedure, and prior Supreme Court precedent that demonstrate "H.R.3590" abrogates the United States Constitution.

7. The fundamental requisite of "*due process of law*" is the opportunity to be heard and the Court is required in the interest of justice to apply the "*clear and convincing evidence standard.*" This has not done! Whether it be involving fraud [See Count 1] or other quasi-criminal wrongdoings in civil actions initiated by government that; "*threaten the individual involved with 'a significant deprivation of liberty'*" *see Santosky,* 102 S. Ct. 1396, quoting adding, 441 U.S. 425, 426, 99 S. Ct. 1808, 1809.

Please Take Special Judicial Notice: It is imperative "*in the interest of substantial justice*" that this Honorable Supreme Court establish legal precedent to be relied upon concerning each of the 19 violations listed herein to protect and preserve the Constitution and the inalienable rights of every citizen as enumerated in the Constitution for future generations.

POINT I

Irrefutable Basis for "Recalling & Vacating" the 1/9/2012 dismissal:

8. As a matter of law, the issue of fact must be resolved in order to determine whether the "*Patient Protection and Affordable Care Act*" "H.R.3590" violates established federal law. Inarguable, the denial by any Court to hear and adjudicate any Constitutional challenge is to deprive a citizen of their constitutional Civil Rights. The "Act" "H.R.3590" abrogates Amendments 5 and 14 throughout the legislation which contradicts prior precedent *See*, *Hunter v. Bryant*, 502 US (1991) *see also*, *Anderson v. Creighton*, 483 US 635, 646, n.6 (1986). Throughout the 15-counts are 19 specific violations of the Constitution and 4-statutory laws.

9. The Supreme Court in *Bell v. Hood*, 327 U.S. 678, 66 S. Ct. 733 90 L.Ed. 939 held:

> "*...where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alerted to adjust their remedies so as to grant the necessary relief*."

Article 3, Section 2 [2], of the Constitution in relevant part says:

> "*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States*".

Marbury v. Madison:

> "*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*."

10. Unquestionably "*subject-matter jurisdiction*" exists; any denial to hear and adjudicate each Count set forth in this Re-Argument brief constitutes a denial of "*due process*" to maintain a constitutional protection in a court of law. See, *Cohens v. Virginia*, 19 U.S. 264 (1821):

> "***To do otherwise than grant jurisdiction nullifies the United States Constitution***";

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2 Courts' jurisdiction in which standing is found, *Flast v. Cohen*, 392 U.S. 83 (1968); *U.S. v. SCRAP D.*, 410 U.S. 614 (1973); *Japan Whaling Assn. v. American Cetacean Society*, 478 U.S. 221, 230-231 (1986); *Federal Election Commission v. Aklins*, 524 U.S. 11, 25 (1998) and *Mass. V. EPA*, (citation omitted)

Justice Antonin Scalia wrote:

> "*When an individual who is the very object of a law's requirement or prohibition seeks to challenge it, he always has standing*." (Doctrine of Standing as an Essential Element of Separation of Power, 17, Suffolk U.L. Rev. 881, 894 (1983).

POINT II

> "*A good judge does nothing according to his private opinion, but pronounces sentence according to the law and the right*" Thomas Aquinas quoting Augustine

11. The Constitution does not allows Congress or the Executive branch to sign into law any "Act" of law not specifically enumerated by the Constitutional "contract" entered into by each sovereign State. The foregoing is an analysis of the Constitutional challenges created by "H.R.3590" that violate the following unbreakable rules: (1) Constitutional law; (2) legislative law; (3) Supreme Court precedent; and (4) conflicting rulings by various Circuit Courts.

12. In essence the entire "Act" erases the full and equal protections granted by law of the land, the U.S. Constitution. No tangible injury could be more imminent. This U.S. Supreme Court held, *see* Julliard v. Greenman 110 US 421:*"There is no such thing as a power of inherent sovereignty in the government of the United* States …." In short, Congress and the Executive branch are without authority to exercise legislation not authorized by the Constitution under any circumstances.

13. The primary function and fiduciary duty of the Supreme Court is to grant relief for any/all unconstitutional discrimination. Any refusal to address the merits of each allegation ignores established law and precedent. Petitioner will prove: *"no set of circumstances exist under which the Act would be valid*." *See*: *United States v. Salerno*, 481 U.S. 739, 745 (1987); also *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008).

Count 1.

14. Indisputable, Article 1, Section 7, Paragraph 1 of the Constitution's '*Origination Clause*' was violated: In order to pass the "Act" the Congressional leadership with fraudulent intent took an unrelated House Bill - H.R. 3590, named the "*Service Members Ownership Tax Act of 2009*", extracted the entire contents of said legislation, thereafter replaced the contents with the Senate's originated bill "*America's Healthy Future Act*" (S. 1796), a precursor to the "Act" to give the appearance of Constitutional legality in passage of the "Act".

15. The leadership[3] thereafter with fraudulent intent substituted the original name "*Service Members Ownership Tax Act of 2009*" (H.R.3590) with "*Patient Protection and Affordable Care Act"* to surreptitiously acquire a "***House Designation Number***". By Constitutional law, only the House of Representatives has **Constitutional authority to originate a revenue raising "Act**". The House accepted the Senate bill for expediency independent of any written House bill.

> Judge Roger Vinson was asked by both sides of the controversy to address the legislative history of the Act and concluded **the bill originated in the U.S. Senate**. *See*, *Florida v. U.S. Department of Health & Human Service*, ---F. Supp. 2d---, 2011 WL285683 (N.D. Fla.2011) which documents that the House of Representatives were amending a Senate Bill,[4] since it was found to have been originated in the Senate.

16. Recent precedent: see, *Bond v. U.S*. *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). Defendants must be mandated to submit a specific defense, or denial to where the "Act" originated. Therefore the "Act" must be rendered unconstitutional and "null and void". Established Supreme law of the land, no provision in the Constitution grants exception to Article 1, Section 7, Paragraph 1, nor does any provision exist that allows "revenue raising bills" to originate in Senate.

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3 This was done behind closed doors following the election of Scott Brown to the Senate replacing Senator Kennedy in order to stop a Republican filibuster.

4 Further evidence that the House of Representatives were aware of their authority and the limited authority of the Senate is illustrated by their recent rejection of S-510 because it contained "revenue rising" provisions. There is no difference in either instance.

Count 2.

17. Two-fold argument not presented by the cases to be heard; the "Commerce Clause": (1) An **Issue of first impression**[5] exists. Again, indisputable the "Act" violates Article 1, Section 8, Paragraph 3, of the Constitution; and, (2) the Act "H.R.3590" issue on its face is ***stare decisis*** since it creates "Specific Welfare" see *Butler v. U.S.* (citation omitted).

18. Under the guise of the "*Commerce Clause*" the government argues a "non-activity", has now become an 'act of commerce'. If "H.R.3590" is found to be Constitutional it will be used as precedent. Especially since the "Act" as written unconstitutionally prohibits any and all judicial review:

(a). The power to regulate interstate commerce does not subsume the power to dictate a lifetime financial commitment to health insurance coverage. Without judicially enforceable limits, the constitutional blessing of the minimum coverage provision, codified at 26 U.S.C. § 5000A, would effectively sanction Congress' exercise of police power under the auspices of the Commerce Clause, destroying our dual sovereignty structure [Amendment 10 violation].

(b). The Legislature attempts to distorted the "*Commerce Clause*" is nothing new, this very Court had to rectify the apparent unfamiliarity Congress has with the Constitution, *see*:

(i) In *United States v. Lopez*, 515 U.S. 549, 115 Sc.D. 1624, 131 L.Ed.2d 626 (1995) and *United States v. Morrison*, 529 U.S. 598, 607 (2000); id. (stating that a court should "*invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds*");

(ii) Also relevant, see *United States v. Whited,* 311 F.3d 259, 266 (**3d Cir**. 2002); *United States v. Bishop*, 66 F.3d 569, 576 (**3d Cir**.1995) "[The court] in reaching their decision took various tests; (i) the channels of interstate commerce; (ii) persons or things in interstate commerce or instruments of interstate commerce; and, (iii) activities that have "a substantial relation to interstate commerce i.e. those activities that substantially affect interstate commerce.

5 Judge Vinson (Fla.) and Judge Hudson (Va.) are quoted as saying the government's claim that the mandate to purchase of Health Insurance is based upon prior Supreme Court precedent. Judge Vinson wrote: "*governments claim is not even a close call*" Judge Hudson was quoted as saying *"[N]o reported case from any federal appellate court*" has ever ruled that Congress' power "included the regulation of a person's decision not to purchase a product." Even Judge Steeh (Michigan) hedge his decision by stating this case the "*issue of first impression*" existed.

19. Any mandate by government to purchase a product, whether health insurance or whatever for a "non-activity" under the guise of the "Commerce Clause" is a clever imitation of law, but is not authorized by law, is by default insipid legislation, inviting this Court to look elsewhere for a clever copy of the law, instead of the real thing. The authority is not granted by the United States Constitution.

20. Specifically, the Constitution states: "*To regulate the Commerce with foreign nations, and among the several States, and Indian Tribes*;" No definition of "regulate" [requires action] allows the government to dictate commerce or a mechanism to force any commerce be performed. The multi-state legal action in *Florida ex rel. Attorney General v. U.S. Department of Health & Human Services,* --- F.3d ---, 2011 WL 3519178, at *24-35 to be reviewed by this Honorable Court, which the Circuit Court found the "Act" unconstitutional. **Petitioner expands upon that argument** addressing issues overlooked by that action.

21. Prior precedent renders use of the "Commerce Clause" of no moment. This issue has been previously adjudicated renders the issue ***stare decisis*. If one reads the bill it becomes abundantly clear** provisions within the "Act" create "*Specific Welfare*" **not** "*General Welfare*". "*Specific Welfare*" was previously found unconstitutional in 1936, *see*, *United States v. Butler*, 287 U.S. 1, and prohibits the type of activities being promulgated by the "Act" because it levies taxes, fines, and fees specifically to supply a product to one specific group by taxing another specific group in-of-itself should be enough to render the "Act" "null and void".

22. To raise revenues to fund the "Act" ["***Specific Welfare***"] the government inserted provisions that employ *extortion* and *intimidation* under the "*color of law*" to force individuals and Corporations to purchase or offer Health-Insurance or suffer the consequence. That is an unlawful tactic used under the "color of law" that violates prior precedent that is legion:

(a) The Third Circuit alone for example, held: "*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)(1)*" *United States v.*

Sweeney, 262 F2d 272 (3rd Cir. 1959) *United States v. Kenny*, 462 F2 1205 (3d Cir.) cet. Denied, 409 U.S. 914, 93 S. Ct. 234, 34 L.Ed.2d 176 (1972) *United States v. Provenzano*, 334 F.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 the Hobbs Act"*).

(b) Intimation violates **Supreme Court precedent**, see, *Mathges v. Eldridge*, 424 U.S. 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*."

Also See, *Cary v. Piphus*, 435 U.S.: 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. Provisions throughout "H.R.3590" preclude judicial review. How can this "Act" be Constitutional? The Court must mandate Defendants dispute the above facts with specificity and particularity.

Count 3.

23. The "Act" "H.R.3590" violates Article 1, Section 8, Paragraph 12 of the Constitution: Appropriation. Provisions in "H.R.3590" appropriate monies for an Army for four (4) years not two (2) years. No further argument is needed. It unambiguously violates the Constitution.

24. The second violation deals with statutory law. "H.R.3590" specifically abrogates the "*Posse Comitatus*"[6] Act by granting the President unfettered authority to create a new

[6] Recently signed into law, National Defense Authorization Act, (S.1867) notwithstanding violates the "Posse Comitatus "Act authorizing the President to use Military force on American citizens, without State approval, retention of American citizens without judicial due process for an unlimited period and the transfer of Americans to overseas detention camps. The reason I bring this to this Courts attention, we see the continual erosion of rights by an administration gone wild. I ask this Court to be cognizant of the fact that "H.R.3590" the so-called healthcare legislation creates a private Presidential Army that violates the Constitution see, paragraph 21 in Stalinist Russian fashion! Even two days before Christmas Mr. Obama told the Congress in no uncertain terms he will decide what's constitutional when referring to provisions in the trillion dollar omnibus spending bill that prevented monies to be used for his anti-gun agenda: I quote: "*I have advised Congress that I will not construe these provisions as preventing me from fulfilling my constitutional responsibility to recommend to the Congress's consideration such measures as I shall judge necessary and expedient*" Therefore Congress will be allowed to institute legislation but he'll decide what is or isn't Constitutional. One would wonder; did Mr. Obama decided you should not address the unconstitutionality of "H.R.3590" as outlined in *Purpura v. Sebelius*?

"military" Ready Reserve Corps (the members of which shall receive weapons training) with unfettered authority to deploy said Corps [federal troops in civilian law enforcement] without consent of the State governor [violation of State sovereignty]. Provisions allow the President to activate State National Guard troops circumventing Congress void an emergency declaration of law, and to implement a draft on what he perceives to be a national emergency under his direct control.

Count 4.

25. The Act violates Article 1, Section 9, Paragraph 4, "*Capitation taxes*", by explicitly taxing individuals and states discriminately.[7] This extends to a second violation prohibited by Amendment 14. In conjunction with Count 1 above, the "Act" itself originated in the Senate, not the House of Representatives must also be taken into consideration since the violation is twofold. Therefore overall we now have 4-unconstitutional provisions that must be addressed. Reasoning; not a single one of the above violations are to be found or adequately framed in the pleading to be argued in March of 2012.

Count 5.

26. Violation of Article 1, Section 9, Paragraphs 3, 5, and 6, by imposing taxes or duties on articles exported from State to State[8] that has already caused immediate and future devastating injury.

27. Secondly, Article 1, of the Constitution is explicit, "special preference" is prohibited! It is inarguable various States are granted waivers over other States. As written "H.R.3590" grants specific financial incentives and special treatment to selective

7 The Honorable Chief Judge Roger Vinson in his previous finding, *see*, Case 3:10-cv-00091, noting that Section 10907 of "H.R.3590" explicitly imposed taxes on indoor tanning salon on individuals as a "service" tax which is clearly a violation of the Constitution "*capitation*" provision.

8 The new Medical Device Excise Tax scheduled to begin in 2013 has already caused 1000 employees at Stryker Corp. will be losing their jobs as a direct result of a medical device fee included in Obama-care according to Reuters (Nov.1, 2011). AdavaMed, the Advanced Medical Technology Association estimates that 43,000 U.S. jobs would be lost as the Medical device Excise Tax as companies move to more productive Nations.

States due to the blatant bribery that took place for the needed votes for passage of the "Act". Such action violates Amendment 14.

Count 6

28. Violation Article 2, Section 1, Paragraph 5; Petitioner has never stated Mr. Obama is not a citizen of the United States, i.e., his has a right to hold certain offices, but not the Presidency. A Constitutional question exists: since Mr. Obama, by his own admission, is not a natural born Citizen, how can he exercise the authority of the office of President? Is he of a privileged class that is above the Constitution – the Supreme Law of the land (see Article 6, Paragraph 2)?

29. Are we still a Republic founded on the principle of law, or a nation of cowering political Quislings that exist in fear of an imperial presidency regardless of the truth? Failure to address this Count would constitute a desertion from ones sworn fiduciary duty and betrayal of the United States Constitution.

30. No Constitutional question before this Honorable Court surpasses the importance concerning this issue that must be adjudicated. **Whether Mr. Obama was and is eligible to sign "H.R.3590" in law, make appointments to the bench, among the many other infractions, proper procedures and damaging regulations the American people are being subjected too.**

31. There are two Constitutional challenges that must be addressed, (1). is this Supreme Court bound by the principles of ***stare decisis?*** If not, (2). do we have an issue of "**first impression**"? Up until now, spineless federal courts have avoided this issue. By so doing this current administration has been repeatedly place itself above the law of the land, the legislature and judiciary. [Currently, they are in contempt of Court (one example Drilling leases)]. I could go on, but what is use? That being said:

32. Article 2, Section 1, Paragraph 5, is unambiguous,

> *"No person except a natural born Citizen, or Citizen of the United States at the time of the adoption of this constitution, shall be eligible to the Office of President".*

33. Petitioner says, this matter is "***stare decisis et no movere***" the Supreme Court has previous adjudicated this question numerous times setting forth established precedent; *see*, *Minor v. Happersett* 21 Wall, 162, 166-168; U.S. v. *Wong Kim Ark*, 18 Sc.D. 456 (1898); *Perkins, Secretary of Labor, et al. v. Elg*. 59 S. Ct. 884 (1939) *Elk v. Wilkins*, 112 U.S. 94 (1884); *THE VENUS*, 12 US 253 (1814) ….

Take Special Notice: Recently uncovered was that an unknown individual[s] in a premeditated criminal act removed all reference to Supreme Court precedent from the website "*Jusatia.com*" corrupting no less than 25-Supreme Court authorities erasing reference to the words "*Minor v. Happersett*" to other relevant cases. Thereafter inserting misleading numerical citations concerning the proper meaning of "*natural born citizen*" as found by the Supreme Court.

- Thus far uncovered; actual text was removed in the landmark decision *United States v. Wong Kim Ark*, with reference to *Scott v. Sandford*, and the *Slaughterhouse Case*s. Attached as Exhibit 1, is a comprehensive treatises citing precedent, and detailed history of what constitutes a "*natural born citizen*". Mr. Obama was/is ineligible to exercise Presidential authority to sign "H.R.3590" into law as would have been John McCain if elected. Regardless of any legislative resolution; the Constitution is the Supreme law of the land that has not been amended.

- The Congressional Research Service distorted what a "natural born citizen" is in their "reports" by carefully quoting various rulings using " … " to obscure their distortions. What is being perpetrated on the public is the claim the dictionary does not define the meaning of words. "Law of Nations" it is the common law of the US that defines the various terms. It is even referenced by name in Article 1, Section 8, Paragraph, 10 of the US Constitution. [Noah Webster's Dictionary 1828 remind us: *It is not only important, but, in a degree necessary, that the people of this country, should have an American Dictionary of the English language; for, although the body of the language is the same as in England, and it is desirable to perpetuate sameness, yet some differences must exist. Language is the expression of ideas; and if the people of one country cannot preserve an identity, they cannot retain an identity of language."*].That being said:

34. The Supreme Court specifically In "*Minor v Happersett*" when deciding an issue of citizenship issued a decision on March 29, 1875 specifically held:

> "The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-

born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their [p168] parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. The words "all children" are certainly as comprehensive, when used in this connection, as "all persons," and if females are included in the last they must be in the first. That they are included in the last is not denied. In fact the whole argument of the plaintiffs proceeds upon that idea".

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

> "The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or natural-born citizens, are those born in the country, of parents who are citizens. As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent. We shall soon see whether, on their coming which they were born. I say, that, in order to be of the country, it is necessary that a person be born of a father who is a citizen; for, if he is born there of a foreigner, it will be only the place of his birth, and not his country.
>
> The Supreme Court in "PERKINS," *Secretary of Labor, et al. V ELG. ELG v. PERKINS, Secretary of Labor, et al*." which was decided on May 29, 1939 discussed the differences between a natural born citizen and a native born citizen. From the decision Fifth.-The cross petition of Miss Elg, upon which certiorari was granted in No. 455, is addressed to the part of the decree below which dismissed the bill of complaint as against the Secretary of State. The dismissal was upon the ground that the court would not undertake by mandamus to compel the issuance of a passport or control by means of a declaratory judgment the discretion of the Secretary of State. But the Secretary of State, according to the allegation of the bill of complaint, had refused to issue a passport to Miss Elg 'solely on the ground that she had lost her native born American citizenship.' The court below, properly recognizing the existence of an actual controversy with the defendants *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617, 108 A.L.R. 1000), declared Miss Elg 'to be a natural born citizen of the

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

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

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

36. Due to the dual citizenship status of the Barack Hussein Obama Jr., which exists because Barack Hussein Obama Sr. was a British citizen and gave his son British citizenship, Barack Hussein Obama II does not meet the "natural born citizen" requirement of Article 2, Section 1, Paragraph 5 of the contract as set forth in the U.S. Constitution. Nor was Barack Obama II alive and a citizen of the United States of America at the time the U.S. Constitution was adopted. Barack Hussein Obama II is a native born or statutory citizen period! Therefore he is ineligible to exercise the authority of the office of President of the United States and cannot legally sign bills into law.

37. Noteworthy to consider; John Jay's correspondence to George Washington during the convention that created the contract represented by the Constitution:

> "*Permit me to hint, whether it would be wise and reasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Commander in Chief of the American army shall not be given to nor devolve on, any but a natural born Citizen*."

38. Therefore, either the issue is ***stare decisis*** or a case of ***first impression***. Regardless, the Court is obligated to address this Constitutional challenge. Unless the Constitution of the United States has been amended retroactively. Mr. Barack Obama II is constitutionally ineligible to hold the office of the President of this United States.

39. Not being eligible to be President and Commander in Chief, Mr. Obama is currently acting without constitutional authority which is causing plaintiff and all citizens of the Republic injury in fact. Until this issue is settled, "H.R.3590" must be rendered "*null and void*" and all federal appointments, Executive Orders, and regulations are invalid. Unless of course this Honorable Court believes the Constitution no longer means what it says!

Count 7.

40. Violation of Amendment 16, that are also violations of Amendments 5 and 8, resulting from excess fines a violation of Amendment 8. See, (A-135;A-284-285). Amendment 16 is constitutional, but what "H.R.3590" does is tax the same income a second time as well as levy taxes on phantom income that was never existed. That is not legally constitutional! Provisions in the "Act" constitute legal extortion under the "color of law". Failure to comply with the government's mandate results in the "Act" levying taxes and excessive fines disproportionate in amounts that violate Amendment 8, Individual either comply or are punished without the benefit of judicial review for refusing to participate in a "non-activity" created under the guise of the "Commerce clause".

41. Notwithstanding a violation of Article 1, Section 9 paragraph 3; "No bill of attainder or "ex post facto" law shall be passed.

- The Court is also charged with the duty to decide; if the penalty is a tax, then clarify what constitutes "income" and how often government can tax it; under the proper authority granted by the Constitution.

- The second question becomes; is it "double taxation" which historically tax protestors argue the tax on dividend income on which the payer, usually a regular 'Subchapter C' corporation or group, has previously listed as income on its own tax return;

- Thirdly, where in the Constitutional contract does the authority exist for the legislature to make laws that tax the same income multiple times or tax income that does not exist?

42. Clearly, this unconstitutional "Act" has opened Pandora's Box in which this Court is charged with the task of undoing numerous wrongs; to do less would be a violation of "proper judicial procedure" if such legal questions were left unanswered.

Count 8.

43. The "Act" abrogates Amendment 4, and "Health Insurance Portability and Accounting Act" "HIPAA" legislation. Complete with explanation is found in the following provision of the "Act"

- Section 1128J pp. 1687-1692ff which creates an "Integrated Data Repository" …the Inspector General's Office will have total; access to any medical record;…(without a search legal warrant) titles XVIII and XIX, allows the government to obtain information from any individual including beneficiaries.

- Section 1128B(f) allows the government access to all records pertaining to medical device and who payments have been made to.

Note: This unconstitutional seizure of personal medical and insurance records (i.e. papers) is currently being implemented.

This Court must address is the words in the Provision that state:

"**Notwithstanding and in addition to any other provision of law**"

- Section 1128J also provides for warrantless searches and seizures. So much for Amendment 4 protection;

- Provisions in Part 6 of the act allows the government access to individual bank accounts and financial records;

- Provisions allow the government the ability to transfer funds electronically to or from an individual's bank account for the purpose of debiting his or her account for fees and penalties. – without prior judicial review.

44. In short, "H.R.3590" violates the individual rights of every citizen in the United States rendering the Articles and Amendments to the Constitution "null and void" creating a Police State with the government above every protection the people of the Republic once enjoyed if not struck down in its entirety.

45. Ironically, this Supreme Court held the right to privacy was critical in *Roe v Wade* which clearly allowed mothers to "kill their unborn" yet, this "Act" nullifies our

Amendment 4 privacy protection. And, the Government must be made to explain what Constitutional authority exists that grants Congress to override the "HIPPA" as well as Amendment 4?

Count 9.

46. "H.R.35590" mandates that citizens no longer are protected by Amendments 5 and 13. The "Act" contains such violations as; "illegal takings", "extortion", "servitude", and mandates "*Specific Welfare*". Provisions set forth in the 'Act" require every individual to buy a product (Healthcare Insurance, except the select few that are granted immunity from the "Act") under the threat penalty of law for which **no judicial review is permitted** see[9], pages 630, 653, 676, 680, 725, 738, 772, 831, 1013, 1415, 1679, and 2303. So much for Amendment 5!

- Provisions allow the government to seize property; without procedural "due process", therefore constitutes an illegal taking, since a citizen is without legal recourse to challenge the taking or seizure. [Supreme Court precedent is legion that this is unconstitutional].

- A "taking" effected by "persuasion, enticement, or inducement"[10] ' implies a transfer of a possession under such circumstance constitutes an act of extortion

9 Procedural due process rules are meant to protect persons not from the deprivation, but from the mistakes or unjustified deprivation of life, liberty, or property. *Cary v. Piphus,* 435 U.S. 247, 259 (1978). The rules minimize substantively unfair or mistaken deprivations" **by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests**. *Fuentes v Shevin,* 407 U.S. 67, 81 (1972). At all times, **the court has also stressed the dignity importance of procedural rights, the worth of being able to defend one's interests** even if one cannot change the results. *Cary v Piphus*, 435 U.S. 247, 266-67 (1978) *Marshall v Jerrico*, Inc., 446 U.S. 238, 242 (1980).

The right of procedural "*due process*" and "*equal protection*" is fundamental! 42 U.S.C. 1983 provides a remedy for violations of those rights created by the Constitution. In *Baker v. Mccollan,* 443 U.S. 137, 144 n. 3, 99 S. Ct. 2689, 2695 n.3, 61 L.Ed.2d 433 (1979): *Kneipp*, 95 F.3d at 1204. Defendants herein, acted under the "*color of law*," to deprived plaintiff[s] of rights secured by the constitution or laws of the United States, also see, *Parratt v. Taylor,* 451 U.S. 527, 535, 101 S. Ct. 1908, 1912, 68 L.Ed2d 420 (1981).

10 The wrongful use of threatening… or fear of economic harm…to surrender a federally protected rights constitutes extortion within the meaning of 18 USC 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 US 914, 93 S. Ct. 234 34 L.Ed.2d 176 (1972) *U.S. v. Provenzano*, 334, F.2d 678 (3d Cir.) cert denied 379 U.S. 212, 80 S. Ct. 270, 4L.Ed.2 544 *fear or wrongfully threaten economic lose also satisfies Hobbs Act).* Such intimation violates Supreme Court precedent, see *Mathges v. Eldridge*, 424 US 319 344: "*The rules 'minimizes substantially unfair treatment or mistake, deprivation by enabling a person to contest the basis upon which a state proposes to*

under the "*color of law*" since a citizen will be penalized for failing to comply with the government's mandate

47. The 'Act' violates Amendment 13. The meaning of "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, against his will, for the benefit of another person due to force, threats, intimidation or other similar means of coercion directed against him."*

48. By law, only an incarcerated ward of the State may be ordered to perform a service against their will. Forcing an individual to purchase a product (Insurance) to cover the costs for others without insurance not only violates Supreme Court precedent concerning "specific welfare", see *Butler v. United States*, for which there is no judicial review, comply or suffer the punishment, it is indisputable the "Act" itself relegates honest free citizens to criminal status if they refuse to comply.

49. The "Act" "H.R. 3590" unconstitutional components are (1) violates Amendments 5 and 8 by impositions of fines and taxes without "*due process*"; (2) institutes illegal "*takings*" without "due process"[11]; (3) imposes extortion under the "*color of law*" similar to the "Jim Crow Laws"; (4) Violates Amendment 13; (5) and creates "*Specific Welfare*" an issue that is *stare decisis*.

Count 10.

50. The "Act" violates Article 4, Section 2, and Amendment 14. Provision set forth in "H.R. 3590" grants special exemptions and waivers (Exceeding 1000) to select classes of citizens, based upon union affiliation, corporations, religious affiliation, and/or State

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deprive them of a 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 mistake or justified deprivation of life, liberty or property.

11 One of the principle purposes of the "Taking" clause is to bar the government from forcing some people alone to bear public burdens which in all fairness and justice, should be borne by the public as a whole, See, Dolan v. City of Tigard, ((citation omitted).

residency that were granted for the needed votes for passage of the 'Act". And again omits the right to judicial review (Amendment 5).

51. What also stands out, select religious affiliation (Islam, Amish, etc.) are exempt from the mandates of the "Act" while other religious groups are mandated to participate or suffer penalties creates a violation of Amendment 1, the respecting one religion over another which is unconstitutional. See, Section 1420(g) to be addressed further in Count 11, the "establishment clause".

52. The "Act" openly contains "Discriminatory Taxation" that selectively punishes homeowners in violation of Amendment 14 "equal protection and treatment". The government by this "Act" turns over partial ownership of a citizens home[12] by taxation by imposing a 3.8 percent fixed tax on the gross amount of the sale of their residence after tax dollars in addition to a capital gains tax to raise the monies for "*specific welfare*" that has been declared unconstitutional see, *Butler v. US*, (citation omitted).

53. Neutrality in application requires an "equal protection" mode analysis. Defendants must be made to explain how the above disparities concerning treatment is not a violation of Article 4, Section 2 and Amendments 1, 5, and 14.

Count 11.

54. Violations: "Establishment Clause", Amendment 1, interrelated with violations of Amendments 5 and 14. A review of page 326 and page 2105 of the "Act" grants "religious conscience exemptions" in a very specific unconstitutional manner. Preferential treatment is granted based upon membership or participation in selected establishment of religion (Islam)[13] that does not apply to all religious groups. Again, violates neutrality.

12 According to the U.S. Supreme Court, if the Amendment 5 is to have meaning, "it must include the right to prevent the government from gaining an ownership interest in one's property outside the procedures of the "Taking" Clause. Dolan v. City of Tigard, 512 U.S. 374, 385 (1994)

13 If the exemption from the mandate to purchase "health Insurance" (regardless of the unconstitutionality of the "Act") is upheld to those in the Islamic faith this Court will be setting a precedent that establishes

The Honorable Judger Harlan stated:

> "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 Justice Goldberg) *Engel v. Vitale*, 370 U.S. 421 (1962) "…Government must neither legislate to accord benefits that favor religion over non-religion, nor sponsor a particular sect, nor try to encourage participation in or abnegation of religion. Mr. Goldberg's concurring opinion in participation in or abnegation of religion. Mr. Goldberg's concurring opinion in[p.695] Abington, which I join, set forth these principles"
> 'the fullest realization of true religious liberty requires that government neither engages in nor compel religious practices, that it effects no Favoritism among sects or between religion and non-religious beliefs.

55. Indisputably, any law must apply with equal force to everyone. "H.R.3590" abridges citizen's rights in direct violation of Amendments 1 and 14. It is inarguable the "Act" favors and respects one religion over another by its privileged exemptions, see provisions "(A) Religious Conscience Exemptions section 1311(d)(4)(H), 1402 (g)(1) and Section 1402(g) in Count 10. What is not made clear in the provision does said exemption described a religious opt-out from social security and Internal Revenue Code (26 U.S.C. 1402(g). That being said; the Constitutional consequence of this challenge will not only affect the issue at bar (H.R.3590" provisions) but also the Internal Revenue Code.

56. Any individual not a member of the favorite religion are subject to fines, and or additional punishment without any appeal or judicial recourse violating Amendment 5.

Count 12.

57. Violations of Amendments 5 and 14, renders the judiciary irrelevant and also interconnects with violation of the Anti-Trust Laws. It is important to first address the language set forth in the "Act" "*There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of [any various procedures described earlier.*

Sharia law above Constitutional law. Such special privileges places are taking place every day, prayer rooms at Airports, stadiums, pray time allotted at schools, dress codes at schools, businesses and Corporations exempting Muslim's from standard work procedure all unavailable to non-Muslims. The question exists are we an equal society or do we now have a privileged class?

This Re-Argument Brief demonstrates the seriousness of this violation. and the relationship to the violation of the Anti-Trust Law, 15 U.S.C. 1 enjoins only anti-competition conduct "effected by a contract, combination, or conspiracy," *see*, Copperweld Corp v. Independence Tube Corp., 467 U.S. 752, 775, 104 S. Ct. 2731, 81 L.Ed.2d 628 (1984). Petitioner; "*pleaded that the defendants "ha[d] entered into a contract, combination or conspiracy to prevent competitive entry ...."*

- Value –based incentives payments to hospitals p.630;
- The government decides which physicians can participate in patient treatment p.653;
- Government bureaucrats' decides Value-based payments and assessments of quality of care p.676;
- Bureaucrats decide the handing of nosocomial (hospital acquired) infection cases p.680;
- Treatment is allowed based upon cost-effective modeling p.725:
- Quality of care and payment determinations involving accountable Care Organizations (ACOs) p.738 [This provision abrogates 44 USC 35 having to do with federal policy coordination;
- Diagnosis related group (DRG) related payments and payments for hospital readmission p.772;
- Reimbursements to hospitals for "compensation care" for which the patient, for whatever reason, cannot pay p.831;
- Direct proposal by the President to Congress concerning changes in reimbursement rate p.1013, [One could say dictatorial power found in totalitarian States];
- Identification of primary-care physicians, as distinct from specialists P.1415;
- Bureaucrats make the determination of the need for additional hospitals p.1512.
- "Moratoriums on enrollment of new providers under Medicare and/or Medicare p.1679; and,

- Government bureaucrats will make the determination of "high-need cures" p.2303.

58. Each provision cited above, must be address for two reasons; (1) Provisions in the "Act" disallow any judicial review (Amendment 5 violation) and or administrative review. In essence "death panels" for senior citizens or those with serious injuries or diseases; (2) Said provisions above clearly exempts the government from the Anti-trust Law allowing the government to "price fix" that will force all private health care providers out of business that will allow the government to create a single payer system under federal control. Rationing or denial of treatment constitutes "*reckless endangerment*". In short, a government monopoly totally controlling every aspect of the Health-care system and the health care decision of every person. Thus eliminating the freedom of the people subjecting them to serfdom.

59. Further, it is indisputable Amendment 14, is violated "equal protection and treatment". One example will suffice. Any business whose payroll exceeds $400,000.00 that fails to offer the public option will incur an 8-percent tax on their payroll. Business with payrolls of $250-400,000.00 that fail to offer the public option must pay 2-6 percent tax on their payroll. Any employer with 50 or more employees would pay $2,000.00 per-worker for failing to offer the public option. Disproportional tax penalties violate "equal treatment".

60. In reality, such governmental strong arm tactic even under the "*color of law*" with penalties for failing to comply is nothing less than "extortion". An unconstitutional revenue rising "bill" that unconstitutionally originated in the Senate, *see*, Article 1, Section 7, Paragraph 1.

Count 13.

61. Violates Title VII, "Civil Rights" Law, Amendment 14[14], and Article 4, Section 2, Paragraph1. In the "Act' "H.R.3590" *see*, Title V Section 5201 and 5202 include

14 The equal protection Clause bars a governing body from applying a law dissimilarly to people who are similarly situated. The purpose of the clause is to secure every person within its jurisdiction against

provisions allocating federal funds for student loans. Section 10908 state loans, in clear violation of Title VII of the Civil Rights legislation, are to be granted. Provisions specifically maneuvers loan monies to "historically black and minority colleges" (see, footnote 13) to the tune of 2.55 billion dollars which also violates "*Equal treatment*". It is inarguable granting monies based upon race or ethnicity is "reverse discrimination"[15]

62. Further discrimination (taxation), is demonstrated by a 10-percent Tax on select individuals for a service in Tanning Salons, not the Tanning Salon itself. One could argue it discriminates against those with light skin punishing one class of citizens. More importantly, such a tax violates "Capitation prohibitions" (see Article 1, Section 9, Paragraph 4) "*No Capitation, or other direct,, Tax shall be laid, ...*" and Article 4, Section 2, Paragraph 1 that specifically states "*the citizens of each State shall be entitled to all privileges and immunities of the Citizens in several States*".

63. The "Act" discriminates regarding the size of a business or corporation, those with more than 10-operating facilities are subject to stringent regulation while those with less than 10-operating facilities are exempt;

64. The "Act" vest the government to discriminate against chain restaurants by requiring publication of the calories of each item on menu (unjust increase in operating expenses) while it exempts smaller restaurants.

65. The "Act" deliberately exempts all federal branches of government from the same healthcare mandates forced upon citizens that they are supposed represent, elevating themselves above those they serve, with "special" and far superior services than those

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arbitrary discrimination, whether occasioned by the expressed terms of a statute or by its improper execution through government agents. See, Village of Willowbrook v. Olech, 528 U.S. 562. In short, to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a governmental objective. See, *Lehr v. Roberson*, 463 U.S. 248 (1983).

15 See, *Regents U. Cal. V. Bakke*, 438 US 265 (1978) also see most recent ruling by this honorable Court, *Ricci et al. v DeStefano*, (citation omitted) in the case of the New Haven, Conn. In which Firefighters with higher test scores were passed over for promotion because they were of the wrong race for firefighters with lower test scores. [Such behavior divides the races].

Americas that are being forced to accept, a government defined Health-care plan, surely violates "equal protection and treatment" mandated by Amendment 14, and it could be argued it violates Title VII creating a privileged class.

66. The "Act" goes so far as to penalize (discrimination) citizens with existing "healthcare policies" that offer a better coverage than those mandated by the "Act" characterizing them as "*Cadillac Plan's*". Those individuals will incur an additional tax. Any person can see this is discriminatory.

67. The "Act" grants special benefits to select groups of citizens, and as written it also subsidizes all Union Retirees, Community Organizations health-care plans at the expense of the taxpayer, that is arguably an unconstitutional use of the taxpayers monies for "*specific welfare*" that was previously ruled unconstitutional see, *Butler v United States*, (citation omitted) as political pay-offs. Clearly discriminatory and an "*equal treatment*" violation.

68. Further unconstitutional State discrimination, the leadership in the Senate selectively granted special financial packages and exemptions to various States to secure passage of the "Act". By law, any special exemptions and/or special funding related to this "Act" constitutes "unequal treatment" to the taxpayers of States not granted these special immunities or financial assistance and could be considered to violate Article 1, Section 9, Paragraph 6.

69. Article 4, Section 2 Paragraph 1 mandates "The Citizens of each State shall be entitled to all the privileges and immunities of the Citizens in several States". Clearly, as demonstrated above, throughout the "Act" are violations of the Equal Protection Clause by the selective application of rules, fines, restriction, and regulations in a dissimilar manner.

Count 14.

70. Violation of Article 6, Section 3, the Oath[16] of Office. When incorporated with the proven allegation above and below that the entire "Act" totally fails to comply with the U.S. Constitution, those that voted for this "Act" admittedly[17] failed in their fiduciary duty to scrutinize the bill prior to passage in violation of their sworn oath.

71. The simple fact is this is not just an unfounded allegation. What has transpired constitutes "high crimes and misdemeanors" which are impeachable offense, though not an incarceration offense, which is too bad! The legislature's behavior has cost the American people untold 100's of millions of dollars thus far and still counting on a piece of legislation that was drafted by outside non-governmental organization[18] that admittedly favor a Socialist/Marxist form of government. To my knowledge no Constitutional authority exists for any group or special interest advocates to draft legislation to be enacted upon the American people; especially if it violates the United States Constitution.

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16 *Marbury v. Madison*, concerning the oath of Office. "…it's apparent that the framers of the Constitution contemplated that the instrument as a rule of government of the courts, as well as the legislature. Why otherwise does it direct the judges to take an a 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 the 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 of the laws of the united states. Why does a judge swear top discharge his duties agreeably to the constitution of the United States, if that Constitution forms no rule of 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 take an oath, becomes equally a crime."

17 The Chairman of the House publically admitted he didn't understand it, yet voted for passage. The speaker of the House Nancy Pelosi publically stated; "We have to pass the "Act" to find out what was in it". Congressman John Conyers on public Television stated: "I love these members who get up and say 'read a bill'. What good is reading the bill if it's 1000 pages and you don't have two days two lawyers to find out what it means after you read the bill". explain what's in it". Senator Thomas Carper /(D-DE) Carper described the 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 "gibberish" used in credit card disclosure forms."

18 Senator Reid, on the floor of the Senate, personally thanked the Apollo Group of NY, for creating and writing the Obama-care bill. The Apollo group is a progressive - socialist group owned and financed by George Soros and have planned Obama-care for many years. [prior to Mr Obama's illicit and election].

72. I respectfully remind this Honorable Court of the words set forth in Article 6, Paragraph 3: "The Senators and Representatives… and executive and Judicial Officers, shall be bound by the Oath or Affirmation, to support the Constitution".

Count 15.

73. Issue of first impression Amendment 10, no State has yet surrendered their Sovereignty to federal government. The "Act" usurps the contractual agreement between the States and Federal government effectively eviscerates the limits of power held by the Federal Government specifically restricted by the Sovereign States is inconsistent with the dual sovereignty system that jeopardizes the integrity of our dual structure of government.

74. By law, Amendment 10 recognizes every State and the People hold the power and authority to declare any appropriation, regulation, or taxation null and void if said legislation violates the main body of the Constitution, its Amendments, or if said legislation violates the powers reserved to the States respectively. To force a State to create an "insurance exchange" is totally inconsistent with the Constitution as was found by the Hon. Justice Vinson, see *Cuccinelli v Sibelius*, No. 310-cv-91 RV/Emt.

75. More importantly, the government assertion that the "*commerce clause*" grants the government the authority to mandate States create "insurance exchanges" infringes upon the power reserved to the States by the people (the key word set forth in Amendment 10) since the people will bear the cost of such implementation.

76. What has been overlooked is "H.R.3590" mandates an appropriation, conveniently exempting the federal government from providing the necessary funding or recourses to administrate this unconstitutional requirement, leaving the costs to be passed on to the citizens of each State. In Machiavellian fashion, the act in essence mandates involuntary servitude to the general government by requiring (1) each 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.

77. In the drafting of "H.R.3590" the legislature displayed a lack of knowledge of the Constitutional, the law, which is also made clear by the utterance of the founding father throughout the federalist papers. Any assertion the "general welfare" clause grants such authority to the legislature to usurp the Constitution demonstrates further those that voted for this "Act" have little or no knowledge of the Constitution. If they had it a clearly recognizable the "Act" converts what has been a voluntary federal and State partnership into a compulsory top-down "command and control" federal program abrogating Amendment 10 protection.

78. The power to regulate interstate commerce does not subsume the power to dictate a lifetime financial commitment to health insurance coverage. Without judicially enforceable limits, the constitutional blessing of the minimum coverage provision, codified at 26 U.S.C. § 5000A, would effectively sanction Congress's exercise of police power under the auspices of the Commerce Clause, jeopardizing the integrity of our dual sovereignty structure [Amendment 10 violation].

79. Total discretion of the State is eliminated; in derogation of the core Constitutional principle of federalism upon which this Nation was founded by the mere fact the "Act" exceeds the vested powers granted by the Constitution, violating Article 1, Section 8, and Amendment 10 incorporated therein. The Federal Government only has those powers that the States of the Union ceded to the Federal Government via the Constitution and no others.

CONCLUSION

80. The magnitude of the Constitutional violations in "H.R.3590" is unprecedented in American jurisprudence. The "Act" "H.R.3590" effectively eliminates the Constitution, and effectively removes all judicial review. To dismiss this Petitioners Writ of Certiorari makes a mockery of a Citizen's standing to challenge the Constitutionality of a law, Amendment 1 which states "*Congress shall make no law ... , and to petition the Government for redress of grievances.*", and make a mockery of the recent precedent held

in "*Bond v. the United States"* that would disenfranchises directly the privileges and immunities of all citizens.

81. This Honorable Court has been besieged with complaints submitted alleging the "*Patient Protection and Affordable Care Act*" "H.R.3590" that demonstrate the both sides have presented argument. Yet in this case Defendants have presented no argument at any federal level. And have legally forfeited no less than three times. Yet, at every level of the Federal Court system Petitioners were denied justice, without any legal justification or reasoning. Petitioners have been denied procedural "due process", as statutes were ignored, as well as clear and convincing evidence that resulted in no answer from the Government. The U.S. Code and Judicial Conduct Code were violated and prior precedent was ignored. The Supreme Court of the United States held: *"...that for a full and fair hearing to have occurred, the courts must demonstrate compliance with elementary legal rules of evidence, and must "**state reasons for their determination**" and, the courts must indicate what evidence was relied on. see, Goldberg v. Kelly*, 397 U.S. 245, 271, 299. Or has a new exclusionary rule been instituted for *pro se* litigants that bring to the attention of the Federal Courts Constitutional violations?

82. The Federal Courts are being swamped with complaints on the issue of Mr. Obama's eligibility to hold the office of President or be allowed to be placed on the ballot this November. This is the only comprehensive Petition that deals with both issues.

PLEASE TAKE SPECIAL JUDICIAL NOTICE: Currently pending throughout the country are numerous challenges to Mr. Obama's eligibility to be place on the ballot this coming November 2012. It is incumbent upon this Court to settle the issue post haste to afford the Democrat Party an opportunity to choose an eligible candidate. To do otherwise disenfranchise the voters and continues the constitutional crisis that has been escalating since the Courts refused to address Hillary Clinton's 2008 Presidential campaign's challenge as well as the many other legal actions to Mr. Obama's eligibility to serve as President. To ignore this constitutional crisis could have devastating consequence which this Court has to accept full responsibility for failing to perform your fiduciary duty.

83. Based upon the indisputable evidence, facts, reason, logic, as well as precedent, this Honorable Court must decide whether the longest and greatest Constitution in human history will remain, and be restored to its original intent. Or will this Court continue the

war on the Constitution and people that has been on-going for more than eight (8) decades even since the rise of what is called "Progressivism" which continues to strangle the freedoms and Rights of the people.

84. Precedent is consistent: A parties whose rights are to be affected are entitled to be heard. Baldwin v. Hale, 68 U.S.(1 wall) 223, 233. "*The notice of a 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*".

85. This kind of power driven legislation has been attempted during Roosevelt's administration, and now again it raises its ugly head by the illicit Obama Administration. It is incumbent upon this Honorable Court to protect the basic principles of individual liberty by adhering to the strict statutory definition of the text of the United States Constitution[19]. To do otherwise will allow the seeds of destruction found in "H.R.3590" forever to strangle the fruits of liberty enjoyed for 230-years never to be found again anywhere on earth. May God grant you the wisdom to do your duty.

83, To those Honorable Justice that were willing to uphold and address the unconstitutional violation presented in Purpura v. Sebelius, Case No. 11-7275 I apologize for my warranted sarcasm. That being said, I ask you all to recognize the Republic that is under siege on all fronts. "*We the People*" have put our trust in you. You have failed us

19 Honorable Judge Christopher C. Conner recently found:

"*Even a law passed with the highest and most noble intentions must be rendered void if constitutionally infirm: It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not entrusted to Congress, but left or committed by the supreme law of the land to the control of the states*".

"*We cannot avoid the duty, even though it requires us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half*."

and betrayed our country by abandoning our law. Those of you that have sold your souls, I pray that each time you look at your family, and friends you hang your head in shame for aiding and abetting in the destruction of the greatest nation on earth. May God forgive you.

WHEREFORE, Petitioner prays this Court acts honorably and recall and vacate the Order issued on January 9, 2012 thereafter schedule *Purpura v Sebelius* to be heard in March of 2012 on the Constitutionality of "H.R.3590" to set forth precedent on all 19-violations to protect the nation against any and all future attempts to usurp the United States Constitution and the liberty every American has enjoyed for over 230 years.

God Bless America
Submitted,

Nicholas E. Purpura, *pro se* January 14, 2012