UNITED STATES COURT OF APPEALS
FOR THIRD CIRCUIT

10cv5 00

CASE No. 11-2303

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

3:10-CV-04814-GEB-DEA

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Deprivation of Articles, Amendments and Statutes

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

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

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

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

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

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

ARGUMENT

A. STANDING:

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

> "*Presently before the Court ...(collectively "defendants"), to dismiss the Complaint of Plaintiffs, pro se, Nicholas E. Purpura and Donald R. Laster, Jr. for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12 (b)(1).*

The Court goes on to say on Page 2:

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

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

Please Take Judicial Notice: Generally, any case brought pursuant to a federally-enacted statute that raises a Federal question requires adjudication. In this action Petitioners alleged and proved violations of Article 1, Section 7, Paragraph 1; Article 1, Section 8, Paragraphs 3, 12, 14, and 15; Article 1, Section 9, Paragraph 4, and 5; and Article 1, Section 8; Article 2, Section 1, Paragraph 5 and Article 6 raises a Federal question. In addition, Petitioners alleged and proved violations of

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

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

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

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

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

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

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

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

16. The Supreme Court in *Marbury v. Madison* held:

> "*Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that the*

law repugnant to the constitution is void; and that the courts, as well as other departments, are bound by that instrument."

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

Clarification Concerning Ruling by District Court:

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

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

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

- The District Court repeatedly violated *Fed. R. Civ. P.* Rule 6 *"a party's failure to act within the designated period deprives the District Court of its power of enlargement without demonstrating excusable neglect."*[Emphasis Added]

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

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

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

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

> "It is on this 4th day of January, 2011 ORDERED that Defendants Motion to Stay is DENIED; and it is further;
>
> ORDERED that Defendants' request for an extension of time until January 17, 2011 to respond to Plaintiffs' Motion for Summary Judgment is GRANTED."

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

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

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

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

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

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

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

Also see,

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

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

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

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

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

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

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

Page 4, Note 6 (A-10):

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

In the "Opinion" II. Standard of Review

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

"*...In evaluating "facial" subject matter jurisdiction attacks, the court ordinarily accepts all well-pleaded factual allegations as true, and views all reasonable inferences in the Plaintiff's favor). Essentially, a facial challenge by defendants contests the adequacy of the language used in the pleading. Turicentro, 303 F.3d at 300 n.4. Factual challenges, on the other hand, attack the factual basis for subject matter jurisdiction; that is, in a factual challenge to jurisdiction, the defendant argues that the allegations on which jurisdiction depends are not true as a matter of fact. See Turicentro, 303 F.3d at 300. As such the court is not confined to the allegations in the complaint, but may look beyond the pleading to decide the dispute. Cestonaro v. United States 211 F3d 749, 749, 752 (3d Cir. 2000) (Mortensen, 549 F.2d at 891).* ***Because the defendants argue that plaintiffs have not adequately alleged standing, the Court will consider this facial challenge to this Court's subject matter jurisdiction.***"

Please Take Notice:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> *"The Court is compelled to note that plaintiffs have not pointed to any particular provisions of the Act in support of their allegations, and the Court will refrain from commenting on the accuracy of these allegations."*

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

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

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

> *"...to challenge the individual mandate, the individual plaintiffs need not show that their anticipated injury is absolutely certain to occur despite the "vagaries" of life; they need*

> *merely establish "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement."*

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

33. It is mystifying as to why the District Court would give any validity to the same argument Defendants unsuccessfully put forth before the Honorable Chief Judge Roger Vinson concerning immediate harm and the excuse that the "Act" does not go into effect until 2014 **that were flatly rejected relying on those same authorities**.

34. Clearly, the precedent set by the Supreme Court's in *Babbitt*, (citations omitted) would abrogate the above findings. What is more disingenuous in the twisted application of the above authorities by the District Court. Petitioners had in their Reply Opposition, pages 12 and 13 (A-216 to A-217) and cited the same authority among others. A review makes obvious *Babbitt v. United Farm Workers Nat'l Union*, (citation omitted) expressly held:

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

35. The Honorable Roger Vinson, Senior United States District Judge went on to note that Defendants conceded: ***"that an injury does not have to occur immediately"*** Def. Memo. at 27. ORDER AND MEMORANDUM OPINION, October 14th 2010 , Case 3:10-cv-00091-RV-EMT held:

> *"Standing depends on the probability of harm, not its temporal proximity. When injury... is likely in the future, the fact that [the complained of harm] may be deferred does not prevent federal litigation now."*

36. Petitioners also quoted Judge Vinson's citation in *Village of Bensenville v. FAA*, 376 F.3d 114 (D.C. Cir 2004) (A-217), in which Plaintiffs in that action challenged a harm scheduled to be imposed **thirteen years** in the future, saying (*see* complete reasoning Order & Memorandum at 33-35):

> *"District Court of Columbia Circuit held that, despite the significant time gap, there was an "impending threat of injury" to plaintiffs that was "sufficiently real to constitute injury-in-fact and afforded constitutional standing."*

37. Petitioner again cited Judge Vinson's use of *Pierce v. Society of Sisters*, 268 U.S. 510, 450, 45 S. Ct 571, 69 L. Ed.2d 1070 (1925) (A-217) that held:

> *"....the Supreme Court found that it had standing to consider the challenge, notwithstanding the universe of possibilities that could have occurred between the filing of the suit and the law going into effect years later. The Court concluded that it was appropriate to consider the challenges because the complained of injury "was present and very real, not a mere possibility in the remote future," and because the [p]revention of injury by lawful action is well recognized function of courts of equity." Id. at 536"*

Note: Case studies submitted by the District Court are without merit and moot, having no relationship to the unconstitutional allegations presented and verified in each allegation.

INCONTROVERTIBLE PROOF OF STANDING

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

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

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

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

> *"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under [its] authority [and] to controversies to which the United States shall be a party."*

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

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

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

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

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

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

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

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

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

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

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

COURT'S (B). OTHER CHALLENGES TO THE ACA:

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

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

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

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

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

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

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

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[1] Incapable of being truthful, using deceptive sophistry, the District Court says: "However, the Court notes that some of the challenges to the Act have been brought by various States as plaintiffs... In those cases, the courts have held that States have standing to challenge the Act since the states are seeking to protect their quasi-sovereign interests and, as a result, are often granted special solicitude" in standing analysis. *See, e.g.* Massachusetts v. EPA, 549 U.S. 49, 520 (2007). Because neither of the Plaintiffs here are States, such reasoning is inapplicable.

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

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

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

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

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

C. THE PRESENT MATTER

Please Take Judicial Notice: The District Court begins this section on page 14 (A-20) of its "Opinion" stating: "*As discussed above, Plaintiffs in the instant matter have alleged few, if any, facts demonstrating the effect that the Act has on them currently or the effect that the Act will have in the future.*"

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

VIOLATIONS IGNORED BY THE DISTRICT COURT

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

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

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

[2] Quoting Chief Judge Vinson from document 79: "To the extent there is statutory ambiguity on this issue, both sides ask that I look to the Act's legislative history to determine if Congress intended the penalty to be a tax. Ironically, they rely on the same piece of legislative history in making their respective arguments, to wit, the 157-page "technical Explanation" of the Act that was prepared by the Staff of the Joint Committee on Taxation on March 21, 2010 (the same day the House voted to approve and **accept the Senate bill** and two days before the bill was signed into law) (page 20) and 'While the above bills were being considered in the House the Senate was working on its healthcare reform bills as well. On October 13, 2009, the Senate Finance Committee passed a bill, "America's Healthy Future Act" (S. 1796). A precursor to the Act, ..." (page 13). These are the bills that were called "H.R. 3590" – all Senate-originated revenue-raising bills are prohibited by Article 1, Section 7, Paragraph 1.

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

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

> "*In addition, the Court understands Plaintiffs to assert at least seven counts challenging the minimum essential coverage provision of the Act. See, e.g. Compl. (the Court omitted references) yet, says: Counts Two , Three, Four, Seven, Nine, Ten, and Fourteen, Glaring absent from the Complaint, however, are any factual allegations concerning how Plaintiffs Purpura and Laster will be affected by the Act or any provisions.*"

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

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

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

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

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

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

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

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

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

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

62. COUNT 4, It is without contradiction, that the "Act" violates Article 1, Section 9, Paragraph 4, that reads: "*No capitation or other direct, Tax shall be laid, unless in Proportion to Census or Enumerated herein before directed to be taken*". Petitioners demonstrated that the "Act" explicitly taxes individuals discriminately devoid of proportionality to various States apart from population. See, complete argument pages A-227 to A-228 Petitioners' Reply. Again, Petitioners are individuals that are affected as the Court clearly noted on page 5: "***Although these "facts" were not included in the Complaint or by Affidavit or Certification attached to any of Plaintiffs' filings, the Court will accept these facts as true for deciding this motion***".

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

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

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

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

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

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

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

63. COUNT 5, Violation of Article 1, Section 9, See complete argument pages 24-25 Petitioners' Reply (A-228 to A-229), though unnecessary since they forfeited by not setting forth any argument in "Opposition". *Fed. R. Civ. P.* states: "failure to set forth an affirmative defense deemed to have admitted all averments." Article 1, Section 9, Paragraph 3, 5 and 6 are explicit:

- *"No bill of attainder or ex post facto law shall be passed." "No tax or duty shall be laid on articles exported from any State." "No preference shall be given by any regulation of commerce or revenue to the ports of one State over another; Nor shall vessels bound to or from one State be obligated to enter, clear, or pay duties, in another."*

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

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

- "Capitation" taxes are not taxes on incomes but are taxes on individuals and entities. In "H.R.3590" the federal government lays taxes on individuals not in proportion to state populations. Legally a capitation tax is: An assessment levied by the government upon a person at a fixed rate regardless of income or worth. The "Act" levies a fixed rate against any individual who does not purchase healthcare insurance, and against any corporation who fails to provide it for its employees and executives; this is a "capitation" tax. The problem with this should be obvious: the federal government is required to lay such a tax in proportion to State populations.

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

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

> "*In Count Six, Plaintiffs allege that Act violates Article II of the Constitution because it was not signed into law by a person eligible to be President of the United States*".

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

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

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

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

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

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

- Petitioners' proved, that the provision in 'Act" by the "Senate's originated bill" (illegal in-of-itself) exceeds the constitutional authority by attempting to levy taxes or fines based upon an individual's "gross income" for failure to comply with the federal governments mandate to purchase healthcare insurance.

- Plaintiffs never questioned Amendment 16's validity, but a provision inserted within the "Act" itself puts a tax on 'gross income twice' based upon phantom income that does not exist. It is inarguable that this results in double taxation on any income of the individual or corporation involved. This taxation imposes a second tax on account of something other than an economic activity. Thus imposing an extra tax (if it could be called that) on individuals who refuse to purchase health-insurance, exceeds the provision set forth in Amendment 16.

- This Circuit Court must also address what the District Court failed to; whether this individual mandate penalty is a tax or a fine. If it is a tax, does the Senate have the

authority to institute the provision? If it a fine, does it violate Amendment 8, by imposing "*Excessive... fines... shall not be imposed.*" Notwithstanding Article 1, Section 9, paragraph 3; "No bill of attainder or *ex post facto* law shall be passed."

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

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

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

> *"The Court is compelled to note that plaintiffs have not pointed to any particular provisions of the Act in support of their allegations, and the Court will refrain from commenting on the accuracy of these allegations."*

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

- Clarification: "H.R. 3590" Section 1128J: Medicare and Medicaid Program Integrity Provisions (pp. 1687-1692ff). This section creates an "Integrated Data Repository." The Inspector General's Office will have access to any medical record that he deems necessary to investigate:

> *"Notwithstanding and in addition to any other provision of law", the Inspector General of the Department of Health and Human Services may, for purposes of protecting the integrity of the programs under titles XVIII and XIX, obtain information from any individual (including a beneficiary provided all applicable privacy protections are followed) or entity that:*
>
> [Warrantless seizures by big brother of individual citizens' records, (our emphasis)]

(A) is a provider of medical or other items or services, supplier, grant recipient, contractor, or subcontractor; or
(B) directly or indirectly provides, orders, manufactures, distributes, arranges for, prescribes, suppliers, or receives medical or other items or services payable by Federal health care program (as defined in section 1128B(f))regardless of how the item or service is paid for, or to whom such payment is made."

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

  Defendants had dishonestly told the District Court:

  "... nor does any such provision exist, that "grants access to the General Government unconditionally authority [sic] to access and seize the private records of individuals" or "allows the federal government to have direct, real-time access to all individual bank accounts for electronic transfer". (A189 to A190)

- Again, Defendants are incapable of being truthful. The "Act" gives the Federal Government access to your individual bank account and financial records *See* Part 6 of the "Act", **without any judicial warrant**:

  "H.R. 3590" gives the federal government specific access to individual bank accounts and medical records as provided by that individual's health plan. The government may monitor an individual's finances and medical records electronically, for the purposes of determining an individual's eligibility for certain programs under the bill. They may also monitor an individual's finances and medical records to ascertain whether that individual has health insurance and is making regular premium payments to an approved health insurance plan; this will allow the federal government to determine each individual's financial responsibilities with respect to penalties and fees prior to or at the point of care as outlined in the bill. This clause gives the government the ability to transfer funds electronically to or from an individual's bank account for the purposes of debiting his/her account for fees and penalties.

70. Count 9, Petitioners proved violations of Amendments 5 and 13; in short, "H.R.3590" mandates that every citizen purchase "Healthcare Insurance" under threat of penalty, **for which no judicial review is permitted**. Ref. "H.R.3590" (pp. 630, 653, 676, 680, 725, 738, 772, 831, 1013, 1415, 1679, and 2303). Amendment 5, in relevant part says:

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

- If the government seizes an individual's property without "*due process*" we have what's called a "*taking*."[4] A "*taking*" may be effected by **persuasion, enticement, or inducement**. It implies a transfer of a possession.[5] Said seizure could be a tax, fine, lien on property. By this unconstitutional "Act" a citizen is without recourse to challenge the "*taking*" or *seizure*. This is exactly what this unconstitutional "Act" does. It is clearly extortion, it's illegal, see footnote below!

- Depriving any citizen of property based upon gross income (excluding Amendment 16) by a "*taking*" in which no trial or appeal process is available to contest said seizure ignores the basic principle of constitutional law and normal established laws governing taxation or fines of any kind.

- The "Act" mandates citizens purchase a product, that product in question is insurance, the requirement is mandated for all those "breathing". Only slaves do as they are told, or those living under totalitarian governments. "H.R. 3590" crosses the line and relegates honest citizens to criminal status without "*due process*" if they fail to comply with the unconstitutional mandate to purchase health insurance, or for that matter any product. The government can only mandate convicted criminals to adhere to demands, not free American citizens;

- The District Court appears to be unfamiliar with Amendment 13, Involuntary Servitude and peonage is: "**A condition of compulsory service or labor performed by one person, against his will, for the benefit of another person** due to force, threats, intimidation or other similar means of coercion and compulsion directed against him";

- Forcing Plaintiffs to buy a product, in this case health insurance, against ones will or be penalized to cover the cost for others without insurance undisputedly contradicts prior Supreme Court precedent held in ***United States v Butler*** **(citation omitted) which was held to be "*specific welfare*" and found to be unconstitutional.**

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

[5] The wrongful use of threatening... or fear of economic harm ....to surrender a federally protected rights constitutes extortion within the meaning of 18 U.S.C. 1951(b)(2) *United States v. Sweeney*, 262 F2d 272 (3rd Cir. 1959) *United States v. Kenny*, 462 F2. 1205 (3d Cir.) *cert. denied*, 409 U.S. 914, 93 S. Ct. 234. 34 L.Ed.2d 176 (1972) *United States v. Provenzano*, 334F.2d 678 (3rd Cir.) *cert. denied* 379 U.S. 212, 80 S. Ct. 270, 4 L.Ed.2d 544 *fear or wrongfully threaten economic lose also satisfies Hobbs Act).* Such intimation violates Supreme Court precedent, *Also see, Mathges v. Eldridge*, 424 US 319 344: "*The rules "minimize substantively unfair treatment or mistake, deprivation by enabling a person to contest the basis upon which a state proposes to deprive them of protected interest."* See, *Cary v. Piphus*, 435 US 259: "*Procedural due process rules are meant to protect persons not, from deprivation, but to contest from the mistake or justified deprivation of life, liberty or property.*

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

71. Of importance, Defendants mocked Petitioners when it was alleged "H.R. 3590" did not rendered the judiciary irrelevant, if the above isn't proof, what is? Any provision forbidding judicial review of a law flies in the face of separation of powers, and eliminates "*due process*" of law.

72. The citizens of these United States are free, and no government official, whether in the legislature or executive branch can violate the U.S. Constitution by the enactment of any bill that usurps the U.S Constitution. In the *State of Florida et al. v. HHS et al*. the Honorable Roger Vinson, Senior United States District Judge, has already ruled that the penalty is a fine and not a tax. Clearly, being fined without "*due process*" violates the Constitution and it is without question this Circuit Court is obligated to render "H.R. 3590" unconstitutional and overturn the District Court and grant the Summary Judgment for Default to Petitioners.

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

Count 10, Violation of Article 4, Section 2, and Amendment 14 concerning this allegation the attorneys for the Defendants, as did the District Court by its "Opinion and Order" claimed Petitioners' failed to present a "*specific-enough claim*". These same vacuous individuals without addressing the allegation set forth in the "*People's*" Petition claim "H.R. 3590"

> "*...does not grant special exemptions and treatment to select classes of citizens based upon religious and/or State of Residence in violation of the Fourteenth Amendment*".

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

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

- "Section 1402(g)" a provisions in the bill, that relate to the Internal Revenue Code (26 USC 1402(g)) that defines recognized religious sects and divisions" as those: (1) The tenets of which forbid an adherent to carry old-age, survivorship, disability, or health insurance, and: (2) That have existed continuously since 31 December 1950.

- The key to the violation of Amendment 14 is simple; if any citizen decides to act on faith and trust in God, and not any human insurer to mange either risks or crisis, this "Act" forbids that person from acting upon his own conscience. Yet, the "Act" grants special privileges to selected religious sects only. The exemption is based not on individuals but **on the sects**. Clearly such discrimination violates Amendment 14. [Also see Count 13 for other violation of Amendment 14] What's more, the way the "Act" **is written, no individual enjoys their full right to have judicial review, or appeal the provisions of the "Act" they are penalized void "*due process*" in violation of Amendment 5.** [6]

Legal Note: S.D.N.Y. 1987. Equal protection rights may be violated by gross abuse of power, invidious discrimination, or fundamentally unfair procedures. U.S.C.A, Const. Amend. 14 see, *Dean Tarry Corp. V. Friedlander*, 650 F. Supp. 1544, affirmed 826 F.2d 210.

[6] See Count 1, the Senate is prohibited from originating any revenue raising bills, Article 1, Section 7, Paragraph 1. Posted April 8, 2010 beginning January 1, 2013, Obama Care imposes a 3.8% Medicare tax on unearned income, including the sale of single family homes, townhouses, co-ops, condominiums, and even rental income.

In February 2010, 5.02 million homes were sold, according to the National Association of Realtors. On any given day, the sale of a house, townhome, condominium, co-op, or income from a rental property can push middle-income families over the $250,000 threshold and slam them with a new tax they can't afford.

This new Obama Care tax is the first time the government will apply a 3.8 percent tax on unearned income. This new tax on home sales and unearned income and other Medicare taxes raise taxes more than $210 billion to pay for Obama Care. The National Association of Realtors called this new Medicare tax on unearned income "destructive" and "ill-advised" and warned it would hurt job creation.

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

Total waivers exceed 1000 granted to date:

- Employment-Based Coverage: 712 plans representing 97 percent of all waivers – were granted to health plans that are employment-related;
- Self-Insured Employer Plans Applicants: Employer-based health plans the waivers – 359.
- "Health Reimbursement Arrangements (HRAs): HRAs are employer-funded group health plans where employees are reimbursed tax-free for qualified medical expenses up to a maximum dollar amount for a coverage period. In total, HHS has approved 171 applications for waivers for HRAs;
- Sixteen waivers were granted to health insurers, which can apply for a waiver for multiple mini-med products sold to employers or individuals;
- Four waivers have gone to State governments. States may apply for a waiver of the restricted annual limits on behalf of issuers of state-mandated policies if state law required the policies to be offered by the issuers prior to September 23, 2010.
- Foundations (if their Obama cheerleaders) received waivers; "**Robert Wood Johnson Foundation**", whose board of trustees includes Obama's healthcare czar Nancy-Ann DeParle Single-employer union plans that have received a waiver. In totaling in the hundreds collectively-bargained plans have received waivers.
- And just recently, the Ex-speaker of the House has the HHS, granting waivers to high end restaurants and nightclubs in her district,

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

- In short, this is outright political corruption: This bill creates a different set of payment regulations for different States. The White House and Congress illegally changed regulations for States forcing some States to bear the costs while others were bought off for their votes needed for passage of this unconstitutional "bill" in order for the federal government to acquire more control over the "*People*", not only Plaintiffs listed in this Petition, but all citizens and residences of the United States.

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

- For factual edification see provision and sections, page 326 and page 2105, in the bill grants "religious conscience exemptions" in a **very specific unconstitutional way**. So there be no doubt in this Courts mind that Amendment 1, has been violated, it says in relevant part:

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

- Amendment 1 prohibits Congress from writing any law that gives preferences to religious organizations, preference to people on the basis of membership in religious organizations or establishing an official State religion (for example The Church of England in the United Kingdom). It is without argument, from the language in the bill, preferential treatment to individuals based upon their membership or participation in selected establishments of religion is granted.

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

- *or abnegation of religion. Mr. Justice Goldberg's concurring opinion in [p695] Abington, which I joined, set forth these* Judge Harlan also stated the: "*Two requirements frequently articulated and applied in our case for achieving this goal are "neutrality" and 'voluntarism." E.g. see Abington School District v Schempp, 374 U.S. 203 305 (1963) (concurring opinion of Mr. Justice Goldberg); 374 U.S. 203,305 (1963) (concurring justice Goldberg); Engel v Vitale, 370 U.S. 421 ((1962). "...Government must neither legislate to accord benefits that favor religion over non-religion, nor sponsor a particular sect, nor try to encourage participation in principles*":

  "*The fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and non-religious beliefs.*"

75. As this Honorable Circuit Court well knows, any law must apply with equal force to everyone. "H.R. 3590" abridges Petitioners' Rights in direct violation of Amendments 1 and 14. The "Act" does favor and respects one or more religions over others failing to prescribe a standard for such privileged exemptions. Therefore, if one is not a member of the favored religion that individual is subject to a penalty for failure to comply with the provision of the "Act" and without "*due process*" (Amendment 5 violation) or any appeal process. **That is clearly an overextension of any clause set forth in the Constitution.** Nor may any individual decide for himself that participation in such a program is a sin.

A Note of Caution: So it can be determine the Muslims and Amish might qualify, or not; this law now puts the Social Security Administration in the position of determining which sect qualify and which do not. But there is one certainty, if any Christian or Jewish sect decides to come to the understanding of the fundamentals of faith, that may now decide that purchasing life or health insurance was a sin, they would not be eligible, strictly on account of the time limit. Therefore it can be argued that this "Act" regards/respects one religious sect over another violating not only Amendment 1, but also Amendments 5 and 14. Again as case of *first impression.*

A review of the provision set forth in the "Act" states:

> "(A) RELIGIOUS CONSCIENCE EXEMPTION.-Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient protection and Affordable Care Act which certifies that such individual is –(i) ***a member of a recognize religious sect or division*** thereof which is described in section 1402(g)(1), and (ii) an adherent of established tenets or teaching of such sect or division as described in such section." *Also see* Section 1402(g)* quoted above Count 10)." [emphasis added]

76. The above sections describe a religious opt-out from Social Security; "H.R. 3590" now incorporates the same exemption, and vests the Commissioner of Social Security (or the Secretary of Health and Human Services; the statute does not make clear) the authority to give exemptions to favored religious sects.

Please Take Special Judicial Notice: The Kicker: In *Droz v. Comm.* IRS, Case #48 F.3d 1120 (9th Cir.) held, on appeal from the U.S. Tax Court, that no individual or group could claim an exemption that did not meet the rather stringent requirements for such exemptions. Specifically, *no one group may establish a new cult having no-insurance rule, nor may any minister, pastor, rabbi, or similar clergy member, even if he determines* that a close read of the Bible or the Jewish *Midrash* or *Talmud* forbids an adherent to buy conventional insurance, may act on such determination. The reason: all exempt religious sects or divisions must "ha[ve] been in existence at all times since December 31, 1950."

77. Petitioners' draw the Court's attention to the provisions in question in the bill, that relate to the Internal Revenue Code (26 USC 1402(g)) that defines recognized religious sects and divisions. The Supreme Court denied *certiorari* in the *Droz* case to examine Section 1402(g)(1)(A) through (E) critically, and threw out that section on Amendment 1 grounds; But that case remains ripe for review, because the concept of *stare decisis* would not apply.

78. The consequence of this challenge will not only effect the issue at bar, the "HR 3590" provisions. But will also draw in the Internal Revenue Code, which is further reaching, and would force a fundamental re-examination of the tax code, and any public insurance system that restricts people from opting out for any reason or no reason, just as individuals may opt into, or out of, any private insurance plan for any reason or no reason.

Please Take Special Judicial Notice: Also ignored by the District Court was that Defendants failed to respond to Counts 12, 13, and 14. Each of which violates Constitutional law and statutory legislation and in most case various other amendments therein. Petitioners will briefly review the violations for this Circuit Court though it should not be necessary since no defense

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

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

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

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

81. The "*People*" alleged in Count 12 "*Violation of the Anti-Trust laws that resulted in violation of Amendment 5 of the U.S. Constitution*" "HR 3590" contains the following language; "*There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of [any of various procedures described earlier*]. The "*People*" ask this Court to take serious notice of these sections in which no judicial review is allowed.[7]

1) Value-based incentive payments to hospitals p.630;
2) Deciding which physicians might be truly said to have participated in treatment of any given patient p.653;
3) Value-based payments and assessments of quality of care p.676;
4) The handing of nosocomial (hospital-acquired) infection cases p.680;
5) Cost-effectiveness modeling p.725;

[7] It is important for this Circuit Court to recognize the provision set forth in the 11 examples cited are nothing less than death panels which has been a worry to many senior citizens and those with serious injuries or diseases. A read speaks for itself. It is important to also note, prior to enactment of this unconstitutional "Act" "H.R. 3590" inserted into the stimulus bill, was in excess of a billion dollars to cover the costs of personal chosen by Mr. Obama himself who will oversee the "death panels". We believe of the 15-men chosen only two are physicians- the rest are bureaucrats that will decided just what care you will be entitled to and whether its cost effective by government standards. Mr. Obama and his Congressional lackeys like Adolf Hitler have their own "*Angels of Death*".

6) Quality-of-care and payment determinations involving accountable Care Organizations (ACOs). p.738 (This provision also cuts out 44 USC 35, having to do with federal policy coordination;
7) Diagnosis-related group (DRG)-related payments and payments for hospital readmission p.772
8) Reimbursements to hospitals for "uncompensated care" for which the patient, for whatever reason, cannot pay p.831;
9) Direct proposal by the President to Congress concerning changes in reimbursement rate p.1013;
10) Identification of primary-care physicians, as distinct from specialists p.1415;
11) Determinations of the need for more hospitals p. 1512.

The next two provisions are declared "not subject to judicial review nor administrative review": (1) Moratoriums on the enrollment of new providers under Medicare and/or Medicare p.1679; and, (2). Determinations of "high-need cures" p.2303."

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

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

- **What we have within this legislation is nothing less than a grand extortion scheme established under the "color of law" for which no judicial review is allowed, that allows the federal government to violate not only Amendment 5, the Anti-Trust Laws, but clearly violates Amendment 14, concerning "equal protection and treatment"** see next bullet;

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[8] Can the District Court or Defendants name one Corporation in these United States that is granted the right to "price fix"? What makes these even more outrageous "No judicial review is permitted, so much for separation of powers. The government will force all provides of medical care and insurance out of business, multiple providers are already ceasing to do business, others are seeking waivers.

[9] The federal government stealthily inserted this provision to not only create an all powerful government 'single-payer' system which neither the Senate nor House of Representatives contemplated or agreed upon a single government provision. There after the federal government will have total control over 1/6th the American economy. Not a single State that entered into the contract to form a federal government ever intended that the Federal government would control the people, exactly the opposite was formulated to halt any opportunity to control the "*People*" of these United States.

- One example will suffice: any business whose payroll exceeds $400,000.00 that does not offer the "*public option*" will be forced to incur an 8-percent tax on that payroll. Those with payrolls of $250-400 thousand who fail to offer the public option must pay 2 to 6 percent tax on payroll. Any employer with 50 or more workers would pay $2,000, per worker, if they fail to offer health insurance. These disproportional tax penalties clearly violate "*equal treatment*" and, of course no judicial review is permitted.

Legal Note: The Guarantee of "*equal protection*" under the Fifth Amendment is not a source of substantial Rights or Liberties but, rather, *a right to be free from invidious discrimination in statutory classifications and other governmental activity. U.S.CA. Const. Amend. 5. Harris v McRae*, 100 S.Ct. 2671, 448 U.S. 297, 65 L.Ed.2d 784, rehearing denied 101 S. Ct. 39, 448 U.S. 917 L.Ed.2d 1180.

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

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

- "HR 3590" Title V Sections 5201 and 5202 includes a provision dealing with federally funded student loans. Section 10908 State loans in violation of Title VII of the Civil Rights legislation. The provision set forth in the "Act" specifically maneuvers loan monies to "historically black and minority" colleges to the tune of 2.55 billion dollars. Unlawfully, the creators of this legislation and those that supposedly read and enacted this decided they were above the laws that guarantee "*equal protection and treatment*" for all citizens and made the decision that members of racial and ethnic minorities are somehow underserved, because in their small minds, members of these groups are unable (clearly an insult to their intelligence) to become doctors, nurses, or professional technicians. It is inarguable granting loans based upon race or ethnicity is "reverse discrimination" The Supreme Court has held this is unlawful, *see*, *Regents U. Cal. v. Bakke*,438 US 265, (1978);

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

- The Tanning Salon discriminatory taxation. First and foremost the 10-percent tax violates the "*capitation*" provision of the Constitution by taxing not all those in a State equally, but instead only selected individuals who use the service - not the Tanning Salon's service! The language of the "Act" specifically taxes the individual not the service.

That Tax also violates Amendment 14 as well as Article 4, section 2, Paragraph 1: "*The Citizens of each State shall be entitled to all privileges and immunities of the Citizens in several States.*"

85. Count 14: Defendants again failed to reply, therefore by law, another forfeiture is and was warranted. Defendants will be brief, Article 6, paragraph 3 reads:

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

(1) As demonstrated above in the previous 13-counts, the Constitution of the United States has been unquestionably violated. Let anyone refute that each legislator that voted for this bill did not violate their oath to uphold the Constitution, or that they are not guilty of dereliction of their fiduciary duty to scrutinize the "Act";

(2) Each Representative of the "*People*" are charged with the duty to securitize every "Act" so that it complies with the Constitution. Instead, the speaker of the House, Nancy Pelosi had the audacity to publicly state: "*We have to pass the "bill" to find out what was in it*"! When asked by a reporter does it comply with the Constitution she relies with words to the effect; "*Constitution, are you serious, are you serious*". Well Ms. Speaker, "*We the People*" are serious! And then we have another buffoon, Congressmen John Conyers saying on television: "*I love these members who get up and say 'read the bill'. What good is Reading the bill if it's 1000 pages* [actual size of bill is 2409 pages, our emphasis] *and you don't have two days and two lawyers to find out what it means after you read the bill.*" Senator Thomas Carper (D-DE): *Carper described the type of language the actual text of the bill would finally be drafted in as "arcane," "confusing," "hard stuff to understand," and "incomprehensible." He likened it to the "gibberish" used in credit card disclosure forms.* Are not the above statement outright dereliction of their fiduciary duty"? **[Petitioners, *acting pro-se*, read the bill in its entirety and had no problems understanding the language of the bill, its implications and unconstitutional provisions set forth therein.]**

86. The Petitioners respectfully remind this Circuit Court, the above constitutes "***high crimes and misdemeanors***" which are impeachable offense, though not an incarceration offense. Article 6, Section 3, of the Constitution that states in part;

> "*...The Senators and Representatives before mentioned, and Members of several State Legislatures, and all executive and **judicial Officers**, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;....*".

87. The Court would be derelict to ignore *Marbury v Madison* concerning oath of office, held:

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

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

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

> "*The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the state government are numerous and indefinite;*"

89. The Court would be remiss to ignore that the State of Virginia, in *Cuccinelli v. Sebelius*, No. 3:10-cv-91-RV/Emt, upheld that: the "*commerce clause*" does not give the federal government the authority to require States to establish an "*insurance exchange*". This mandate exceeds the enumerated powers of Congress and thus infringes upon powers properly reserved to the States and the "*People*", See Amendment 10, the key word being "*People*". Since it is inarguable the "*People*" bear the cost of implementation.

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

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

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

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

90. Especially relevant, "HR 3590" mandates an appropriation, conveniently exempting itself from providing the necessary funding or recourses to administer this requirement, leaving the costs to be passed on to the citizens and residences (Petitioners) of the State of New Jersey and other States. In Machiavellian fashion, the act in essence mandates involuntary servitude to the general government by requiring: (1) the State to provide oversight of the newly created insurance markets; (2) to include *inter alia*, instituting regulation, consumer protections, rate reviews, solvency, and reserve fund requirements to include premium taxes.

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

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

CONCLUSION

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

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

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

> *"**unless it appears beyond a doubt** that plaintiff can prove no set of facts in support of his claim which entitle him to relief."*
>
> Also See, *Michigan So. v. Brach & St Joseph Counties Rail Users Ass'n*, 287 F.3d 568, 573 held: *"that a claim generally survives a motion to dismiss if plaintiff shows any arguable basis in law for claims alleged."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

June 7, 2011

To: Ethan P. Davis, Esq.,
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW, Room 7320
Washington, D.C. 20530

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCIT

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Civil Docket No. 11-2303

Nicholas E. Purpura, *pro se*
Donald R. Laster Jr. *pro se*
et al. (listed on separate of Complaint)

Plaintiffs

OPPOSITION TO REQUEST FOR 30-DAY EXTENSION OF TIME AFFFIDAVIT IN SUPPORT

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,
Defendants.

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For the following reason, Petitioners strongly object to any extension of time, for appellees' to file their opposing brief.

1. Petitioners are aware that any extension of time is rarely given, and in this present action no justifiable excuse exists that has been presented that would justify granting any such extension.

2. Once again the Department of Justice is acting in a duplicitous manner claiming they have not previously received any extension. Throughout these protracted proceeding defendants have repeatedly requested and have been granted (procedurally infirm) (3x's) extensions. Yet, not once have defendants addressed the allegation set forth in Plaintiffs' Petition. To claim that the Justice Department has deadlines in three other "Affordable

Care Act" cases that will fall within or shortly after the briefing periods of June 22, 27, and July 13th, 2011 in no way is good cause since the Department of Justice has hundreds of attorneys at their disposal. It is undeniable that scores of them are assigned to the task of defending the constitutionality of the Healthcare Act - "H.R. 3590".

3. Most relevant, by Fed. R. Civ. P., this Honorable Court is only permitted to examine the record before the District Court for any possible constitutional, legal, or factual error. As is plainly apparent by the Appendix on file, the entire record submitted by the Department of Justice consisted of a total of 18-pages which was a rehash of arguments made before other District Courts that have been previously rejected. Defendants fallaciously claim that an extension of time is necessary to ensure adequate time to prepare the government brief, in consultation with affected agencies.

4. The question therefore come to mind, what legal advice could any agency of government present or advise; when all legal questions come under the auspicious of the Justice Department. Clearly, this is another mendacious stalling tactic to protract this matter further.

5. WHEREFORE, Petitioners pray this Honorable Court deny Defendants request for any extension of time.

Respectfully submitted,

Nicholas E. Purpura.
pro se,

Donald R. Laster Jr.
pro se.

Date: June 15 __, 2011

PROOF OF SERVICE

United States Appeals Court, For the Third Circuit, Civil Case No. 11-2303 PURPURA et al v. SEBELIUS et al:

OPPOSITION TO MOTION FOR EXTENSION OF TIME

We, Nicholas E. Purpura and Donald R. Laster, Jr,

Served the above referenced documents by causing a true and correct copy to MARK B> STERN, ALISA B> KLEIN and DANA KAERSVANG, Esq,s' be mailed certified, return receipt as follows to Attorneys for:

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

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

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

I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

Dated June 15, 2011

NICHOLAS E.PURPURA, DONALD R. LASTER, JR

For Plaintiffs,

Nicholas E. Purpura, *pro se*
1802 Rue De La Port
Wall, New Jersey 07719
732- 449-0856
718- 974-2273

Donald L. Laster Jr. *pro se*
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West Long Branch, New Jersey 07764
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732- 539-5658

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCIT

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Civil Docket No. 11-2303

Nicholas E. Purpura, *pro se*
Donald R. Laster Jr. *pro se*
et al. (listed on separate of Complaint)

Plaintiffs

AFFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE FOR A RESTRAINING ORDER DUE TO EXTRODINARY CIRCUMSTANCES THAT REQUIRE EMERGENCY RELIEF

VIOLATION Title 28 U.S.C. 1331
& CIVIL RIGHTS

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,

Defendants.

---x

"Justice will only exist where those not affected by injustice are filled with the same amount of indignation as those offended."

Plato (c427-347 BC)

1. Under the authority of Article 3, Section 1, Congress has vested the District Courts with *"Original jurisdiction of all civil actions arising under the Constitution, laws..."*. Article 3 of the Constitution provides, *"the judicial Power shall extend to all Cases, in Law and Equity, arising under ..., the Laws of the United States ..."*: the Supreme Law of the Land the United States Constitution.

PRELIMINARY STATEMENT

2. From the onset, Petitioners allege no legal argument exists to prevent the said forth relief request herein granting Petitioners request for a temporary restraining order on any further enforcement or implementation of "H.R.3590" until this action is fully adjudicated.
3. It is and has been customary judicial procedure for the Courts to be governed by statutory direction especially concerning procedural due process. The Federal Rules Civil Procedure (FRCP) are unambiguous especially Rule 8(d) concerning forfeiture.
4. It is inarguable Defendants failed to respond, as required by law, to the original Petition, only submitting procedurally infirm requests for extensions of time, after Petitioners submitted a Motion for Summary Judgment more than 80 days after serving Defendants (DOJ) with the original Petition. Defendants, even with their infirm responses, failed to address Counts 5, 6, 7, 11, 12, 13, and 14 of the original petition thereby, by law, admitted to each said averment set forth in the Petition. It must also be noted Defendants failed to adequately or otherwise answer any of the other nine (9) allegations with specificity and particularity that would satisfy the FRCP.
5. The current appeal before this Circuit Court is whether the District Court denied Petitioners their Constitutional Rights? The District Court erred in its assumption that Petitioners where without 'standing' to challenge the validity or the unconstitutionality of "H.R.3590".
6. Thought the District Court was mistaken for numerous reasons. The recent unanimous (9-0) decision rendered on June 16, 2011 in *Bond v. United States* (09-1227) held individuals have the constitutional right to sue when laws are unconstitutional. Most relevant any citizen may sue the government to say that a law infringes on the reserved powers of the States, and so violates the Constitution. In short, the Supreme Court decision renders the District Court's ruling using standing as the basis for the denial to litigate is/was then and now legally insignificant and void.
7. When the federal government passes a law in an area that is the State's business only that harms individual liberty. So *any person* who has lost any liberty under that law may sue to get it back said Justice Anthony Kennedy, writing for the court:

> *"The Framers concluded that allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments*

themselves, and second by protecting the people, from whom all governmental powers are derived."

"By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake."

"An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate."

"That claim need not depend on the vicarious assertion of a State's constitutional interests, even if a State's constitutional interests are also implicated."

8. Justice Ginsberg with Justice Breyer concurring writing separately stated: *"In short, "beyond the power Congress,' for any reason, is "no law at all."*
9. In the matter of *Purpura v Sebelius* the government was petitioned for grievances based upon Amendment 1, as well as Amendment 10. No argument based upon positive law exists to deny any sovereign natural born Citizen the right and authority to petition their government concerning a violation of their Constitutional protected rights. As clearly expressed by Justice Ginsburg in her concurring opinion of *Bond v. United States* (09-1227) states one does not have to be a directly involved party to challenge the constitutionality of a law:

   "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. Our decisions concerning criminal laws infected with discrimination are illustrative. The Court must entertain the objection—and reverse the conviction—even if the right to equal treatment resides in someone other than the defendant."

10. "H.R. 3590" criminalizes various actions or rather non-actions of citizens and residents of the United States of America in violation of the U.S. Constitution.
11. Petitioners' Petition contains 15-Counts citing 19 violations of the U.S Constitution and existing statutory laws. As sovereign citizens of the United States and the State of New Jersey, as well as citizens that swore an oath to the Constitution of the United States, as so stated in Article 6, we the Petitioners, are bound by Oath to challenge the unconstitutionality of "H.R.3590" as is this Honorable Court to protect the Constitution against all those that would violate it.

CONSTITUTIONAL AND STATUTORY

Deprivation of Articles, Amendments and Statutes

12. *We the Petitioners* (Plaintiffs) request this Honorable Court issue injunction relief for a Temporary Restraining Order requiring emergency relief. The claim of irreparable injury, perhaps the single most important prerequisite for issuance of a preliminary injunction, is no longer potential; it is taking place as this Court reads this Show Cause Order for Relief. Since on September 24, 2010 the commencement of select sections of the "Act" have been and continue to be unconstitutionally implemented.

13. The question before this Honorable Court is whether the people of the State of New Jersey Constitutional rights have been and are being infringed upon based upon misapplication and/or a blatant abuse of authority not granted to the Legislature or Executive branch of government of the United States associated with the Senate originated "H.R.3590".

14. Petitioners submit this Show Cause Order for Relief requesting emergency relief due to extraordinary circumstances, since again subsequent to September 24, 2010, individual sections of the Senate originated "H.R. 3590" (hereafter the "Act") had not commenced prior to judicial review by this or any other Court of these United States. Nor has any legislative body or Court ruled on whether said "Act" conforms to the Supreme Law of the Land, the Constitution of the United States. The Defendants must prove that the "Act" does not violate the United States Constitution.

Please Take Judicial Notice: In the matter at bar, the Court is duty bound to consider that Defendants have thus far failed to address the Petition as required by the Fed. R. Civ. P. thereby forfeiting any rights they might have had.

15. Profoundly important, no citizen should be manipulated and be forced, by politically powerful individuals who created a privileged class, to unilaterally forgo fundamental liberties, set forth in the Constitution, including violations of four (4) major statutes.

16. The Senate originated "Act", "H.R. 3590", strips citizens of assets and alters the current legal policies related to healthcare insurance as well as fundamental freedoms protected by the U.S. Constitution. As it stands, it is inarguable Petitioners by *positive law* as well

as *natural law* are being denied their Constitutional Rights prior to any judicial review addressing the questionable validity of the healthcare "Act". Further implementation of the "Act" prior to adjudication is tantamount to rendering the Constitution irrelevant. In short, it puts the cart before the horse or closes the barn door after the horses are out.

17. It is inarguable the District Court failed in its fiduciary duty to uphold the Constitution and adhere to the Fed. R. Civ. P. from the inception of the Petitioners' Petition.

18. One of the threshold arguments before this Honorable Court is whether the "Act" has any validity at all since Defendants failed to answer the original Petition, and then failed to adequately answer nine (9) of the 15-Counts, and gave no answer to six (6) Counts, after being illicitly being allowed to answer by the District Court, therefore by statutory law admitted to the averments set forth in Plaintiffs' Petition.

19. Most importantly, whether Mr. Barak Hessian Obama II was Constitutionally authorized to sign the "Act" into law, since by his own admission his father was a foreign national and thus fails to qualify to hold the office of President of the United States, see Article 2, Section 1, Paragraph 5 of the United States Constitution which states:

> *"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; ...."*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

20. The U.S. Constitution's Amendment 5, says:

> *... nor be deprived of life, liberty, **or property, without due process of law**; nor shall private property be taken for public use, without just compensation.*

21. The U.S. Constitution Amendment, Article 14, says:

> *...nor shall any State deprive any person of life, liberty, or **property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.***

22. Article 3, Section 2 extends the jurisdiction to cases arising under the U.S. Constitution, pursuant to Title 42 U.S.C. 1983 of the Federal Code, for violations of certain protections guaranteed by Amendments 5, 6, 14, etc.. Under the "*color of the law*", as individuals and/or in their official capacity, Defendants associated in and with the Federal

Government, an enterprise, whether intentionally or mistakenly violated the Natural, Constitutional and Civil Rights of the citizens of the State of New Jersey and Nation with the passage of Senate originated "H.R. 3590", the "Act".

23. As a threshold matter, as outlined on page 5 of Plaintiffs' Petition, relating to the Constitutional challenges whether: Article 1, Section 7, Paragraph 1; Section 8, Paragraphs 1, 3, 12, 14, and 15; Section 9, Paragraphs 4 and 5; Article 2, Section 1, Paragraph. 5: Article 6; Amendments 1, 4, 5, 13, 14, 16, to include violations of the "*Posse Comitatus*" Act, Anti-Trust laws; and Title VII were blatantly violated by passage of said legislation?

24. Plaintiffs' Petition unmistakably demonstrates how the Supreme Law of the Land, the U.S. Constitution, both Articles and Amendments, were violated. Specific and explicit fundamental guaranteed Constitutional rights are succinctly spelled out in Petitioners' Petition that were violated by the "Act". In the matter at bar, the Legislative and Executive branch behaved as if "*We the people*" Petitioners have no Natural, Constitutional, or Civil Rights, effectively erasing the Articles of the Constitution, Bill of Rights and other Amendments, reminiscent of the "Jim Crow" days.

25. The compelling reason to grant this "Restraining Order" is simple, further implementation of the "Act", the Senate originated "H.R. 3590", is in direct conflict with and not limited to legislative "*prior policy*" and legal "*precedent*" rendered by all Circuit Courts and the Supreme Court of this United States. If said "Act" is allowed to proceed further prior to judicial review, then openly, the Petitioners will be deprived of their Natural, Constitutional, and Civil Rights to "*equal protection and treatment*" (not limited to) as prescribed by law prior to being afforded a "*full and fair hearing.*"

26. The entire action as alleged by Petitioners spells out the danger of the soft tyranny being instituted by the legislative branch of government that is controlled by one politically powerful, party that unilaterally erases every citizens Constitutional Rights under the "*color of law*" by passage of the Senate originated (unconstitutional) "Act".

27. Thereafter, said "Act" institutes punitive punishment and/or retribution upon any citizen who has the audacity to refuse to comply with unlawful provisions inserted by legislative fiat, tantamount to open political corruption, that will cost the Petitioners, of not only New Jersey, but the entire Nation, over-all in the hundreds of billions of dollars in additional taxes, void judicial review.

28. Of paramount importance is the unprecedented sections of the "Act" that renders the Judicial branch of our government totally irrelevant **as was clearly articulated in Count 12 of the Petition which they failed to answer. A clear acknowledgment that the averment is true!** As well as the blatant violation of Amendment 5 erasing the "*due process*" provision of the Amendment.

29. Petitioners have yet to have an opportunity to address the relevant legal questions before the court prior to a "*pre-trial,*" or "*evidentiary hearing*" at the District Court and/or *oral argument.* No record exists submitted by Defendants. The only record in existence is that of the Petitioners' pleadings, that sets forth a genuine issue of fact, warranting the granting of Petitioners request for this Restraining Order.

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

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

Please Take Special Judicial Notice: As this Honorable Court is aware, at the present no less than 27-States have been granted permission to adjudicate their petitions on the validity of the Senate originated "H.R. 3590" the "Act" based upon the "commerce clause" and Amendment 10. Unlike those complaints, Petitioners' Petition before this Honorable Circuit Court of the State of New Jersey contains 15 separate Counts that demonstrate the "Act" is unconstitutional! Most relevant, Petitioners set forth the same argument but not limited to, the suit presented by the Attorneys General of those States. If *arguendo* Petitioners are to be successful in only one Count, based upon the alleged unconstitutionality of the "Act" that creates harm to Petitioners by the "Act's" unconstitutional implementation the entire "Act" becomes "*null and void.*" Since its inarguable the Senate originated "H.R. 3590" and the legislation failed to include a

severability clause! That in-of-itself demonstrates the substantial likely-hood of success based upon the merits set forth within Petition.

31. Unmistakably, the Petition specifically demonstrates each unconstitutional mandate inserted within the "Act" finds no basis in law, reason, logic or prior public policy. Consequently equity and justice is/was non-existent if said "Act" is allowed to be implemented prior to judicial review on the Constitutional questions presented. It will and is causing irreparable damage. Those involved in the passage of this legislation acted repeatedly in:

    1) Absence of *subject-matter jurisdiction;*
    2) Violated statutes;
    3) Prior policy;
    4) Rules of procedure;
    5) Precedent;
    6) Procedural "*due process*" and "*equal protection*" as set forth in the Constitution to include a blatant disregard for prior "legal precedent" held by Supreme Court of these United States.

32. Because of Congressional negligence, Petitioners invoked their right to federal interdiction under Amendment 1 of the U.S. Constitution and the *FRCP*. This Circuit Court of the United States has before it irrefutable evidence of continual and repeated deprivation of federally guaranteed Natural, Constitutional, and Civil Rights by Defendants' implementation of this "Act.

33. It is the civic duty of this Honorable Court in the "*interest of substantial justice*" to grant this Stay at least until Defendants can demonstrate to the Court that Petitioners are either mistaken or that said "Act" will have no adverse effect on Petitioners and/or the general public (*See, Bond v United States* 09-1227) based upon the valid challenges of the constitutionality of the broad statutory scheme which the "Act" entails.

34. The "Act" as it stands explicitly deprives "*We the People*" of the State of New Jersey, and the Nation, of significant property and liberty interest (Amendment 10 and other Amendments) void procedural "*due process*" (Amendment 5), and "*equal protection*" (Amendment 14) repugnant to the Constitution prior to review by this Honorable Court. And the fundamental rights of Petitioners to present arguments and to examine or cross examine each denial by the Defendants.

35. The Supreme Court of the United States held, in *Goldberg v. Kelly*, 397 U.S. 245,2721, 299:

> ***...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.***

36. Any denial of a STAY and/or to expedite a trial or any further protracting of this action is tantamount to cruel and inhuman treatment and the shedding of the Petitioners', as well as the general public's, Natural, Constitutional, and Civil Rights. Surely it is inarguable that, by law and by Supreme Court precedent, any violation of the U.S. Constitution, the Federal Court is authorized and compelled to act.

37. Whether the issue at bar is a bill, act, or legislative mandate, if it violates the Constitution it must rendered *null and void*. As such, the people cannot "seek relief" from any other court, since no order exists to appeal from that addresses a single Constitutional or civil rights violation set forth!

38. Any denial of this TRO will cause Petitioners to suffer injuries by implementation of the Act prior to being afforded the opportunity to present evidence or oral argument to establish the impropriety from a standpoint of justice and law. Again, even *arguendo* Defendants can miraculously demonstrate to this Court that Petitioners are incorrect, which they are required to do by the rules of procedure, it is imperative that the Court review the validity of the "Act".

39. Petitioners contend, no adverse harm would be afforded Defendants if said Stay were granted. Surely the Department of Justice with its army of 100's of judicial experts is capable of presenting an affirmative defense, if they believe one exists, and as required pursuant to FRCP 8(b) & (d) and 12(b). By law, Constitutional claims pursuant to *inter alia*, Title 28 U.S. Code 1331 mandate an affirmative reply or suffer forfeiture. [Which by law, Defendants already have in the Court below].

40. Petitioners believe in the principles and laws upon which our Nation was founded. Upon entering military we swore an oath to defend the Constitution against all enemies foreign and domestic. The individuals involved in the drafting of this "Act" are comprised of

powerful political circles that transcend party lines. They've arrogantly demonstrated they are a law unto themselves and are by all logic, enemies of our Constitutional system of government (a Republic), therefore creating irreparable harm endangering Petitioners and all citizens. Each of us, including all judicial appointees, are bound by said oath even after being Honorably Discharged from their duties to always protect the Republic and the Supreme Law of the Land, the United States Constitution!

In Conclusion

41. One need not be an attorney, judge, or law clerk to comprehend an injustice. Petitioners realizes expediting review of this action and/or the granting of an immediate Restraining Order may not be the usual practice of the Court when the Defendants are U.S. governmental agencies, but under these extraordinary circumstances this request for a Stay is Constitutionally warranted and necessary to protect Petitioners and the public as a whole. Especially since Defendants failed to answer the original Petition, failed to answer six (6) Counts in their entirety and failed to adequately or otherwise answer nine (9) Counts of the Motion for Summary Judgment for Default.

42. WHEREFORE, Petitioners pray this Honorable Court grant a Temporary Restraining Order until Defendant can demonstrate why a permanent Stay should not be granted until adjudication of the Constitutional challenges presented. Petitioners et. al. have a legally protectable and tangible interest that is and not just limited to Petitioners as citizens of this, a contractual Constitutional Republic, that has a very real harm that could indeed affect everyone in these United States!

Petitioners also request this Honorable Court grant sufficient time to Petitioners acting *pro se* to reply to any objections or opposition papers submitted by Defendants. Though no need exists to deny this relief based upon the record before this Court.

Respectfully submitted,

Nicholas E. Purpura,
pro se.

Donald R. Laster Jr.
pro se.

Date: June 27, 2011

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following:

AFFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE FOR A RESTRAINING ORDER DUE TO EXTRODINARY CIRCUMSTANCES THAT REQUIRE EMERGENCY RELIEF

ORDER GRANTING A TEMPORARY RESTRAINING DUE TO EXTRODINARY CIRCUMSTANCES THAT REQUIRE EMERGENCY RELIEF

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvania, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

27/June/2011

Donald R Laster Jr

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCIT

----------x

Civil Docket No. 11-2303

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

Plaintiffs

ORDER GRANTING A TEMPORARY RESTRAINING DUE TO EXTRODINARY CIRCUMSTANCES THAT REQUIRE EMERGENCY RELIEF

VIOLATION Title 28 U.S.C. 1331 & CIVIL RIGHTS

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,

Defendants.

----------x

LET Appellee/Respondents Show Cause why this Temporary Restraining Order should not be made permanent until this issue is fully adjudicated.

On June ___, 2011, the Court after reviewing Appellants' Affidavit in Support, and after due consideration based upon the facts and law necessary to support the cause of action and request the court FINDS as follows:

The threatened harm to Appellants and those they are spoke-persons for, to include the general public, outweighs any harm a temporary restraining order would inflict on Respondents.

Issuance of a temporary restraining order *ex parte* is clearly in the public's interest and not against the public's interest because the financial burdened the public is now and will continue to suffer as a whole if said relief is denied. Our Nation's financial crisis outweighs any excuse Respondents can demonstrate as to why this Court should lift this Order. The Court notes Respondents by their previous pleading stated the "Act" doesn't take effect until 2014.

Appellants and the general public will clearly suffer irreparable injury and financial harm based upon the facts set forth in Appellants' Affidavit. And, based upon the numerous violations of the U.S. Constitution demonstrated in the Show Cause Order establishes a substantial likelihood Appellants will succeed on numerous Constitutional grounds.

The Court enters this Temporary Restraining Order without notice to Appellee/Respondent's because the ongoing financial harm and burden placed upon the public as well as the specific violation of the U.S. Constitution that Appellee/Respondents admitted by failure to set forth any opposing argument in no less than 6-specific Counts set forth in the Petition.

The Court will accept an opposing reply and thereafter set forth a hearing date for oral argument to lift this TRO should Appellee/Respondent's request. Until such time and if Respondent's can demonstrate Appellants are incorrect Appellee/Respondent's, officers, agents, servants, employees, attorneys, and all persons acting in concert with them be restrained from any further implementation of "H.R. 3590" "Patient Protection and Affordable Care" Act.

SO ORDERED.

_____

U.S. CIRCUIT COURT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCIT

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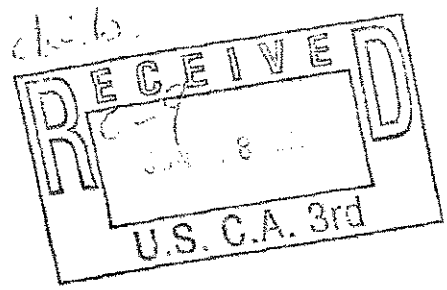
Nicholas E. Purpura, *pro se*
Donald R. Laster Jr. *pro se*
et al.

Civil Docket No. 11-2303

MOTION TO VACATE OR MODIFY THE CLERKS ORDER GRANTING EXTENSION OF TIME

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

---x

Appellants come before this Circuit Court requesting the ORDER(see, attachment) issued on June 23, 2011 by the Clerk Marcia M. Waldron be immediately recalled and vacated. Appellants respectfully allege said ORDER was improperly granted. While Federal Rules of Appellate Procedure (FRAP) Rule 27 states:

> **"Rule 27. Motions**
>
> **(b) Disposition of a Motion for a Procedural Order.** The court may act on a motion for a procedural order—including a motion under Rule 26(b)—at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the

clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed."

Allowing Respondents/Appellees specific Motion to be granted by an authorized Clerk in this particular incident, the approval of the Motion is clearly prohibited under the Local Appellate Rules (LAR) 31.4 which specifically states:

"31.4 Motions for Extension of Time to File a Brief

A party's first request for an extension of time to file a brief must set forth good cause. Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient. A first request for an extension of 14 days or less may be made by telephone or in writing. Counsel should endeavor to notify opposing counsel in advance that such a request is being made. The grant or denial by the clerk of the extension must be entered on the court docket. If a request for extension of time is made and granted orally, counsel must file a confirming letter to the clerk and to opposing counsel within 7 days. A first request for an extension of time should be made at least 3 days in advance of the due date for filing the brief. A motion filed less than 3 days in advance of the due date must be in writing and must demonstrate that the good cause on which the motion is based did not exist earlier or could not with due diligence have been known or communicated to the court earlier. Subsequent requests for an extension of time must be made in writing and will be granted only upon a showing of good cause that was not foreseeable at the time the first request was made. Only one motion for extension of time to file a reply brief may be granted." [Emphasis Added]

The issue of Rules of Procedure, as stated the *FRAP*, fail to state the number of days the Clerk is authorized to allow, therefore the Clerk is obligated to adhere to the Local Appellate Rules of the Third Circuit see, 31.4.

While Respondent/Appellees went "on and on" about this and that case they had to handle they did not in any fashion state any good cause as required by the Rule 31.4. The two (2) paragraphs taking up 11 lines at the end of their Motion is nothing more than a statement of:

We are too busy to answer this Petition at this time.

Or based upon past history, and numerous procedurally infirm extensions of time, Respondents have demonstrated:

We do not want to answer this Petition since they are correct on all counts.

Such excuses are clearly and explicitly **NOT** a reason to grant an extension of time. LAR 31.4 does **NOT** allow for 30 day extensions. At most, providing a valid good cause is set forth, **only 14 or fewer days** may be granted.

Throughout the District Court Proceedings, and into this Court, the Respondent/Appellees have tried to ignore the Petition and engaged in prevarication, stalling and collusion with the District Court in obvious violations of Judicial Procedures. Even in their "MOTION FOR 30 DAY EXTENSION IN WHICH TO FILE APPELLEES' BRIEF" they continue in their prevarication by misrepresenting Appellants' Petition as well as facts. In fact the Clerk of the Court ignored their outright lie that they never received any extensions of time when in truth they received THREE (3) procedurally infirm extensions of time. And thereafter failed/refused to answer the Petition or the Summary Judgment.

It is without argument Appellants Petition, authorized under Amendment 1 [confirmed and reinforced by *Bond v United States* (09-1227)], specifically addresses 19 violations of the U.S. Constitution and four (4) existing Statues. Respondent/Appellees failed to answer the original Petition that by law, as stated in the FRCP warranted default on six counts. When forced to answer, consistently failed to answer six (6) Counts and gave spurious replies to nine (9) Counts. One can only expect this behavior to continue based upon the current actions.

WHEREFORE, the Appellants pray this Court immediately recall and vacate the Clerks ORDER of June 23, 2011 based upon the law and true facts presented.

Respondents Opposition was due on July 11, 2011;

By the Courts own Rule the maximum time the Clerk would have been allowed would be 14-day, that is if good cause was presented

Respectfully submitted,

Nicholas E. Purpura, Donald R. Laster, Jr. June 27, 2011

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11-2303

Purpura v. Sebelius

To: Clerk

1) Motion by Appellees for Extension of Time to File Brief

2) Response by Appellants in Opposition to Appellees' Motion for Extension of Time

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The foregoing motion and response are considered. Appellees' motion is granted. Appellees' brief must be filed and served on or before August 10, 2011.

For the Court,

/s/ Marcia M. Waldron
Clerk

Dated: June 23, 2011
DWB/cc:
Nicholas Purpura
Donald R. Laster, Jr.
Dana Kaersvang, Esq.
Alisa B. Klein, Esq.
Mark B. Stern, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Civil Docket No. 11-2303

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

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

REPLY TO GOVERNMENTS COMBINED OPPOSITION TO PLAINTIFFS MOTION TO VACATE THE CLERKS ORDER GRANTING EXTENSION OF TIME And MOTION FOR TEMPORARY RESTRAINING ORDER

Respondents again show contempt for the Court, as well as the *Fed. Rules of Civ. P.*, by failing to properly respond to the Appellants' Opposition Motion for an Extension of Time and Appellants' Show Cause Order for a TRO. Appellants will address both ingenuous, fallacious, or should we say juvenile responses now before this Honorable Court.

Extension of Time Argument:

Appellants say again, the "Extension of Time" was improperly granted. Respondents unquestionably failed to demonstrate "good cause". Respondents claim, with hundreds of attorneys at their beck and call, that they are too busy at this time to reply because they are

defending three other actions related to the *'Patient Protection and Affordable Care'* Act. When is being too busy justification for an extension of time proper under the rules? That is what the 11 lines at the end of their ridiculous motion states.

Such self-indulgent and lack of respect for the Third Circuit Court and its rules of procedure are beyond the pale. What this Honorable Court must make Respondents understand is that they are not above the rules. And surely ask: what don't they understand about the rule that specifically states: "***... or that counsel is too busy, are not sufficient***"?

Allowing Respondents/Appellees extension of time motion to be granted by an authorized Clerk in this particular incident, the approval of the motion for an extension of time, is clearly prohibited under the Local Appellate Rules (LAR) 31.4 which specifically states:

> A party's first request for an extension of time to file a brief must set forth good cause. **Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient.** A first request for an extension of **14 days or less** may be made by telephone or in writing. Counsel should endeavor to notify opposing counsel in advance that such a request is being made. The grant or denial by the clerk of the extension must be entered on the court docket. If a request for extension of time is made and granted orally, counsel must file a confirming letter to the clerk and to opposing counsel within 7 days. A first request for an extension of time should be made at least 3 days in advance of the due date for filing the brief. A motion filed less than 3 days in advance of the due date must be in writing **and must demonstrate that the good cause on which the motion is based** did not exist earlier or could not with due diligence have been known or communicated to the court earlier. Subsequent requests for an extension of time must be made in writing and will be granted only upon a showing of good cause that was not foreseeable at the time the first request was made. Only one motion for extension of time to file a reply brief may be granted." [Emphasis Added]

The issue is the Rules of Procedure, as stated in the *FRAP*, only states a Clerk may be authorized to approve certain types of motions and the Third Circuit has allowed these types of motions to be approved by a Clerk. The Clerk is still obligated to adhere to the Local Appellate Rules of the Third Circuit, in this case see Rule 31.4.

As *pro se* litigants, Appellants have diligently adhered to "Black Letter Law" unlike Respondents. Precedent is legion in all the Circuit Courts including this Third Circuit, to include the Supreme Court of the United States, that it is the *pro se* litigants that are to be given latitude - lawyers are supposed to have been trained in, know, and follow the rules. Respondents have repeatedly submitted procedurally infirm extensions of time in order to protract the proceeding

that began in the District Court. In-of-itself is good cause for this Court to deny Respondents motion for any extension of time. That is unless the Department of Justice is operating under some special exemption provision, exclusionary rule, or dispensation that the public has not been informed of?

Respondents Opposition to the "Temporary Restraining Order" and Standing:

Respondents have demonstrated a complete lack of respect for this Courts' intelligence and shear contempt for Appellants *pro se* that this Court should treated as an insignificant nuisance disregarding the fact that the Petition has been publically touted as the most comprehensive legal opposition to "H.R.3590" in the United States.

Respondents' opposition is a rehash of faulty arguments that are of no moment. What this Court should find more disturbing is Respondents' argument consisted of two incomplete misstatements related to two (2) violations, taken out of context, of nineteen (19) violations of the Constitution to include four (4) Statutes contained in the 15-Count Petition. Obviously, a reading comprehension course is in order. Especially in light of the recent Supreme Court ruling in *Bond v United States* (09-1227) in relationship to standing (Did they read it?). Even the Sixth Circuit's recent ruling in *Thomas More Law Center v Obama* 10-2388 expounded the same argument for standing we put forth to establish the Court's authority to adjudicate.

It is without argument Appellants' Petition was authorized under Amendment 1 concerning standing. The Supreme Court unanimously 9-0 confirmed and reinforced in *Bond v United States* (09-1227) Petitioners' standing. Petitioners' Petition specifically addresses nineteen (19) violations of the U.S. Constitution and four (4) existing Statutes.

Respondent/Appellees failed to answer the original Petition and the Summary Judgment for Default within the timeframe required by law, as stated in the FRCP, which warranted a default on all fifteen counts. When forced to answer, consistently failed to answer six (6) Counts and gave spurious replies to nine (9) Counts. As we stated in our prior Show Cause Order: "One can only expect this behavior to continue based upon the current actions". As we said, they just keep on giving, the opposition's submitted papers, submitted by Respondents cannot even be considered an argument - legal or otherwise. Again, they failed to answer anything before this prayerfully Honorable Court.

Please Take Special Judicial Notice: Respondents to either try and curry favor or prejudice this Court cites a previous case in which Petitioner *pro se*, then Plaintiff, in the legal dispute *Purpura v. Bushkin, Gaims, Gains, Jonas & Stream*, 317 Fed. Appx. 263, 266 (3rd Cir 2009) saying: "(discussing plaintiff Purpura's "abusive and vexatious litigation in this Circuit)".

Their irrelevant citing of this case requires a response and unfortunately forces us to respond and potentially embarrass the Third Circuit and the District Court of New Jersey, Trenton, Judge Freda L. Wolfson presiding.

If this Circuit Court reviews the questionable behavior in the referenced action above, and the misapplication of their "[NOT PRECEDENTIAL] ORDER" for dismissal based on the *Rooker-Feldmen* Doctrine. The three Judges panel; Rendell, Hardiman, and Greenberg presiding; should have to rightfully recuse themselves from this case for the following reasons. Their intentional misapplication of the Doctrine to protect an inept District Court Judge, Freda L. Wolfson, they intentionally: (1) ignored the fact that no Court in the State of New York or New Jersey can produce an Order issued by the State of New York's Court of Appeals that addressed Purpura's Constitutional and Civil Rights violations which was necessary to invoke the *Rooker-Feldmen* doctrine; and, (2) this same three Judge panel made note of the fact that whistle-blowing was at the root of the litigation and ignored the action had nothing to do with the matrimonial decision but the use of the matrimonial proceeding as a weapon to bankrupt Purpura for his whistle-blowing. The State of New York at the time was being bilked out of no-less than 500 MILLION DOLLARS ($500,000,000.00). Documentary evidence available upon request.

The same Judge Wolfson repeatedly ignored; (1) existing law, (2) precedent, and, (3) rules of procedure. As she is blatantly guilty in this current Petition in order to ingratiate herself within the DOJ. In the previous litigation it was proven she was to protecting as what can be described as "hoodlums in Black-robes" in the State of New York.

Just as she illegally did in that action, committing the same procedural due process violations, that took place concerning the Petition before the Appeal of her decision concerning "H.R.3590". It appears Respondents, then Defendants, and the Court fear any open hearing and the establishment of a legitimate Court record!

That being said Mr. Purpura would welcome a public debate to demonstrate each Judge that took part in that prior action referenced by the DOJ to attempt to influence the Court should resign or be removed from the bench for violations of their fiduciary duty and disrespect for the laws of the United States!

We would also note the loss of all Mr Purpura assets as punishment for whistle-blowing in an attempt to protect the Taxpayers of State of New York, at the time, was certainly an injustice. But in the scheme of things one individual and his family being hurt is a micro-injustice when compared to the *"Patients Protection and Affordable Care Act"*, "H.R.3590" which is a macro-injustice that strips all Americans of the guaranteed freedoms as set forth in the Constitution.

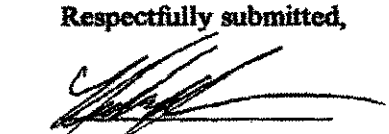
If citing Mr. Purpua's past and legitimate litigation is the Department of Justice's best argument to influence this Court to rule in their favor, we welcome it! It's time the DOJ received a verbal spanking from two *pro se* for mocking our laws and the integrity of the Court and Judicial System. That is if we are allowed the proper proceedings and "*We the People*" are blessed with an impartial panel of Judges that respect the law, and the oath they swore before God to uphold the United States Constitution.

WHEREFORE, the Appellants prays this Court immediately recall and vacate the Clerks ORDER of June 23, 2011 based upon the law and true facts presented;

Immediately issue a Temporary Restraining Order; as should have been done *ex parte* based on the facts and law; and,

Sanction Respondents attorneys for unnecessary delaying tactics, frivolous motion practices and contempt for the Court's Rules of Procedure.

Respectfully submitted,



Nicholas E. Purpura, *pro se*

Donald R. Laster, Jr. *pro se*

July 5, 2011

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following

REPLY TO GOVERNMENTS COMBINED OPPOSITION TO PLAINTIFFS MOTION TO VACATE THE CLERKS ORDER GRANTING EXTENSION OF TIME And MOTION FOR TEMPORARY RESTRAINING ORDER

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvannia, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

06/July/2011

Donald R Laster Jr

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

---x

Civil Docket No. 11-2303

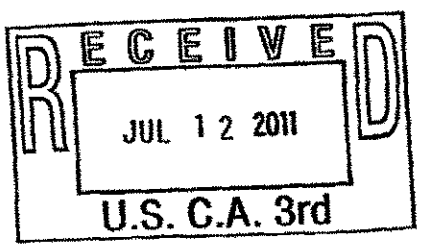
Nicholas E. Purpura, *pro se*
Donald R. Laster Jr. *pro se*
et al.

Plaintiffs/Appellants

MOTION FOR DEFAULT OF APPEAL AND ORDER FOR DECLARATOY RELIEF

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

---x

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 due on July 10, 2011.

According to the Rules, forwarded to *pro se* litigants on page 4, Titled "**Time Requirements for Briefs and Appendix** explicitly states:

> "Extension of Time: If you need an extension of time in which to file your brief and/or appendix, you must request the extension (well before the brief is due) by filing a motion for extension of time with the Clerk. **Extensions are rarely granted.** Failure to file a brief when due or to request an extension may result in **dismissal** of the appeal for failure to timely prosecute the appeal. 3rd Cir. LAR Misc. 107.2" [Emphasis Added]

Furthermore Local Appellate Rules (LAR) 31.4 explicitly states:

> "... Generalities, such as that the purpose of the motion is not for delay or **that counsel is too busy, are not sufficient.** A first request for an extension of **14 days or less** may be made by telephone or in writing. ... A motion filed less than 3 days in advance of the due date must be in writing **and must demonstrate that the good cause on which the motion is based** did not exist earlier or could not with due diligence have been known or communicated to the court earlier." [Emphasis Added]

In their motion "GOVERNMENT'S COMBINED OPPOSITION TO PRO SE PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND MOTION TO VACATE THIS COURT'S ORDER GRANTING AN EXTENSION" the Respondent/Appellee dismissively state on page 3 of the "motion" they claim the basis for extension was spelled out in their prior motion stating

> "Although plaintiffs assert that there was no good cause for the extension, the basis for the extension was set out in the government's extension motion, which was properly granted by this Court."

Instead of answering the Appellants' explicit showing that the Respondent/Appellee were given a procedurally infirm and illicit extension of time, in clear violations of the Rules, they claim their procedurally infirm request was legitimate in spite of the Court's Rules and based upon the Clerk's violation of the *FRAP* and *LAR*. Even though their stated reason was "We are too busy".

Thus claiming the Court has no authority to revoke the illicit extension of time and claiming the rules do not apply to them. Are Respondent/Appellee above the law and rules of the Court? Do the Clerks of the Court have authority to usurp the Rules? Do Respondent/Appellee dictate the rules of the Court?

Previously Respondent/Appellee requested multiple procedurally infirm extension of time, after repeatedly forfeiting by failing to respond as required by the Federal Rules of Civil Procedures (FRCP), acting in connivance with the District Court Judge. The blatant connivance is obvious by a simple examination of the District Court Record.

Respondent/Appellee are continuing the same game in this prayerfully Honorable Circuit Court. This Court has a fiduciary duty to put an end to these games and illicit behavior, that is occurring

under the *color of law*, that brings this Court's integrity in question and usurps the authority of Justices of this Court.

The actions of the Respondent/Appellees reflect the arrogance of self-imputed governmental exemptions from judicial review as repeatedly cited in Petitioners' Appeal by page and provisions that renders our Judiciary irrelevant, since no judicial review of the Government's behavior is allowed. So why should one expect them to adhere to the *FRCP*, *FRAP* and Court's *Local Rules of Procedures*.

We respectfully remind the Court, neither the DOJ or the Clerk of the Court are above or exempt from the rules.

WHEREFORE,

Appellees prayerfully ask this Honorable Court to declare an immediate default for failure to respond within the requirements as required under this Court's specific Rules of Procedures;

To issue an immediate Order declaring the *"Patient Protection and Affordable Care"* Act, known as "H.R. 3590", is invalid and unconstitutional based upon all 15 Counts submitted to this Court for failure to demonstrate a single Count was incorrect;

Defendants (Respondent/Appellee) are hereby order to cease and desist from all implementation of the "Act" known as *"Patient Protection and Affordable Care"* or "H.R. 3590";

At the very least, as an alternative to the relief requested above, this Court should sign the Temporary Restraining Order that is awaiting a signature before this Court. If this Honorable Court or Defendants can show legal and legitimate justification to adjudicate further.

Respectfully Submitted,

Nicholas E. Purpura, *pro se*

Donald R. Laster, Jr. *pro se*

July 10, 2011

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following

MOTION FOR DEFAULT OF APPEAL AND ORDER FOR DECLARATOY RELIEF

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvannia, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

10/July/2011

Donald R Laster Jr

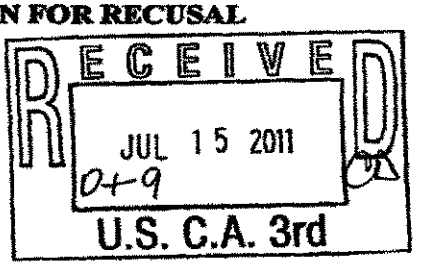
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

---x

Civil Docket No. 11-2303

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

NOTICE OF
MOTION FOR RECUSAL



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

---x

Appellants submit this Motion for the Recusal of the Honorable Joseph A. Greenaway and Honorable Thomas I. Vanaskie based upon the following reason pursuant to the Federal Civil Rules Handbook:

- **As this Court is aware it is without argument Respondent/Appellees failed to respond to Count 6 of Appellants Petition, thereby under the *Fed. Rules of Civ. P.*, 8(b) & (d) conceded that the said averment was correct.**
- **The Court refused to inform Appellants which Honorable Judges are or will preside on ours and Respondent/Appellees pending motions, therefore making this Motion necessary. Though customary, Litigants are usually informed and if there be any reasons**

that a prejudice against him/them in favor of the adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear the proceedings. See, Title 28 Sec 41 # 144 Biases or prejudice of judge, the Court's refusal to inform Appellants makes it impossible for Appellants to adhere to the rules of this provision therefore requiring this Motion.

Disqualification of justice…

Title 28 Section 455 (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his partiality might reasonably be question. Part (b) He shall also disqualify himself in the following circumstances:

- (4) he knows that he, individually or as a fiduciary, ….has a financial interest in the subject matter in the controversy or a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding: Also see:
- (5) (iii) Is known by the judge to have a financial interest that could be substantially affected by the outcome of the proceeding;
- (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

For the purposes of this section the following words or phrases shall have the meaning indicated

- (d) (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation:
- (d) (4) financial interest" means ownership of legal or equitable interest, however small, or relationship as ….

As this Court is aware, or should be aware, Respondent/Appellees failed to answer Count 6 of the Petition that concerns whether Mr. Barak Hussein Obama II is, pursuant to Article 2 of the U.S. Constitution, a "natural born Citizen" and was authorized to sign "H.R. 3590" into law. The question remains does Mr. Obama have executive power to also appoint judges to the District, Circuit and Supreme Court?

Legal Precedent: It is incontrovertible the request for recusal of Honorable Joseph A. Greenaway and Honorable Thomas I. Vanaskie is valid since each has a financial stake in the outcome of this litigation. At issue is whether Mr. Obama has authority to appoint them to the Circuit Court.

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

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

WHEREFORE, Appellants are in their legal right to request the Honorable Joseph A. Greenaway and Honorable Thomas I. Vanaskie not take any part in any stage of this litigation.

Special Note: In no way are Appellants questioning the honesty or integrity of either of these two former District Court Judges. This request for recusal adheres to the rules to assure the integrity of the Court does not come into questioned.

Respectfully Submitted,

Nicholas E. Purpura, *pro se*

Donald R. Laster, Jr. *pro se*

July 15, 2011

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following

NOTICE OF MOTION FOR RECUSAL

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvannia, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

15/July/2011

Donald R Laster Jr

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.

MOTION FOR ENTRY OF DEFAULT

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

---x

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 either the District Court or this Honorable Appeal Court failing no less than four (4) times to answer the allegation cited in Plaintiffs' Petition.

Pursuant to Rule 55(a): Upon motion of a party, the clerk of the court may enter a default against a party who has failed to plead or otherwise defend against allegations.

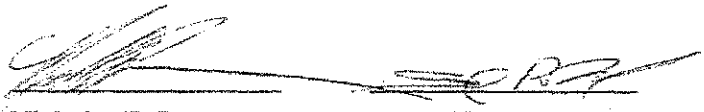
It is without argument Defendant willfully failed to reply to Counts 5, 6, 7, 12, 13, and 14 as required by the *FRCP*, pursuant to Rule 8(d), which was and is an automatic admission that the assertions of these allegations are correct and factual.

This relief should have been granted by the District Court that violated its fiduciary duty to uphold procedural due process as required by *Black Letter* law.

Petitioners' come before this Honorable Court requesting this Court comply with *Black Letter* Law as set forth and adhering to Rule 55 (a) entering an Entry of Default by the Clerk of the Court immediately.

The onus is now upon the Defendants to argue before this Honorable Court why Petitioners are not entitled to the requested relief. Defendants have but one option to submit to this Court a Motion to Vacate proving Petitioners' claims are inaccurate.

Respectfully Submitted,

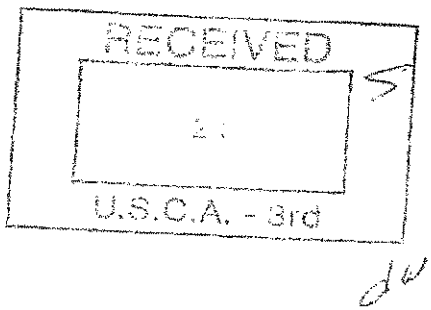


Nicholas E. Purpura, *pro se*

Donald R. Laster, Jr. *pro se*

July 25, 2011

Proof of Service



The following documents

Entry for Default

Clerk Letter

were served upon

Dana Kaersvang
Attorneys, Appellate Staff
Civil Division, Room 7235
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

and the Court of Appeals Third Circuit

United States Court of Appeal for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

by Express and/or Certified Return Receipt Mail on or by 25/July/2011 to the best of my knowledge.

Donald R Laster Jr.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

----------x

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

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/Appellees

----------x

Civil Docket No. 11-2303

MOTION TO RECALL AND VACATE AND REQUEST FOR JUDICIAL INTERVENTION BY AN EN BANC COURT

Preliminary Statement

For the Republic to function properly, an honorable judiciary is indispensable to justice. According to the Judicial Code of Conduct it is the obligation of every judge to observe the highest standards of conduct to preserve the integrity of the Court.

It is indisputable the Court of Appeals for the Third Circuit has in the Appeal of *Purpura v. Sebelius* been operating as a law unto itself; and has no regard for the *FRCP, FRAP, LAR* as well the Judicial Conduct Rules making a mockery of judicial procedure as well violating "due process". In short, one could say a quasi-criminal enterprise.

This Court thus far has demonstrated that impartiality is near impossible. One could believe the Court fears criticism as the Quisling before Hitler from an all-powerful government that has a tendency to retaliate against anyone interfering with their Draconian policies. In short, this Court's behavior is unacceptable that mandates an *En banc* review.

Background

Before addressing this Court's latest action, it's imperative that an *En banc* Court be aware of what has thus far transpired that blackens the name of every Honorable Judge sitting on the Third Circuit, who takes their Oath and responsibilities to adjudicate in compliance with the U.S. Constitution and rules regardless of their personal feeling and views.

Petitioners have submitted the following legitimate and proper requests:

- Show Cause Order for a TRO which has still not been signed; (Ignored)
- Motion to Vacate a procedurally infirm Extension of Time; (Ignored)
- Motion for a Summary Judgment; (Ignored)
- Motion for Recusal; July 15, 2011 – Order issued July 28, 2011;
- Request for the names of those Honorable Judges that recused themselves; (Ignored)
- A request to be informed of which Judges are on the panel; (Ignored)
- Entry of a Motion Entry for Default. (Ignored)

These violations of proper judicial procedure are nearing the numerous violations experienced in the District Court's willful corruption in connivance with the Department of Justice.

On July 28, 2011 an Order was entered denying Petitioners' request for the recusal of Thomas I Vanaskie from adjudicating any issue related to *Purpura v. Sebelius*, Civil Docket No. 11-2303. Said Order was signed by Circuit Judge Thomas I. Vanaskie, as "*Motion Denied*" with no explanation *see,* attached. The rules specifically require an explanation why Petitioners' request has been denied thus demonstrates a biased ruling.

Argument

Judge Thomas I. Vanaskie was appointed to a lifetime post by Mr. Obama and obviously has a substantial personal and financial interest in the outcome of the issue at bar. As Petitioners proved, Defendants acknowledged by their silence, Mr. Obama is ineligible to sign, appointment, or exercise Presidential authority. Therefore, every law passed or appointment made while Mr. Obama occupies the Oval Office is invalid.

It is without argument Defendants failed to respond to Count 6 of the original Petition, that Mr. Obama is not constitutionally eligible to sign "H.R.3590" into law. It is imperative this Court be aware that the entire rule of law based on the Constitution, and is the crux of the issue at bar, is at risk. The appointment of Judge Vanaskie is not valid under the U.S. Constitution.

Disregard for a moment that Defendants failed/refused to address five (5) additional Counts, or failed to demonstrate that not one of the fifteen (15) Count were not unconstitutional acts as set forth in the Petition. It is without argument Defendant willfully failed to reply to Counts 5, 6, 7, 12, 13, and 14 as required by the *FRCP*, pursuant to Rule 8(d), which was and is an automatic admission that the assertions of these allegations are correct and factual that mandated forfeiture.

It is inarguable that the above facts demonstrate Mr. Obama is ineligible to hold the Office of the President. Therefore, Judge Vanaskie is prohibited from adjudicating any issue related to this Petition. Federal law requires that any judges exclude themselves when circumstances arise that would involve "*even the appearance of impartiality*." Clearly, by sitting as a justice and deciding upon Plaintiffs' Petition would be self-serving.

Once again, Petitioners remind this Court, our public servants who serve the citizens and residents of the United States of their Article 6 Oath to uphold the U.S. Constitution and Laws of the United States when entering public service. To do anything less soils the integrity of the Court making a mockery of Justice.

WHEREFORE, Petitioners request this Court *en banc* Recall and Vacate Judge Vanaskie Order that was not only self-serving but illegally issued by the rules of Judicial Conduct. Under the circumstances, Petitioners have requested judicial intervention by an *en banc* Court, due to the seriousness of this action, to alleviate the apparent political ideology that get in the way of justice that would shred the U.S. Constitution as we know it, undermining the "Rule of Law".

Respectfully submitted,

Nicholas E Purpura

Donald R. Laster, Jr

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

July 15, 2011
Panel No. ACO-144

No. 11-2303

NICHOLAS E. PURPURA;
DONALD R. LASTER, JR.,
Appellants

v.

KATHLEEN SEBELIUS, Individually and as Secretary of the United States Department of Health and Human Services.;
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
TIMOTHY F. GEITHNER, Individually and as Secretary of the United States Department of the Treasury;
UNITED STATES DEPARTMENT OF TREASURY;
HILDA A. SOLIS, Individually and as Secretary of the United States Department of Labor;
UNITED STATES DEPARTMENT OF LABOR

(D.N.J. No. 3-10-cv-04814)

Present: VANASKIE, Circuit Judge

Motion to Recuse Judge Vanaskie.

Respectfully,
Clerk/dwb

ORDER

The foregoing motion is denied.

By the Court,

/s/ Thomas I. Vanaskie
Circuit Judge

Dated: July 28, 2011

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following

MOTION TO RECALL AND VACATE AND REQUEST FOR JUDICIAL INTERVENTION BY AN EN BANC COURT

Letter to Chief Judge Theodore A. McKee

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvannia, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

31/July/2011

Donald R Laster Jr

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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

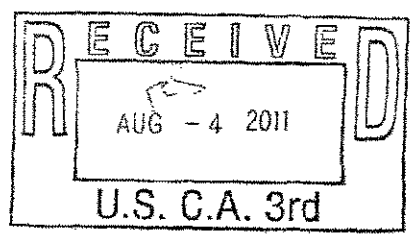
v.

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/Appellees

Civil Docket No. 11-2303

MOTION TO RECALL AND VACATE ORDER DATED AUGUST 1, 2011
Judge Greenaway Authoring Judge. (DW)
AND SECOND REQUEST FOR JUDICIAL INTERVENTION BY AN EN BANC COURT



Preliminary Statement

It has become obvious impartiality as well as proper judicial procedure being adhere to is impossible in the Court of Appeals for the Third Circuit. On Friday July 28, 2011 Judge Thomas I. Vanaskie in a ploy to distract Petitioners and instigate unnecessary litigation refused to recuse himself as a sitting Judge in the matter of *Purpura v Sebelius* as if he were on the panel, see, page 1 of Order top right "Panel No. ACO-144" knowing full well he is/was required to recuse himself/ The LAW IS UNAMBIGIOUS! No Judge can sit on a panel in which they have a personal and/or financial interest in the outcome of the action, see the Judicial Conduct Rules.

This same Court of Appeals hubris is beyond the pale that gives new meaning to the term "Hoodlum's in Black-robes". It is a shame that the actions of a few judges acting in an inappropriate and unlawful manner that bring dishonor to the remaining Honorable Judges on the Court. To date Petitioners have not been informed by the Court concerning the August 1, 2011 Order, instead Petitioners saw the Order as stated below on the Internet by an agitator that a ruling was issued on August 1, 2011. Thereafter, accusing Petitioners of not following our own case. The Court Order said:

> "08/01/2011 Open Document ORDER (SLOVITER, JORDAN and GREENAWAY, JR., Circuit Judges) The appellant's motion for an injunction pending appeal is denied. Appellant's motion to vacate the order granting the government an extension of time to file a response brief is denied. Appellant's motion for default of appeal and order for declaratory relief is also denied. Appellant's motion requesting that the court disclose the names of those judges who have recused themselves from this case is denied. Appellants motion for entry of default is denied. , filed. Panel No.: BLD-236. GREENAWAY, JR., Authoring Judge. (DW)"
>
> "08/01/2011 Open Document ORDER (GREENAWAY JR., Circuit Judge) denying Motion to Recuse Judge Greenaway, JR. filed by Appellants Nicholas Purpura and Donald R. Laster, Jr., filed. Panel No.: BLD-236. GREENAWAY, JR., Authoring Judge. (DW)

It has becoming blatantly obvious the Court of Appeals, Third Circuit in the matter of *Purpura v. Sebelius* has instituted a new and special rule titled: "*The Purpura/Laster Exclusionary*" Rule, whereby the *FRCP, FRAP, LAR,* Judicial Conduct Rules as well as procedure "*due process*" will not apply.

It is inarguable Judge Greenaway has a substantial personal and financial interest in the outcome of the issue at bar. Federal law requires that any judges exclude themselves when circumstances arise that would involve "*even the appearance of impartiality.*" Clearly, by sitting as a justice and deciding upon Plaintiffs' Petition, and the numerous papers related to this case is self-serving. Judge Greenaway was required to recuse himself! Therefore, Judge Greenaway's Order must be recalled and vacated as invalid!

Note: It appears Judges Greenaway and Vanaskie have been able to unnecessary protract this litigation in order to protect the Justice Department, Mr. Obama, and their own appointment.

Petitioners inarguably proved Mr. Obama is ineligible to sign "H.R. 3590" into law, make appointments, or exercise Presidential authority. Therefore, every law or appointment made while Mr. Obama occupies the Oval Office is invalid. No need to reiterate what is/and has been

argued and proved *ad nauseam* before this Court and District Court which is part of the record concerning the Defendants failure to reply to Count 6 [to include the other 14-Counts] that automatically warranted an Order for default rendering "H.R.3590" by law, "*null and void*" see, the *FRCP*, pursuant to Rule 8(d).

The failure by Defendants to respond by law, was an admission that Mr. Obama' is ineligible to occupy the Oval Office as set forth in the Constitution, see, Article II, Section 1.

Judge Greenaway's Order of August 1, 2011 blatantly violated proper "*due process*", even if Mr. Obama had authority to appoint him or he had no personal or financial interest in the outcome of this action. The Supreme Court of the United States held for an Order to be considered as rendering proper '*Due process*' the Court is obligated to adhere to prior precedent *see*, Goldberg v. Kelly, 397 U.S. 245, 271, 299:

> *"...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."*

At all times, like Judge Vanaskie, and now Judge Greenaway was/is absent "*subject-matter jurisdiction*" to adjudicated any matter concerning Purpura v. Sebelius, under the "*color of law*". "*Orders*" that failed to hew to precedent held by the Supreme Court of this United States, as clearly demonstrated by Judge Greenaway's Order, that fails to put forth a valid explanation exists for a single denial listed.

In short, at all relevant times, Judges Vanaskie and Greenaway failed to articulate the reason for the departure from "*public policy*," "*regulatory requirements*," "*statutes*," "*case law*", and "*precedent*" held by the Supreme Court of the United States

At all relevant times, Judges Vanaskie and Greenaway individually and collectively acted in concert, directly and indirectly, engaged, and participated in, or aided and abetted, a continuous course of conduct as an "enterprise" to deny Petitioners procedural "due process" by employing under the color of law, *absent "subject-matter jurisdiction"* devices, schemes, and artifices to acting in connivance with the Department of Justice, engaged in acts, practices, to protract this litigation by abrogating the *FRCP, FRAP, LAR*, and the Judicial Conduct Rules.

This Third Circuit could learn a lesson from Supreme Court Justice Brennan:

> *"what is systematic and obvious: the Supreme Court has the responsibility to for laying down law that deeply affects some of the most important domestic matters in the country. This high Court is far more interested in matters of policy, reason, principle, limits on principle and generally prevailing fact. And precedent must be treated within the limit of the law."*

WHEREFORE, Petitioners request this Court *en banc* Recall and Vacate Judge Greenaway's Order of August 1, 2011 that was not only self-serving but illegally issued by the rules of Judicial Conduct. The illicit behavior of certain individual on the Court have shown they have no regard for the laws of these United States. Therefore, again under the circumstances Petitioners request judicial intervention by an *en banc* Court to protect the integrity of the Court and Petitioners from coming before a handpicked kangaroo Court.

Respectfully submitted,

August 2, 2011

Nicholas E. Purpura Donald R. Laster, Jr

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following

MOTION TO RECALL AND VACATE ORDER DATED AUGUST 1, 2011 Judge Greenway Authoring Judge. (DW) **AND SECOND REQUEST FOR JUDICIAL INTERVENTION BY AN EN BANC COURT**

Second Letter to Chief Judge Theodore A. McKee

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvannia, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

03/August/2011

Donald R Laster Jr

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

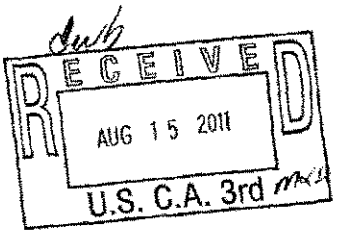
---x Civil Docket No. 11-2303

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

Plaintiffs/Appellants

MOTION FOR ORAL ARGUMENT BEFORE AN EN BANC COURT IN THE INTEREST OF SUBSTANTIAL JUSTICE

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

---x

STATEMENT OF FACT

In the "interest of substantial justice" Appellants request that oral argument[1] be allowed, to establish a record, should it become necessary, to take this matter up on appeal or certiorari to the Supreme Court of the United States. Thus far it has become evident that a "*full and fair*" proceeding is nearly impossible, if the prior actions of the Court are any example of jurisprudence in action. Like the District Court, this Circuit Court of Appeals first denies that the facts are factual, and the law is what it says it is. Thereafter dismisses just about all of Petitioners' very concrete narrative as "speculation and conjecture".

[1] See *Gannis v Ordean*, 234 U.S. 385, 394; *Milliken v. Meyer*, 311 U.S. 467; *Priest v. Las Vegas*, 232 U.S. 604; *Roller v. Holly*, 1576 U.S. 398 which held, in short, 'due process of law" is the opportunity to be present, and the opportunity to present objections.

True arguments are presented in written briefs. That being said, the seriousness of this Petition mandates oral argument to allow each of the Appellate judges to ask questions based on their review of the record below and the submitted briefs.

Petitioners constitutional rights, by ways and means of provisions set forth in "H.R.3590", which truly shocks the conscience, deprive Petitioners of *due process* under the Amendment 5, along with 18 additional violation of the Constitution that demonstrate with deliberate indifference to the vast potential for loss of life, injury, and deprivation of rights, acted, failed to act, and conspired, in a variety of ways, based on evident knowledge that was set to occur at incremental intervals, which were designed and intended to, and did, facilitate, enable and aid and abet the erasing guaranteed protections set forth in the Constitution and statutes. Which is a ghastly betrayal of the United States Constitution and Country by Defendants assigned to carry out draconian provisions in the "Act" "H.R.3590".

On August 10, 2011 Appellants received notification that an *en banc* Court denied Appellants' Motion to Recall and Vacate Judge Vanaskie's Order of June 28, 2011, and Judge Greenaway's Order of August 1, 2011 without explanation or reasoning. This violates Supreme Court precedent that requires that an explanation for said decision for "*due process*" to be properly served.

Please Take Judicial Notice: Shockingly, the Court of Appeals allowed Title 28 Section 455 of the United States Code to be abrogated. It is without argument Judges Vanaskie and Judge Greenaway violated that statute, therefore placing themselves above the United States Code and becoming a law unto themselves, by authoring decisions and Orders single-handedly and without proper *subject-matter jurisdiction*. The Rules for Judicial Conduct unambiguously state: "*Any judge is disqualified from participating in any proceeding under these Rules if said Judge has a financial interest in the outcome*"

What is more alarming, Judge Greenaway's misapplication of rules and precedent in his illegal decision and Order dated August 1, 2011, **openly intimates that his final decision is pre-determined,** saying:

> "***The appellants have failed to meet their burden of showing that they are likely to succeed on the merits of their appeal...***" *or that thy will be irreparably injured absent an injunction. Greenaway goes on to cite* Republic of Philippines v. Westinghouse Elec. Corp., 949 F.2 653, 658 (3d Cir. 1991).

It must also be noted the application of the above precedent has no bearing or similarity to the issue at bar. Judge Greenaway's motives or misunderstanding the law or the issues at bar before the Court is frightening.

The facts were clearly alleged in the Petition were/are more than sufficient to properly support their charges against the Defendants at the pleading stage, however horrifying the charges are. Further, the assertion that the Petitioners *"will not succeed on the merits"* is frivolous. Judge Greenaway, like the District Court, effectively fails to take into consideration the Order issued the District Court that dismissed the Petition was "*an abuse of discretion*" beyond the 'four corners' of the Petition.

Inarguable Appellants submitted a 15-Count Petition that listed 19 proven violations of the United States Constitution and 4 statutes set forth in "H.R.3590", yet to be contradicted, denied, or contested.

More to the point: Appellees/Defendants failed to present any argument on 5, 6, 7, 12, 13, and 14 Counts, thereby, by law, automatically forfeiting[2], **that is if *FRCP* 8(b) and (8(d) haven't been revoked**.

It is incumbent upon this Court to recognize Defendants failure to answer any of the remaining Nine (9) counts with any specificity or particularity. Combined with the failure to reply to Six (6) Counts, in-of-itself assures Appellants of prevailing in any honest Court in the United States. Yet, Judge Greenaway preposterously says:

> ***"The appellants have failed to meet their burden of showing that they are likely to succeed on the merits of their appeal"***

More disconcerting, the only issue before this Third Circuit is whether Appellants had standing. **The District Court dismissed the Petition, claiming "lack of subject matter jurisdiction" pursuant to Fed. R. Civ. P. 12(b)** to come before the District Court." See, Order dated Judge Freda L. Wolfson; see Appendix (A-27).

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[2] See, 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.*

Judge Wolfson chose to abrogate Rule 12 (b) (1) and Supreme Court precedent ignoring the fact that 12(b) is valid ***"only if there is no federal question at issue."*** A Constitutional challenge automatically grants "standing and jurisdiction" that mandates adjudication to name just one of many reasons Appellants would prevail on appeal before an impartial judiciary. The facts and record explicitly show that Judge Wolfson by her own admission failed/refused to address the merits. Again, proves Judge Greenaway's (sitting illegally) decision is pre-determined.

As far as prevailing on the merits Judge Greenaway appears to have no interest in the merits or the United States Constitution. His primary motive for remaining on the panel obviously is to protect his position on the Court.

Judge Greenaway knows, or should know full well, that Defendants failure to answer Count 6 admits by their silence that Mr. Obama was/is ineligible to sign "H.R.3590" into law. The result of the failure to answer in-of-itself, by law, mandated a default on this single Count [along with the remaining 14-Counts]. Such a result would rightfully mean Mr. Obama was ineligible to appoint Judge Vanaskie and Judge Greenaway to the Third Circuit Court of Appeals.

Shockingly, the *en banc* panel that refused to vacate Judge Greenaway's prior Order should also have recognized his violation of rule of law, as well as the Judicial Conduct Rules, to include the Court's own Local Appellate Rules Procedure. In the second paragraph Judge Greenaway says:

> *"The appellants' motion to vacate the order granting the government an extension of time to file a response brief is denied. We are satisfied that the government has Shown "good cause" for its request. See 3d Cir. L.A.R. 31.4."*

Who are *we?* He himself authored the Order. Clearly, Judge Greenaway has no regard for the *FRCP*, the *FRAP* or the *L.A.R.*, or is in need of a reading comprehension course. The current Rule dated August 1, 2011 has not been rescinded according to the updated version of the L.A.R; see, Rule 31.4:

> *"A Party's first request for an extension of time to file a brief must set forth good cause.* ***Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient."***

Also relevant, the Clerk of the Court is/was prohibited from issuing an extension of time for 30-days. The rule says:

> *"A first request for an extension of 14-days or less may be made by telephone or in writing."*

Judge Greenaway incorporates in the same paragraph:

> *"Appellants' motion for default of appeal and order for default of appeal and order for declaratory relief is also denied".* [without reasoning].

Lastly, Judge Greenaway says:

> *"The appellants' motion for entry of default is denied."*

At law, it is customary for the Clerk to enter a Motion for Entry of Default" if an affidavit demonstrates the default against the party that failed to plead or otherwise defend. See. Rule 55. It is without argument that Defendants failed to answer Counts 5, 6, 7, 12, 13, and 14. Therefore it is/was incumbent upon the Defendants to contest the Motion for Entry of Default, not Judge Greenaway! Judge Greenaway ruled on every motion without any hearings, nor did he set forth the required explanation of the basis of his reasoning on each Motion contained in his (illegal) Order.

Incontrovertible evidence abounds that the District Court and Department of Justice, acting in connivance, chose to manufacture a fraudulent 'standing' argument by twisting existing Supreme Court precedent instead of following the law and/or proper judicial procedure throughout the proceedings. Not a single ruling was based upon the law, facts, or proper judicial procedure; all were found to be non-existent.

We respectfully remind this Court of the words of Supreme Court Justice Antonin Scalia, concerning the Doctrine of Standing as an Essential Element of Separation of Power, 17, *Suffolk U. L. Rev. 881, 894 (1983):*

> *"[W]hen an individual who is the very object of a law's requirement or prohibition seeks to challenge it, he always has standing."*

Obviously, "H.R. 3590" directly and specifically affects each of us. Thus we have standing and by all existing precedent will prevail if proper judicial "*due process*" is observed. We would also remind the Court of the Supreme Court's *per curium*, 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 that Appellants "*We the People*" have always had standing to challenge "H.R. 3590" and all issues related to this unconstitutional bill/law. If proper judicial procedure, due process and the law was followed Petitioners would have been issued an Order in their favor.

Unfortunately, procedurally infirm behavioral patterns existed in this matter that prayerfully are behind us. The previous alleged violation of Petitioners constitutional rights, by ways and means which truly shock the conscience, thus far has deprived us of proper procedural "*due process*" mandated under the Fifth Amendment along with injuries arising from "Act" "H.R.3590" itself.

Appellants believe this is a valid request that this Court set forth a date for Oral argument to establish a record that has thus far has been denied by the District Court. It will also allow those sitting on the bench an opportunity to question the parties concerning each and every Count that will affect every Americans way of life. Surely, Appellees shouldn't object or fear arguing against *pro se* litigants.

"*We the People*" ask for the sake of our nation this Court adheres to *Black Letter Law*, proper judicial procedures, and most importantly, the U.S. Constitution? We know that there are men of honor and integrity sitting in the Third Circuit that will followed the law, and their Oath to uphold the Constitution even if it were distasteful or repugnant to him/her, let them step forward now.

Thomas Aquinas quoted Augustine who stated:

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

Thus far, the two Judges that set down rulings in this matter give new meaning to the Greek myth of Diogenes; Appellants are carrying a lantern through the Circuit Court in search of an Honest Judge. The implication is that there is little hope of finding any especially in the dire political situation that appear to be governing the Court.

It has also become necessary that Appellants request an *en banc* Court along with oral argument, and again, request the removal of Judge Vanaskie and Judge Greenaway as required by Title 28, Section 455 from adjudicating on any further on the matter of *Sebelius v. Purpura*, as required by the Judicial Conduct Rules!

We pray as a body an *En banc* court put an end to the disgraceful behavior that has thus far taken place for the integrity of the Court, and judiciary as a whole.

WHEREFORE, Appellants request Oral Argument before an *en banc* Court on the matter of *Purpura v. Sebelius*; and the removal of Judges Vanaskie and Greenaway from sitting on any panel

Respectfully submitted,

Nicholas E. Purpura Donald R. Caster Jr. August 10, 2011

Cc: Clerk of the Court
Dana Kaersvang

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following

MOTION FOR ORAL ARGUMENT

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvania, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

11/August/2011

Donald R Laster Jr

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.

Plaintiffs/Appellants

MOTION FOR ORAL ARGUMENT BEFORE AN EN BANC COURT IN THE INTEREST OF SUBSTANTIAL JUSTICE

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

----------x

STATEMENT OF FACT

In the "interest of substantial justice" Appellants request that oral argument[1] be allowed, to establish a record, should it become necessary, to take this matter up on appeal or certiorari to the Supreme Court of the United States. Thus far it has become evident that a "*full and fair*" proceeding is nearly impossible, if the prior actions of the Court are any example of jurisprudence in action. Like the District Court, this Circuit Court of Appeals first denies that the facts are factual, and the law is what it says it is. Thereafter dismisses just about all of Petitioners' very concrete narrative as "speculation and conjecture".

[1] See *Gannis v Ordean*, 234 U.S. 385, 394; *Milliken v. Meyer*, 311 U.S. 467; *Priest v. Las Vegas*, 232 U.S. 604; *Roller v. Holly*, 1576 U.S. 398 which held, in short, 'due process of law" is the opportunity to be present, and the opportunity to present objections.

True arguments are presented in written briefs. That being said, the seriousness of this Petition mandates oral argument to allow each of the Appellate judges to ask questions based on their review of the record below and the submitted briefs.

Petitioners constitutional rights, by ways and means of provisions set forth in "H.R.3590", which truly shocks the conscience, deprive Petitioners of *due process* under the Amendment 5, along with 18 additional violation of the Constitution that demonstrate with deliberate indifference to the vast potential for loss of life, injury, and deprivation of rights, acted, failed to act, and conspired, in a variety of ways, based on evident knowledge that was set to occur at incremental intervals, which were designed and intended to, and did, facilitate, enable and aid and abet the erasing guaranteed protections set forth in the Constitution and statutes. Which is a ghastly betrayal of the United States Constitution and Country by Defendants assigned to carry out draconian provisions in the "Act" "H.R.3590".

On August 10, 2011 Appellants received notification that an *en banc* Court denied Appellants' Motion to Recall and Vacate Judge Vanaskie's Order of June 28, 2011, and Judge Greenaway's Order of August 1, 2011 without explanation or reasoning. This violates Supreme Court precedent that requires that an explanation for said decision for "*due process*" to be properly served.

Please Take Judicial Notice: Shockingly, the Court of Appeals allowed Title 28 Section 455 of the United States Code to be abrogated. It is without argument Judges Vanaskie and Judge Greenaway violated that statute, therefore placing themselves above the United States Code and becoming a law unto themselves, by authoring decisions and Orders single-handedly and without proper *subject-matter jurisdiction*. The Rules for Judicial Conduct unambiguously state: "*Any judge is disqualified from participating in any proceeding under these Rules if said Judge has a financial interest in the outcome*"

What is more alarming, Judge Greenaway's misapplication of rules and precedent in his illegal decision and Order dated August 1, 2011, **openly intimates that his final decision is pre-determined,** saying:

> "***The appellants have failed to meet their burden of showing that they are likely to succeed on the merits of their appeal...***" *or that thy will be irreparably injured absent an injunction. Greenaway goes on to cite Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2 653, 658 (3d Cir. 1991).

It must also be noted the application of the above precedent has no bearing or similarity to the issue at bar. Judge Greenaway's motives or misunderstanding the law or the issues at bar before the Court is frightening.

The facts were clearly alleged in the Petition were/are more than sufficient to properly support their charges against the Defendants at the pleading stage, however horrifying the charges are. Further, the assertion that the Petitioners "*will not succeed on the merits*" is frivolous. Judge Greenaway, like the District Court, effectively fails to take into consideration the Order issued the District Court that dismissed the Petition was "*an abuse of discretion*" beyond the 'four corners' of the Petition.

Inarguable Appellants submitted a 15-Count Petition that listed 19 proven violations of the United States Constitution and 4 statutes set forth in "H.R.3590", yet to be contradicted, denied, or contested.

More to the point: Appellees/Defendants failed to present any argument on 5, 6, 7, 12, 13, and 14 Counts, thereby, by law, automatically forfeiting[2], **that is if *FRCP* 8(b) and (8(d) haven't been revoked**.

It is incumbent upon this Court to recognize Defendants failure to answer any of the remaining Nine (9) counts with any specificity or particularity. Combined with the failure to reply to Six (6) Counts, in-of-itself assures Appellants of prevailing in any honest Court in the United States. Yet, Judge Greenaway preposterously says:

> ***"The appellants have failed to meet their burden of showing that they are likely to succeed on the merits of their appeal"***

More disconcerting, the only issue before this Third Circuit is whether Appellants had standing. **The District Court dismissed the Petition, claiming "lack of subject matter jurisdiction" pursuant to Fed. R. Civ. P. 12(b)** to come before the District Court." See, Order dated Judge Freda L. Wolfson; see Appendix (A-27).

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[2] See, 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.*

Judge Wolfson chose to abrogate Rule 12 (b) (1) and Supreme Court precedent ignoring the fact that 12(b) is valid ***"only if there is no federal question at issue."*** A Constitutional challenge automatically grants "standing and jurisdiction" that mandates adjudication to name just one of many reasons Appellants would prevail on appeal before an impartial judiciary. The facts and record explicitly show that Judge Wolfson by her own admission failed/refused to address the merits. Again, proves Judge Greenaway's (sitting illegally) decision is pre-determined.

As far as prevailing on the merits Judge Greenaway appears to have no interest in the merits or the United States Constitution. His primary motive for remaining on the panel obviously is to protect his position on the Court.

Judge Greenaway knows, or should know full well, that Defendants failure to answer Count 6 admits by their silence that Mr. Obama was/is ineligible to sign "H.R.3590" into law. The result of the failure to answer in-of-itself, by law, mandated a default on this single Count [along with the remaining 14-Counts]. Such a result would rightfully mean Mr. Obama was ineligible to appoint Judge Vanaskie and Judge Greenaway to the Third Circuit Court of Appeals.

Shockingly, the *en banc* panel that refused to vacate Judge Greenaway's prior Order should also have recognized his violation of rule of law, as well as the Judicial Conduct Rules, to include the Court's own Local Appellate Rules Procedure. In the second paragraph Judge Greenaway says:

> *"The appellants' motion to vacate the order granting the government an extension of time to file a response brief is denied. We are satisfied that the government has Shown "good cause" for its request. See 3d Cir. L.A.R. 31.4."*

Who are *we?* He himself authored the Order. Clearly, Judge Greenaway has no regard for the *FRCP*, the *FRAP* or the *L.A.R.*, or is in need of a reading comprehension course. The current Rule dated August 1, 2011 has not been rescinded according to the updated version of the L.A.R; see, Rule 31.4:

> *"A Party's first request for an extension of time to file a brief must set forth good cause.* ***Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient."***

Also relevant, the Clerk of the Court is/was prohibited from issuing an extension of time for 30-days. The rule says:

> *"A first request for an extension of 14-days or less may be made by telephone or in writing."*

Judge Greenaway incorporates in the same paragraph:

> *"Appellants' motion for default of appeal and order for default of appeal and order for declaratory relief is also denied"*. [without reasoning].

Lastly, Judge Greenaway says:

> *"The appellants' motion for entry of default is denied."*

At law, it is customary for the Clerk to enter a Motion for Entry of Default" if an affidavit demonstrates the default against the party that failed to plead or otherwise defend. See. Rule 55. It is without argument that Defendants failed to answer Counts 5, 6, 7, 12, 13, and 14. Therefore it is/was incumbent upon the Defendants to contest the Motion for Entry of Default, not Judge Greenaway! Judge Greenaway ruled on every motion without any hearings, nor did he set forth the required explanation of the basis of his reasoning on each Motion contained in his (illegal) Order.

Incontrovertible evidence abounds that the District Court and Department of Justice, acting in connivance, chose to manufacture a fraudulent 'standing' argument by twisting existing Supreme Court precedent instead of following the law and/or proper judicial procedure throughout the proceedings. Not a single ruling was based upon the law, facts, or proper judicial procedure; all were found to be non-existent.

We respectfully remind this Court of the words of Supreme Court Justice Antonin Scalia, concerning the Doctrine of Standing as an Essential Element of Separation of Power, 17, *Suffolk U. L. Rev. 881, 894 (1983):*

> *"[W]hen an individual who is the very object of a law's requirement or prohibition seeks to challenge it, he always has standing."*

Obviously, "H.R. 3590" directly and specifically affects each of us. Thus we have standing and by all existing precedent will prevail if proper judicial "*due process*" is observed. We would also remind the Court of the Supreme Court's *per curium*, 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 that Appellants "*We the People*" have always had standing to challenge "H.R. 3590" and all issues related to this unconstitutional bill/law. If proper judicial procedure, due process and the law was followed Petitioners would have been issued an Order in their favor.

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Appellants believe this is a valid request that this Court set forth a date for Oral argument to establish a record that has thus far has been denied by the District Court. It will also allow those sitting on the bench an opportunity to question the parties concerning each and every Count that will affect every Americans way of life. Surely, Appellees shouldn't object or fear arguing against *pro se* litigants.

"*We the People*" ask for the sake of our nation this Court adheres to *Black Letter Law*, proper judicial procedures, and most importantly, the U.S. Constitution? We know that there are men of honor and integrity sitting in the Third Circuit that will followed the law, and their Oath to uphold the Constitution even if it were distasteful or repugnant to him/her, let them step forward now.

Thomas Aquinas quoted Augustine who stated:

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It has also become necessary that Appellants request an *en banc* Court along with oral argument, and again, request the removal of Judge Vanaskie and Judge Greenaway as required by Title 28, Section 455 from adjudicating on any further on the matter of *Sebelius v. Purpura*, as required by the Judicial Conduct Rules!

We pray as a body an *En banc* court put an end to the disgraceful behavior that has thus far taken place for the integrity of the Court, and judiciary as a whole.

WHEREFORE, Appellants request Oral Argument before an *en banc* Court on the matter of *Purpura v. Sebelius*; and the removal of Judges Vanaskie and Greenaway from sitting on any panel

Respectfully submitted,

Nicholas E, Purpura Donald R Laster Jr. August 10, 2011

Cc: Clerk of the Court
Dana Kaersvang

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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

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
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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

Civil Docket No. 11-2303

REPLY OPPOSITION TO APPELLEES BRIEF ON APPEAL

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 any 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 Things*", 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,

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

Proof of Service

We, Donald R. Laster Jr and Nicholas E. Purpura, for Case 11-2303, did serve the following

REPLY OPPOSITION TO BRIEF ON APPEAL

on Appellee/Respondent/Defendants

KATHLEEN SEBELIUS and the
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
Secretary of the United States Department of Health and Human Services

TIMOTHY F. GEITHNER and the
UNITED STATES DEPARTMENT OF THE TREASURY
Secretary of the United States Department of the Treasury;

HILDA L. SOLIS and the
UNITED STATES DEPARTMENT OF LABOR
Secretary of the United States Department of Labor

through their Department of Justice (DOJ) Attorneys

Mark B. Stern, Alisa B. Klein, and Dana Kaersvang
Appellate Staff Attorneys
Civil Division, Room 7235
Department of Justice
950 Pennsylvannia, Ave., NW
Washington, D.C. 20530

and delivered to the United States Court of Appeals for the Third Circuit by United States Postal Service (USPS) Certified and/or Express mail. I declare under penalty of perjury under the State of New Jersey that the foregoing is true to the best of my knowledge.

13/August/2011

Donald R Laster Jr

Nicholas E. Purpura / Donald R. Laster Jr.
1802 Rue De La Port Dr.
Wall, New Jersey 07719
(732) 449-0856

Marcia M. Waldron
U.S. Court of Appeals Third Circuit
214 United States Courthouse
601 Market Street
Philadelphia, Pa. 19106-1790

July 5, 2011

Re; PURPURA et al v Sebelius Case No. 11-2303

TO BE MADE PART OF THE OFFICIAL RECORD

Dear Marcia M. Waldron:

We have reviewed *Title 28 USC*, the *Federal Rules of Appellate Procedure* (December 1, 2010) and the Third Circuit's *United States Court of Appeals for the Third Circuit Local Appellate Rules* (March 8, 2010) and can find no law or Rule that indicate a list of Judges who have recused themselves from any case and the reason they have stated for said recusal is confidential.

As such due to the seriousness of the Constitutional violations and violations of existing statutes that have been identified by the Petition and various actions of the Courts we are formally requesting, under the provisions of the Freedom of Information Act (FOIA), the list of Judges who have recused themselves from hearing and adjudicating PURPURA et al v Sebelius, Case No. 11-2303

Respectfully,

/s/ Nicholas E. Purpura
Nicholas E. Purpura, Donald R. Laster, Jr.

MARCIA M. WALDRON

CLERK

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

June 21, 2011

Nicholas Purpura
1802 Rue De La port Drive
Wall, NJ 07719

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

Re: Nicholas Purpura, et al v. Kathleen Sebelius, et al
Appeal Docket No. 11-2303
District Court No. 3-10-cv-04814

Dear Mr. Purpura, Mr. Laster:

This letter will acknowledge receipt on June 20, 2011 of your letter dated June 15, 2011.

Please be advised that recusal information regarding judges is confidential. In the event that you believe that certain judges on this Court should be recused with respect to your appeal, you may file a motion to recuse a particular judge or judges.

Very Truly Yours,

Patricia S. Dodszuweit
Chief Deputy Clerk
267-299-4903

Desiree,
Case Manager
267-299-4252

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NICHOLAS E. PURPURA and DONALD R. LASTER, JR.,	)	
Plaintiffs-Appellants,	)	
v.	)	No. 11-2303
KATHLEEN SEBELIUS, individually and as Secretary of the United States Department of Health and Human Services, *et al.*,	)	
Defendants-Appellees.	)	

GOVERNMENT'S COMBINED OPPOSITION TO *PRO SE* PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND MOTION TO VACATE THIS COURT'S ORDER GRANTING AN EXTENSION

Plaintiffs-appellants, who are proceeding *pro se*, have filed two motions. The first, styled as plaintiffs' "Affidavit in Support of Order to Show Cause for a Restraining Order Due to Extrodinary [sic] Circumstances that Require Emergency Relief," seeks a temporary restraining order and other emergency relief pending appeal. The second, styled as plaintiffs' "Motion to Vacate or Modify the Clerks Order Granting Extension of Time," seeks to vacate this Court's order of June 23, 2011, which granted the government a 30-day extension of time in which to file the appellees' brief. For the following reasons, both motions should be denied.

1. Plaintiffs challenge provisions of the Patient Protection and Affordable Care Act, alleging that the Act violates the Constitution and various statutes. Plaintiffs allege, for example, that the Act unlawfully creates a "private Presidential Army," Compl. at 12, and that the Act violates equal protection by taxing tanning salons because this amounts to a tax on "'White' Americans," Compl. at 31.

The district court dismissed the complaint for lack of standing. R. 31. The court explained that, although plaintiffs challenged a series of the Act's provisions, they failed to show injury resulting from any of the challenged provisions. The court held that many of their claims were, "at best, generalized grievances for which Plaintiffs have no standing." *Id.* at 15. The court further held that "neither the Complaint nor the supporting documents nor the voluminous briefs sufficiently allege — or for that matter, allege at all — that Plaintiffs will be subject to the Act's Individual mandate provision." *Id.* at 17; *cf. Purpura v. Bushkin, Gaimes, Gains, Jonas & Stream,* 317 Fed. Appx. 263, 266 (3d Cir 2009) (discussing plaintiff Purpura's "abusive and vexatious litigation in this Circuit").

2. Plaintiffs appealed and filed their opening brief on June 10, 2011. They now ask this Court for emergency relief that would enjoin application of the statute. However, their *pro se* motion fails to show any injury, much less the imminent and

irreparable harm that would be a prerequisite for emergency relief even if the claims had any merit.

3. Plaintiffs have separately moved to vacate this Court's order of June 23, 2011, which granted the government's motion for a 30-day extension of time in which to file the appellees' brief. Although plaintiffs assert that there was no good cause for the extension, the basis for the extension was set out in the government's extension motion, which was properly granted by this Court.

Respectfully submitted,

MARK B. STERN
(202) 514-5089

ALISA B. KLEIN
(202) 514-1597

/s/ Dana Kaersvang
DANA KAERSVANG
Attorneys, Appellate Staff
Civil Division, Room 7235
Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

JULY 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2011, I caused the foregoing motion to be filed with the U.S. Court of Appeals for the Third Circuit through the CM-ECF system and served upon plaintiffs by first-class mail at the following addresses:

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

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

/s/ Dana Kaersvang
DANA KAERSVANG

No. 11-2303

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NICHOLAS E. PURPURA,
DONALD R. LASTER, JR.,
Plaintiffs-Appellants,

v.

KATHLEEN SEBELIUS, Individually and as Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; TIMOTHY F. GEITHNER, Individually and as Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF TREASURY; HILDA A. SOLIS, Individually and as Secretary of the United States Department of Labor; UNITED STATES DEPARTMENT OF LABOR,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of New Jersey, Case No. 3:10-cv-04814

BRIEF FOR APPELLEES

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STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331. The district court dismissed the case for lack of standing on April 21, 2011. Plaintiffs filed a notice of appeal on May 12, 2011. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the district court correctly dismissed this *pro se* action for lack of standing because plaintiffs failed to allege injury-in-fact resulting from the Patient Protection and Affordable Care Act ("Affordable Care Act").

STATEMENT OF RELATED CASES

This case has not previously been before this Court. On August 3, 2011, this Court issued its decision in *New Jersey Physicians, Inc. v. Obama*, No. 10-4600, ___ F.3d ___, 2011 WL 3366340 (3d Cir. Aug. 3, 2011). Like this case, *New Jersey Physicians* addressed plaintiffs' standing to challenge provisions of the Affordable Care Act. This Court affirmed the order of dismissal for lack of standing in a published decision that is directly controlling here.

Another challenge to Affordable Care Act provisions is pending before a district court in this Circuit in *Goudy-Bachman v. U.S. Department of Health & Human Services*, No. 1:10-cv-763 (M.D. Pa.).

The Sixth Circuit recently rejected a challenge to the Act's minimum coverage provision in *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.). The following Affordable Care Act cases are pending before other courts of appeals:

> *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).
>
> *Liberty University, Inc. v. Geithner*, 753 F. Supp. 2d 611 (W.D. Va. 2010), *appeal pending*, No. 10-2347 (4th Cir.).
>
> *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).
>
> *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.).
>
> *Kinder v. Geithner*, No. 1:10-cv-00101, 2011 WL 1576721 (E.D. Mo. Apr. 26, 2011), *appeal pending*, No. 11-1973 (8th Cir.).
>
> *Mead v. Holder*, 766 F. Supp. 2d 16 (D.D.C. Feb. 22, 2011), *appeal pending sub nom. Seven-Sky v. Holder*, No. 11-5047 (D.C. Cir.).

STATEMENT OF THE CASE

Pro se plaintiffs Nicholas E. Purpura and Donald R. Laster, Jr., seek to challenge the constitutionality of the Affordable Care Act. They allege that the passage and enforcement of the Act violate the Constitution in numerous ways,

including allegations that the Act was not validly enacted because the President is not a naturally born citizen, Plaintiffs' Appendix ("Pl. App.") 78-80 (Complaint ("Compl.") 18-20), and that it creates a "private Presidential Army," Pl. App. 72 (Compl. 12). Plaintiffs also allege that the Act is invalid because it conflicts with other federal statutes.

The district court dismissed the suit for lack of standing, concluding that plaintiffs failed to allege injury-in-fact. Pl. App. 26 (Op. 20). The court explained that "[g]laringly absent from the Complaint . . . are any factual allegations concerning how Plaintiffs Purpura and Laster will be affected by the Act or any of its provisions." Pl. App. 11 (Op. 5). The court held that many of plaintiffs' claims were, "at best, generalized grievances for which Plaintiffs have no standing." Pl. App. 21 (Op. 15). The court further held that "neither the Complaint nor the supporting documents nor the voluminous briefs sufficiently allege — or for that matter, allege at all — that Plaintiffs will be subject to the Act's Individual mandate provision." Pl. App. 23 (Op. 17). The court examined the allegations found to be sufficient to create standing in other cases challenging that provision and concluded that no other court had found standing in a case where there were no allegations showing that plaintiffs "are or will be subject to the Act's provisions." *Ibid.*

On August 1, 2011, this Court issued an order that denied various motions filed by plaintiffs including their motion for an injunction pending appeal, their motion to vacate the government's extension of briefing time, their motion for entry of default, and their motion asking that the Court disclose the names of judges who have recused themselves. Plaintiffs then filed two motions to "recall and vacate" the order and to request "judicial intervention by an *en banc* court," which were denied by the full court on August 8, 2011. In prior litigation, this Court noted that plaintiff Purpura has been repeatedly sanctioned for "frivolous and abusive litigation." *Purpura v. Bushkin, Gaimes, Gains, Jonas & Stream,* 317 Fed. Appx. 263, 266 (3d Cir. 2009).

STATEMENT OF FACTS

A. Statutory Background

The Affordable Care Act is a comprehensive reform of our national health care system. The Act seeks to ameliorate the crisis in the interstate market for health care services that accounts for more than 17% of the nation's gross domestic product.

Millions of people without health insurance consume many billions of dollars worth of health care services each year. They fail to pay the full cost of those services and shift the uncompensated costs of their care — totaling $43 billion in 2008 — to health care providers regularly engaged in interstate commerce. Providers pass on much of this cost to insurance companies, which also operate interstate. The result

is higher premiums that, in turn, make insurance unaffordable to even more people. At the same time, insurers use restrictive underwriting practices to deny coverage or charge higher premiums to millions because they have pre-existing medical conditions.

The Affordable Care Act addresses these national problems through measures designed to make affordable health care coverage widely available, protect consumers from restrictive underwriting practices, and reduce the uncompensated care that is obtained by the uninsured and paid for by other participants in the health care market.

First, the Act builds upon the existing nationwide system of employer-based health insurance, the principal private mechanism for health care financing. Congress established tax incentives for small businesses to purchase health insurance for their employees. 26 U.S.C.A. § 45R. It also prescribed tax penalties for large employers if the employer does not offer full-time employees adequate coverage and at least one full-time employee receives a tax credit to assist with the purchase of coverage in a health insurance exchange established under the Act. *Id.* § 4980H.

Second, the Act provides for the creation of health insurance exchanges to allow individuals, families, and small businesses to use their collective buying power to obtain prices competitive with those of large-employer group plans. 42 U.S.C.A. § 18031.

Third, for individuals and families with household income between 133% and 400% of the federal poverty line who purchase health insurance through an exchange, Congress offered federal tax credits to defray the cost of premiums. 26 U.S.C.A. § 36B(a), (b).[1] Congress also authorized federal payments to help cover out-of-pocket expenses such as co-payments or deductibles for eligible individuals who purchase coverage through an exchange. 42 U.S.C.A. § 18071. In addition, Congress expanded eligibility for Medicaid to cover individuals with income up to 133% of the federal poverty line. *Id.* § 1396a(a)(10)(A)(i)(VIII).

Fourth, the Act regulates insurers to prohibit industry practices that have prevented people from obtaining and maintaining health insurance. The Act bars insurers from refusing coverage because of pre-existing medical conditions, canceling insurance absent fraud or intentional misrepresentation of material fact, charging higher premiums based on a person's medical history, and placing lifetime dollar caps on benefits. *Id.* §§ 300gg, 300gg-1(a), 300gg-3(a), 300gg-4(a), 300gg-11, 300gg-12.

Fifth, the minimum coverage provision at issue here will require, beginning in 2014, that non-exempted individuals maintain a minimum level of health insurance or pay a tax penalty. 26 U.S.C.A. § 5000A. The requirement may be satisfied

[1] Except in Alaska and Hawaii, the federal poverty line in 2011 is $10,890 for one person and $22,350 for a family of four. HHS Poverty Guidelines, 76 Fed. Reg. 3637-02 (Jan. 20, 2011).

through enrollment in an eligible employer-sponsored plan; an individual market plan, including one offered through a health insurance exchange; a grandfathered plan; government-sponsored programs such as Medicare, Medicaid, or TRICARE; or similar coverage as recognized by the Secretary of Health and Human Services ("HHS") in coordination with the Treasury Secretary. *Id.* § 5000A(f)(1). Congress exempted certain groups, *id.* § 5000A(d), and made the tax penalty inapplicable to individuals whose household income is too low to require them to file a federal income tax return, whose premium payments would exceed 8% of household income, or who establish (under standards set by the HHS Secretary) that they have suffered a hardship with respect to the capacity to obtain coverage. *Id.* § 5000A(e).

In enacting the minimum coverage provision, Congress made detailed findings that establish the foundation for the exercise of its commerce power. Congress found that the minimum coverage provision "regulates activity that is commercial and economic in nature" — how people pay for services in the interstate health care market. 42 U.S.C.A. § 18091(a)(2)(A). Congress found that, as a class, people who "forego health insurance coverage and attempt to self-insure" fail to pay for the medical services that they consume, and shift substantial costs to providers and insured consumers, raising average family premiums by more than $1,000 a year. *Id.* § 18091(a)(2)(A), (F). In addition, Congress found that the minimum coverage

requirement is "essential" to the Act's guaranteed issue and community rating reforms that will prevent insurers from relying on medical condition or history to deny coverage or set premiums. *Id.* § 18091(a)(2)(I). Congress found that, without the minimum coverage requirement, many people would exploit these new consumer protections by waiting to purchase health insurance until they needed care, which would undermine the effective functioning of insurance markets. *Ibid.*

The Congressional Budget Office has projected that the Act's various provisions, taken in combination, will reduce the number of non-elderly people without insurance by about 33 million by 2019. Letter from Douglas W. Elmendorf to John Boehner, Speaker, U.S. House of Representatives, Table 3 (Feb. 18, 2011).

B. Prior Proceedings

1. Plaintiffs Nicholas E. Purpura and Donald R. Laster, Jr. brought this suit *pro se*, claiming to represent *"We the People."* Pl. App. 7 (Op. 1 n.1) (plaintiffs' emphasis). Because *pro se* plaintiffs cannot represent other parties, the district court treated the suit as "brought solely on behalf of the two individual Plaintiffs." Pl. App. 7 (Op. 1 n.1).

Plaintiffs' complaint alleges a litany of statutory and constitutional violations arising from the passage and enforcement of the Affordable Care Act. For example, they allege that President Obama is not a naturally born U.S. citizen and thus could

not validly sign the bill into law, Pl. App. 78-80 (Compl. 18-20), and that the Act creates a "private Presidential Army," Pl. App. 72 (Compl. 12). They allege that, under the Act, "all medical records will be forwarded to a government bureaucracy," and that the Act "allows the federal government to have direct, real-time access to all individual bank accounts," Pl. App. 82 (Compl. 22). They allege that the Act's tax on tanning salons violates equal protection because it "'*exempts citizens of color*' that have no need or desire to purchase said services." Pl. App. 91 (Compl. 31) (plaintiffs' emphasis). They also allege that the Act violates equal protection by treating large corporations differently from small businesses and by "discriminat[ing] against chain restaurants" in favor of small restaurants. Pl. App. 92 (Compl. 32). Plaintiffs allege that the Act is unconstitutional because it "exempts the federal government from the anti-trust laws." Pl. App. 89 (Compl. 29). And they allege that the Act is unconstitutional because legislators who voted for the bill had not read or understood it. Pl. App. 94 (Compl. 34).

Among the many claims in the complaint are seven counts challenging the minimum coverage provision. Plaintiffs allege, *inter alia*, that the minimum coverage provision exceeds Congress's power under the Commerce Clause, Pl. App. 69-71 (Compl. 9-11), and is a form of "involuntary servitude," Pl. App. 84 (Compl. 24).

2. The district court granted the government's motion to dismiss, concluding that plaintiffs failed to establish an injury in fact with respect to any of the claims in their complaint. Pl. App. 21, 25 (Op. 15, 19).

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." Pl. App. 10 (Op. 4). However, the court observed that "[g]laringly absent from the Complaint . . . are any factual allegations concerning how Plaintiffs Purpura and Laster will be affected by the Act or any of its provisions." Pl. App. 11 (Op. 5). The district court concluded that, as to those counts of the complaint that did not involve the minimum coverage provision, "Plaintiffs' claims amount to nothing more than 'generally available grievance[s] about government — claiming only harm to [Plaintiffs'] and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large.'" Pl. App. 22 (Op. 16) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992) (alternations in original).

Turning to the challenges to the minimum coverage provision, the district court contrasted the allegations in this case to those in other such challenges where courts have found standing. The court noted that the complaint does not indicate whether plaintiffs have health insurance. Pl. App. 23 (Op. 17). It observed that, unlike

plaintiffs in other cases, plaintiffs here did not allege that they must forgo spending in order to obtain insurance in 2014. And the court explained that "neither the Complaint nor the supporting documents nor the voluminous briefs sufficiently allege — or for that matter, allege at all — that Plaintiffs will be subject to the Act's Individual mandate provision." Pl. App. 23 (Op. 17). "Plaintiffs have not alleged any facts whatsoever regarding their financial situations, let alone set forth any facts demonstrating their inability to make purchases as a result of the Act." Pl. App. 25 (Op. 19).

The court noted that the only facts about plaintiffs were presented in a footnote in their opposition to dismissal. The court accepted those facts as true for purposes of deciding the motion, Pl. App. 11 (Op. 5), and held that they would not establish standing, Pl. App. 24 (Op. 18 n.11). Taking those facts into account, the court determined that "Plaintiff Purpura would *not* be subject to the Act's Individual Mandate since, based on his age alone, Mr. Purpura appears to qualify for Medicare." Pl. App. 24 (Op. 18 n.11).

The court reasoned that, instead of pleading facts to demonstrate an injury, plaintiffs "assert their belief that a 'violation of the Constitutional is an immediate personal injury of every citizen of this [sic] United States.'" Pl. App. 25 (Op. 19) (alternation in original). The court concluded that "such a generalized type of injury

flies in the face of well-established Supreme Court precedent." Pl. App. 25 (Op. 19). Accordingly, the district court dismissed this case for lack of standing, without reaching the merits. Pl. App. 26 (Op. 20).

Plaintiffs noticed this appeal, which challenges the standing ruling and also urges that "default" summary judgment should have been entered in their favor.

SUMMARY OF ARGUMENT

To establish standing, plaintiffs must show that they have "suffered an 'injury in fact,' which is an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Mariana v. Fisher*, 338 F.3d 189, 204 (3d Cir. 2003) (quoting *Lujan*, 504 U.S. at 560). The district court correctly held that plaintiffs failed to show any legally cognizable injury resulting from the Act. Pl. App. 22, 25 (Op. 16, 19). Plaintiffs have not alleged that they lack health insurance or that they will be required by the Act's minimum coverage provision to obtain it, let alone any facts demonstrating that they need to take action now in preparation for the provision's effective date in 2014. *See New Jersey Physicians, Inc. v. Obama*, No. 10-4600, __ F.3d __, 2011 WL 3366340 (3d Cir. Aug. 3, 2011). Nor have plaintiffs alleged any concrete injury resulting from any of their other challenges to the Act. Plaintiffs raise "only a generally available grievance about government." *Lujan*, 504 U.S. at 573-74.

STANDARD OF REVIEW

This Court reviews *de novo* an order dismissing a complaint for lack of standing. *Common Cause of Pa. v. Pennsylvania*, 558 F.3d 249, 257 (3d Cir. 2009).

ARGUMENT

The District Court Correctly Held That Plaintiffs Lack Standing To Challenge The Affordable Care Act.

To establish standing, plaintiffs must show that they "have suffered an 'injury in fact,' which is an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Mariana v. Fisher*, 338 F.3d 189, 204 (3d Cir. 2003) (quoting *Lujan*, 504 U.S. at 560). Standing requirements ensure that a plaintiff has a "personal stake" in the outcome of the litigation. *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975). Article III courts are not the proper forum for citizens to "vindicate the public's nonconcrete interest in the proper administration of the laws." *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (citing *Lujan*, 504 U.S. at 581 (Kennedy, J., concurring in part and concurring in judgment)).

This Court held in *New Jersey Physicians, Inc. v. Obama*, No. 10-4600, __ F.3d __, 2011 WL 3366340 (3d Cir. Aug. 3, 2011), that an individual lacked standing to challenge the minimum coverage provision because he failed to allege facts

showing present or imminent future injury. In that case, there were "no facts alleged to indicate that [the plaintiff] is in any way presently impacted by the Act or the mandate." *Id.* at 2011 WL 3366340, *4. This Court thus contrasted *Thomas More Law Center, v. Obama*, ___ F.3d ___, 2011 WL 2556039 (6th Cir. June 29, 2011), and other cases "in which the plaintiffs alleged or demonstrated that they were experiencing some current financial harm or pressure arising out of the individual mandate's looming enforcement in 2014." *New Jersey Physicians*, 2011 WL 3366340, *4. In addition, this Court explained that an individual plaintiff in *New Jersey Physicians* had failed to allege facts establishing a "'realistic danger' that he would be harmed by the individual mandate" when it takes effect, noting his failure to address potential exemptions. *Ibid.*[2]

As in *New Jersey Physicians*, plaintiffs here do not allege that they lack insurance and do not represent that they must take any action, now or in the future, as a result of the Act. The district court explained that "neither the Complaint nor the supporting documents nor the voluminous briefs sufficiently allege — or for that matter, allege at all — that Plaintiffs will be subject to the Act's Individual mandate

[2] District courts have dismissed other challenges to the minimum coverage provision where individuals failed to establish standing. *See, e.g., Liberty University, Inc. v. Geithner*, 753 F. Supp. 2d 611, 621-22 & nn. 6-7 (W.D. Va. 2010), *appeal pending*, No. 10-2347 (4th Cir.); *Baldwin v. Sebelius*, No. 3:10-cv-1033, 2010 WL 3418436 (S.D. Cal. Aug. 27, 2010), *appeal pending*, No. 10-56374 (9th Cir.).

provision." Pl. App. 23 (Op. 17). On the contrary, plaintiff Purpura is 68 years old and likely qualifies for Medicare Part A, which, by statute, satisfies the minimum coverage requirement. Pl. App. 24 (Op. 18 n.11); 26 U.S.C.A. § 5000A(f)(1)(A)(i); *see also Mead v. Holder*, 766 F. Supp. 2d 16 (D.D.C. Feb. 22, 2011) (finding that a plaintiff would not have an injury if eligible for Medicare by 2014).[3] Thus, plaintiffs have "alleged no predicate facts to demonstrate that [their] situation[s] will even change when the individual mandate takes effect on January 1, 2014." *New Jersey Physicians*, 2011 WL 3366340, *4.

Plaintiffs assert only the type of generalized interest that courts have held to be inadequate to support standing. Plaintiffs argue that "Any violation of the Constitution grants automatic 'standing,'" Pl. Br. 13, and that they have standing because "[w]henever the Constitution is usurped, it becomes an immediate present danger of direct injury and harm to our person, families, as well as to our Constitutional Republic." Pl. Br. 14 (emphasis omitted). But that is merely a generalized grievance, not a judicially cognizable injury. "The Supreme Court has

[3] Plaintiff Laster's age is not in the record, so it is unclear whether he is also Medicare eligible. Plaintiffs may also qualify for other government health benefits; notably, they asserted in their second Motion for a Temporary Restraining Order that they served in the military. *See* Plaintiffs' Affidavit in Support of Order to Show Cause for a Restraining Order Due to Extrodinary [sic] Circumstances that Require Emergency Relief, at 9-10 (June 28, 2011).

consistently rejected claims of citizen standing predicated upon the right, possessed by every citizen, to require that the government be administered in accordance with the Constitution." *Americans United for Separation of Church & State v. Reagan*, 786 F.2d 194, 200 (3d Cir. 1986) (citing Supreme Court cases). Plaintiffs openly declare that their only grievances are "shared by . . . every citizen, resident and visitor[] of the United States." Pl. Br. 38.

Although plaintiffs allege no cognizable injury, they seek to distinguish other Affordable Care Act cases by declaring that this suit is "the most comprehensive challenge" to the Act and the district court was required to address the validity of their constitutional challenges as a "*threshold matter*." Pl. Br. 15-16 (plaintiffs' emphasis). Plaintiffs misunderstand standing doctrine. It is standing, not the merits of plaintiffs' claims, that "is a threshold jurisdictional requirement." *Interfaith Community Organization v. Honeywell Intern., Inc.*, 399 F.3d 248, 254 (3d. Cir. 2005) (internal quotation marks omitted).

Because plaintiffs lack standing, there is no reason for the Court to address plaintiffs' contention that they were entitled to "default summary judgment" on the ground that the government's motion to dismiss was untimely. Pl. Br. 6. Moreover, even if the government's motion had been untimely, plaintiffs would not have been entitled to default summary judgment. In fact, the government's motion was timely

filed. Plaintiffs never properly served their complaint on the United States. *See* Pl. App. 41 (Dec. 7, 2010 letter from the district court noting that "Plaintiffs have failed to properly effectuate service upon the United States"). In December 2010, the U.S. Attorney's Office received a mailing from plaintiffs containing their "Request for Declaratory Judgment." That mailing did not include a summons as required by Fed. R. Civ. P. 4(i)(1)(A)(i). The government nevertheless indicated that it would file a motion to dismiss. *See* Docket No. 20-1. The government received an automatic extension to January 4, 2011, pursuant to Local Rule 7.1(d)(5), and an additional extension to January 17 by order of the district court. Pl. App. 35 (order). The government filed its motion to dismiss on January 17, 2011, consistent with that order. *See* Docket No. 26 (motion to dismiss).

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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AUGUST 2011

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B) and (C), I certify that this brief complies with the type-face and volume limitations set forth in Federal Rule of Appellate Procedure 32(a)(7)(B) as follows: the type face is fourteen-point Times New Roman font, and the number of words is 3,900 (excluding the cover, tables, and certificates).

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CERTIFICATE OF BAR MEMBERSHIP, E-BRIEF COMPLIANCE, AND VIRUS CHECK

Counsel for appellees are federal government attorneys and are not required to be members of the Bar of this Court.

The text of the hard copy of this brief and the text of the brief in electronic PDF format are identical.

A virus check was performed on the electronic version of this brief using "Microsoft Forefront Client Security" definition 1.109.1371.0, and no virus was detected.

/s/ Dana Kaersvang
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2011, I filed an electronic copy of the foregoing brief through this Court's appellate CM/ECF system and caused ten paper copies to be sent to the Court by Federal Express overnight delivery. I also served it upon plaintiffs by first-class mail at the following addresses:

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U.S. Court of Appeals
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June 15, 2011

Re; PURPURA et al v Sebelius Case No. 11-2303

Dear Desiree:

Per you instructions we are making this formal request in writing that we be notified and receive a list of all judges that have recused themselves in the matter of *Purpura v. Sebelius.*

If there's any other requirements needed please inform us. Thank you in advance.

Respectfully,

Nicholas E. Purpura, Donald R. Laster, Jr.