

United States District Court
District of New Jersey

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

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

**ORDER TO SHOW CAUSE
WHY THIS
RESTRAINING ORDER
SHOULD BE DISMISSED DUE TO
EXTRODINARY CIRCUMSTANCES
THAT REQUIRE SAID
EMERGENCY RELIEF**

Plaintiffs

v.

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 Defendants Show Cause why this Temporary Restraining Order should not be made permanent to preserve the *status quo* pending a hearing on this preliminary injunction based upon the affidavit and verified complaint or that a permanent Stay not be granted.

Plaintiffs contend said Complaint filed on September 20, 2010 qualifies for an immediate Stay since the breath of the Complaint is Public Interest litigation that should qualify for "class-action status".

Plaintiffs contend there's more than a substantial likely-hood of success based upon the merits within the 15-count Complaint. Plaintiffs sufficiently demonstrated the Healthcare "Act" originated in the Senate; the Senate version of H.R.3590 violates the Constitutional authority granted the legislature. Therefore this Court in the interest of substantial justice will address such serious Constitutional challenges presented by "*We the people*" (Plaintiffs) Petition, to include names attached on separate sheet following page 42 represented by Plaintiffs Nicholas E. Purpura, *pro se* and Donald R. Laster, Jr. *pro-se*.

This request for a Stay causes no risk or harm to the defendants. This preliminary injunction is to preserve the status quo pending either a permanent injunction and/or a trial on the merits alleged in filed complaint 3:10-CV-04814-GEB-DEA 3:10. is necessary to avoid the potential of additional irreparable injury and harm, perhaps the single most important prerequisite for issuance of a preliminary injunction. On September 24, 2010 various sections of the alleged unconstitutional Act have begun to be implemented.

Defendants are required to present an affirmative defense to this Show Cause Order which has been served upon you, within 20-days or within ____ days determined by the Court. This Stay will remain in effect until this Court can hear argument. Any failure to show reason why said Stay should not be granted, Stay will remain in effect until a final judgment is made based on the law.

To Defendants Attorneys (Plaintiffs have yet to be notified on who represents Defendants) Address set forth above in caption	Plaintiffs: Nicholas E. Purpura, 1802 Rue De La Port. Wall, NJ 07719 732-449-0856	Donald R. Laster, <i>pro-se</i> (s) 25 Heidl Ave West Long Branch, NJ 07764 732-263-9235
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So ORDERED
The Honorable Justice
District Court, State of New Jersey

United States District Court
District of New Jersey

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

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

Plaintiffs

**AFFIDAVIT 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

v.

Individually & in their Official Capacity

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

Defendants.
-----x

“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)

Article III, sec. 1, Congress has vested the District courts with “Original jurisdiction of all civil actions arising under the Constitution, laws...” Article III of the Constitution provides, “*the judicial powers 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.

1. *We the people* (Plaintiffs) request this Honorable Court issue injunction relief for a Temporary Restraining Order requiring emergency relief. The potential claim of irreparable injury perhaps the single most important prerequisite for issuance of a preliminary injunction is no longer potential, instead it is taking place as this Court reads this petition for relief. Since on September 24, 2010 the commencement of select sections of the “Act” have begun to be implemented. 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 these United States associated with the Senate originated H.R.3590.

2. Petitioners submit this motion for 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 Court ruled on whether said “act” conforms to the supreme Law of the Land, the Constitution of these United States. The burden proof rest with Defendants to show otherwise

3. Profoundly important, no citizen should be manipulated and be forced by politically powerful individuals, who have allegedly “unilaterally suspended fundamental liberties”, set forth in the Constitution. The Act, the Senate originated H.R. 3590, strips citizens of assets and/or altering the current legal policies related to healthcare insurance. As it stands, as of September 24, 2010 prior to judicial review, the questionable validity of the healthcare Act is being implemented which is tantamount to putting the cart before the horse, or closing the barn door after the horses are out prior to judicial review.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Constitution Amendment, Article 5, says:

*“...speedy trial, ...nor be deprived of life, liberty, **or property, without due process of law...**”*

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**”*

4. Article III, Section 2, which 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 Five, Six, and Fourteen 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 civil, and Constitutional, rights of the citizens of the State of New Jersey and nation with the passage of Senate originated H.R. 3590, the “Act.”

5. As a threshold matter, as outlined on page 5 of Plaintiffs Petition, relating to the Constitutional challenges whether: Article 1, Section 7, para. 1; Section 8, para. 3, 12, 14, and 15; Section 9, para. 4 & 5; Article 2, Section 1, para. 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? Plaintiffs’ Petition unmistakably demonstrates how the supreme Law of the Land, the U.S. Constitution, both Articles and Amendments, were violated. Said explicit fundamental guaranteed Constitutional rights are succinctly spelled out in Plaintiffs’ Complaint that were violated by the “Act.” In the matter at bar, the Legislative and Executive branch behaved as if “*We the people*” Plaintiffs have no civil or Constitutional rights effectively erasing the Articles of the Constitution, Bill of Rights and other Amendments, reminiscent of the “Jim Crow” days.

6. The compelling reason to grant this “Restraining Order” is simple, 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 Plaintiffs will be deprived of their civil and Constitutional rights to “*equal protection and treatment*” (not limited to) as prescribed by law prior to being afforded a “*full and fair hearing*.”

7. The entire action as alleged by Plaintiffs 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 erased every citizen’s Constitutional rights under the “*color of law*” by passage of the Senate originated (unconstitutional) Act. 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 Plaintiffs, of not only New Jersey, but the entire nation, over-all in the hundreds of billions of dollars in additional taxes.

8. Of paramount importance is the unprecedented section of the Act that renders the Judicial branch of our government irrelevant as was clearly articulated in Count Twelve of the Complaint. As well as the blatant violation of Amendment 5, erasing the “*due process*” clause.

9. It must be noted, defendant have yet to prove the allegations set forth in the petition are not on their face unconstitutional. Yet they would have this “Act” go forth without review in complete disregard of the opposition of over 70-percent of the American public. Also relevant, Plaintiffs 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*.” Therefore no record exists that sets forth a ‘genuine’ issue of fact to warrant a dismissal or to refuse Petitioners request for a Restraining Order.

10. 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 14-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 petitions, Plaintiffs Petition before this Honorable District Court of the State of New Jersey contains 15 separate Counts that demonstrate the Act is unconstitutional! Most relevant, Plaintiffs Complaint includes that same argument but not limited 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 a harm to Plaintiffs by its unconstitutional implementation the entire “Act” becomes “*null and void*.” Since its inarguable the Senate originated H.R. 3590 legislation failed to include a “sever-ability clause!” That in-of-itself demonstrates the substantial likely-hood of success based upon the merits set forth within Plaintiffs 15-count Complaint.

11. Unmistakably, Plaintiffs' petition, specifically demonstrates each un-Constitutional mandate inserted within the "Act" finds no basis in law, reason, logic or prior public policy to support their outcomes. Consequently equity and justice is/was non-existent! If said "Act" were allowed to be implemented prior to judicial review on the Constitutional questions presented, it would cause 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; and, 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.

12. Because of the legislature's negligence, Petitioners invoked their right to federal interdiction under Amendment 1 of the U.S. Constitution and the FRCP. This District Court of the State of New Jersey has before it irrefutable evidence of a continual and repeated deprivation of federally guaranteed civil and Constitutional rights by the implementation of this "Act"; if defendants' unconstitutional mandates are allowed to proceed. 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 Plaintiffs and/or the general public based upon the valid challenges of the constitutionality of a broad statutory scheme which the "Act" entails. The "Act" as it stands explicitly deprives "*We the People*" (Plaintiffs) of the State of New Jersey, and the Nation, of significant property and liberty interest 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 right" of Plaintiffs to present arguments and to examine or cross examine each denial by the Defendants.

13. 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."*

14. 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 Plaintiffs' and general public's Constitutional 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. Whether the issue at bar is a bill, act, or legislative mandate, if it violates the Constitution it must be rendered “*null and void*.” The core point of this prospective injunctive relief, as is fully evident by the caption and questions presented (see page 5 of the Complaint) is the protection of Plaintiffs and those that are asking to join the suit on a daily basis who are also being subjected to an unconstitutional mandate.

15. 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! Any denial of this TRO will cause Plaintiffs 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 Plaintiffs are incorrect, which they are required to do by the rules of procedure. Plaintiffs contend, no adverse harm would be afforded defendants if said Stay were granted. Surely the Department of Justice with its army of 100’s 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.

16. Petitioners believe in the principles and laws upon which our nation was founded. Upon entering military we swear 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, therefore creating irreparable harm endangering to Plaintiffs and all citizens. Each of us, and that includes all judicial appointees, are still bound by said oath even after being Honorably discharged from their duties to always protect the supreme Law of the Land, the United States Constitution!

17. One need not be an attorney, judge, or law clerk to comprehend an injustice. Petitioners realize 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 Plaintiffs and the public as a whole. That is, if we are truly a free Constitutional Republic protected by law.

18. The fundamental requirement of “*due process*” is the opportunity to be heard “*at a meaningful time and in a meaningful manner.*” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) If “*due process*” entails a hearing before the District judge, let said hearing proceed prior to allowing a denial of “*equal protection*” and “*due process*” that will take place void any stay of enforcement of the “Act.” Defendant’s must be required to show this Honorable Court how no irreparable harm will befall Plaintiffs which is and has been held to be “perhaps the single most important prerequisite for issuance of a preliminary injunction” or dismissal of said relief. Plaintiffs clearly demonstrated how violating the Constitution of these United States causes irreparable harm.

Please Take Special Judicial Notice: Plaintiffs have established a nexus between that status and the precise nature of the Constitutional infringement alleged. Congressional representatives have acted beyond the powers delegated to Congress by Article 1, Section 8 and Amendment 16. The Supreme Court has held; 88, S, Ct, at 1954, 392 U.S. at 102: “*allows petition of the Government for redress of grievances.*”

WHEREFORE, Petitioners prays this Honorable Court grant a Temporary Restraining Order until Defendant can demonstrate why a permanent Stay should not be granted or until adjudication of the Constitutional challenges presented. And also the “*We the people*” Plaintiffs request this Court expedite this Complaint to any opening date that may become available, as soon as possible. Clearly, Plaintiffs et. al. have a legally protectable and tangible interest and not limited to Plaintiffs as citizens of this a contractual Constitutional Republic that has a very real harm that could indeed affect everyone in these United States!

Respectfully submitted,

Nicholas E. Purpura,
pro se,

Donald R. Laster Jr.
pro se.

Date: October __, 2010