No. 19-1415

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

John J. Dierlam
Petitioner
v.
Donald Trump, President, et. al.
Respondents

On Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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Issues Presented

This case originated in District Court on 2/4/2016. Despite the government's admission at least in part to a violation of Constitutional Rights, on 6/14/2018 a District Court finally and completely dismissed case 4:16-cv-307. It was appealed to the 5th Circuit, case 18-20440. The case was fully briefed on 3/12/2019. On 8/7/2019 the case was placed in abeyance in favor of *Texas v. United States,* case 19-10011 in the same court. I filed a Response Letter objecting to this action by the court. On 3/9/2020 in response to the government's 28(j) Letter, the court requested Supplemental Briefs. The government in their Brief has requested another Stay, which will be the third in the history of this case. As will be expanded later in this Petition, the cases currently in the Supreme Court present different issues as compared to the instant case. The lower courts have unjustly delayed this case and will probably continue to do so. It is possible this case will become moot by a Supreme Court decision in the case previously mentioned before the issues in this case can be properly heard. I therefore request this case be granted Certiorari and set for hearing either before or simultaneously with any case which could cause the instant case to be moot.

Issues presented to the Court for decision:

1)Do one or more Constitutional violations exist in the ACA? Subsidiary to this question and suggested by the Claims in the Complaint and subsequent papers are multiple violations which may require the court to decide such questions as:

a)Does the HHS Mandate violate one or more of the RFRA, the 1st

amendment, or equal protection?

b)Do the religious Exemptions in the ACA violate RFRA, the 1st amendment, or due process?

c)Does the ACA violate freedom of association, privacy rights, equal protection, or due process?

2)Does the Constitutional violations of the ACA constitute a law which is so corrupt, "unreasonable" and "capricious" as to goals and implementation to make it unseverable?

3)Can the principle of the Consent of the Governed be restored to some degree by a declaration properly defining a "direct tax?"

Parties to the Proceedings

Petitioner who was Plaintiff-Appellant in the lower courts, is John J. Dierlam, citizen of Harris County, Texas, and the United States. The Respondents or Defendants-Apellees in the lower courts are DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, in his official capacity as President of the United States; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR, II, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, in his official capacity as Secretary of the U.S, Department Health and Human Services; UNITED STATES DEPARTMENT OF TREASURY; STEVEN T. MNUCHIN, SECRETARY, U.S. DEPARTMENT OF TREASURY, in his official capacity as the Secretary of the U.S. Department the Treasury; UNITED STATES DEPARTMENT OF LABOR; R. ALEXANDER COSTA, SECRETARY, DEPARTMENT OF LABOR, in his official capacity as the Secretary of the U.S. Department of Labor The proceeding changed to the current occupants with the change in administration.

Directly Related Cases

John J. Dierlam v. Donald J. Trump et. al., US Southern District of Texas Houston Division, case no. 14:16-cv-307. Dismissed on 6/14/2018

John J. Dierlam v. Donald J. Trump et. al., 5th Circuit Appeals Court, case no. 18-20440. No dispositive action taken.

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On 10/13/2017 Judge Ellison referred the case to Magistrate Judge Palermo for a Report and Recommendation. In that report Judge Palermo recommended the case be completely dismissed with prejudice. See Appendix A. On 6/14/2018 case no. 14:16-cv-307 was finally and completely dismissed in favor of the government on all claims. See Appendix B. Judge Ellison in his order referred to the hearing for his reasons. See Appendix C for the relevant excerpt from the transcript.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. §§ 1254(1) and 2101(e). This petition has been filed primarily for two reasons. a)The Appeals Court has unjustly failed to rule in this case which threatens to cause much of this case to be later disposed of as moot by that court. The great reluctance of the Appeals court to make a decision as well as the placement of stays in favor of other cases is a strong indication the issues raised in this case are more properly decided by the Supreme Court. See Rule 10(c). b)This case preceded the Texas and California cases. It involves substantive rights which should take precedence over the procedural rights in those cases currently before the Supreme Court. Clearly, since the Supreme Court has granted Certiorari in those cases, this case which involves rights even more fundamental to the citizen should have "imperative public importance" as required by Rule 11.

Applicable Law Involved

The appendix reproduces part of the Statutes: 5 U.S.C. § 706; 26 U.S.C. § 1402(g), § 5000A; 28 U.S.C. § 1254(1), § 1331, § 1340, § 1343, § 1346, § 1361, § 1367 , §

1391(e)(1)(C), §2101(e), § 2201, § 2202, § 2465, § 2674; 42 U.S.C. § 2000bb-1(a) (b), 18022(a), 18091(1), 18092; 45 CFR §147.130(a)(1). Also reproduced are Art. I, §9, cl. 4 and 26. Art. I §2, cl. 3 of the Constitution and the 1st ,4th ,5th , 9th, and 10th amendments of the Constitution.

Statement of the Case

On February 4, 2016, I, John J. Dierlam, initiated a suit due to the imposition of the Individual Mandate Penalty in 26 U.S.C. § 5000A. However, 45 CFR §147.130(a)(1) among others, the HHS Mandate, made effective in 2012, caused me to terminate my employer's health insurance and made it virtually impossible to find health insurance which was compliant with my religion. The Federal Court for the Southern District of Texas was the proper venue for the Original Complaint based upon 28 U.S.C. § 1331, § 1340, § 1343, § 1346, § 1367, and § 1391(e)(1)(C); it had the authority to provide the relief sought based upon 5 U.S.C. § 706, 28 U.S.C. § 1361, § 2201, § 2202, § 2465, § 2674, 42 U.S.C. § 2000bb-1.

Claim I is the only procedural law violation in the Complaint. The agencies failed to comply with 42 U.S.C. § 18092 in the ACA. They failed to timely provide a required notice to the taxpayer, which if it were sufficiently helpful in providing aid in locating health coverage compliant with my needs and beliefs as the government indicates exists, this lawsuit could potentially have been avoided.

Claim II of the Complaint is a violation of the RFRA, 42 U.S.C. § 2000bb-1 (a), (b), by the imposition of the HHS Mandate. This regulation requires all health insurers to include certain contraceptive, abortion, and sterilization services without additional payment from women in all policies as part of minimum

essential coverage. This Mandate also violates the Establishment and Free Exercise clauses of the 1st amendment to the US Constitution in its formulation and implementation as contained in Claims III and IV.

Claim III also contains a claim the HHS Mandate violates the equal protection clause by its discrimination against men who can not receive the FDA approved contraceptive method cost free even though the contraceptive benefit accrues to women. Equal protection is also violated based upon religion.

Claim V concerns the two religious exemptions allowed by the ACA, 26 U.S.C. § 5000A(d)(2)(A) Religious Conscience Exemption and (B) Health Care Sharing Ministry, these violate the 1st amendment, RFRA, and due process. The ACA grants a 26 U.S.C. § 1402(g) exemption from the Individual Mandate Penalty to certain religions with an aversion to insurance benefits. The second exemption awards the same exemption from the Individual Mandate Penalty and reduced government intervention upon religions with a 501(3)c since 1999.

Claim VI describes a violation of the freedom of association in the 1st amendment. Here if we assume that the government has a compelling interest to create a compelled association between an individual and an insurance company the government has provided no means to protect constitutional rights. A close analogy can be found in *Janus v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, No. 16-1466 (U.S. June 27, 2018)*. The same Claim also mentions a violation of privacy rights. Here, minimum essential coverage coerce a confiscation of an individual's property for the purposes of the government and for which I disagree without warrant or due process in disregard

for private property rights.

Claim VII indicates that the ACA violates equal protection and due process, which finds support in capricious application and purposes other than those stated in the legislation. The number and partiality of the exemptions to the Individual Mandate Penalty render it irrational and capricious. Similarly situated individuals are most definitely NOT treated alike.

In the final claim, Claim VIII, I request Declaration of the term direct taxes so that the principle of the Consent of the Governed is preserved. It was the destruction or willful ignorance of this principle in the Constitution which has made the abuses in the ACA possible.

Severability analysis can be very simple. As *Brushaber v. Union Pac. R.R. Co., 24-25, 240 U.S. 1 (1916)* indicates that a 5th amendment violation can be applied to a tax which confiscates private property and, *Nebbia v. New York, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 (1934)* proclaimed a law must not be "unreasonable, arbitrary or capricious," and the means employed should have a substantial relation to the goals, the ACA fails and should be declared unconstitutional. The many constitutional violations of the ACA and its regulations as well as the self-contradictory nature of its provisions and goals amply demonstrate a more sinister nature for this Law. The ACA is a law which was a sham from the beginning, since its basis was false and its aim was confiscatory and unequal, it must be removed in its entirety.

Reasons to Grant Petition for Writ of Certiorari

I – This case has been unjustly impeded by the Lower Courts

This case has been subject to a stay and an abeyance. It is approaching yet

another stay if it is not currently in a tacit stay. Discovery has never been allowed in this case, however for the most part sufficient evidence is on the public record. The first stay I appealed all the way to the Supreme Court, but was denied.

The district court has since rendered an opinion. The district court judge decided no violation existed. He did not state any reason other than agreement with the Magistrate Judge or provide any legal theory in support of his opinion or in opposition to the reasoning of the Complaint and related documents. The District Court Judge ruled for the defendants and dismissed the case despite a recent concession on the part of the government that it had violated RFRA. The Magistrate's R&R did not lend much credence to the majority of the claims in the Complaint, which were relegated to a couple of footnotes or simply not mentioned at all. She essentially misstated these claims and instead focused on the RFRA claim. I believe several errors in fact and law were made in this report, which were mentioned in my Response. (See Dkt.#74 & 75 filed 12/11/2017 and 12/22/2017.) However, more importantly for this petition, about the time the Magistrate was writing the report the government was changing its position. The government decided a violation of RFRA had occurred and disagreed with the majority of the reasoning of the R&R. (See Dkt.#73 filed 12/12/2017.) The government agreed with the Magistrate that the claim was moot, which I will address later, but the government sought to substitute a couple of NEW reasons to dismiss the case instead of the Magistrate's argument my burden was not sufficiently substantial.

Both reasons were rather frivolous and invalid. The government alleges I never said I paid the Individual Mandate Penalties in FULL in the complaint, 28

U.S.C. § 1346(a)(1). This specific word may not have been used but the Magistrate was able to understand from my Complaint payment was made in full. From p.11 of the Magistrate's R&R, "Plaintiff has paid in full the shared responsibility payment he owed under the ACA." The next new reason to dismiss the case given by the government involved the timing of the claim sent to the IRS before the suit was filed as required by 26 U.S.C §§ 6532(a)(1) and 7422. I initially filed this suit about nine months after the first claim form was sent to the IRS. The law requires only six. I filed the second claim form with the amended Complaint, which was before six months for the following tax year, however the controversy was not new but continuing and unchanged.

The transcript of the hearing suggests based upon the inquires of the Judge, he supported fully the Magistrate's R&R, which received his only mention during the announcement of his decision near the end of the transcript. He ignores the government's confession of a violation of RFRA and, their admission a substantial burden did exist. The judge in violation of the admonition in *Hobby Lobby 134 S. Ct. at 2778* decided my beliefs are not "reasonable." Many other cases involving employers since this decision have obtained injunctions against the government from enforcement of the HHS Mandate. Clearly, the Judge has departed from conventional judicial practice and thus far the Appeals Court has done nothing to correct it. (See Rule 10(a))

I appealed this decision and have faced additional delays in the Appeals court. On 3/9/2020 the Court requested and later received Supplemental Briefs on the disposition of the case. In this request the court indicates it disfavors holding

cases pending Supreme Court decisions but invited briefs on whether a stay was requested in light of two Supreme Court cases. These cases were *California v. Texas No. 19-840* consolidated case, which was recently accepted on Certiorari by the Supreme Court. and *Little Sisters of the Poor Saints Peter and Paul Home v. Commonwealth of Pennsylvania and State of New Jersey, No. 19-431 (consolidated with Trump v. Pennsylvania, No. 19-454).*

II – The instant case presents Issues concerning the ACA, which are of great Public Importance not found in other cases

A – The instant case is a live controversy and is not moot, but could possibly be rendered moot by a current case before this Court.

This lawsuit involves many potentially complex issues involving the ACA, and its regulations. I am unaware of any suit which raises similar questions. The issues presented in the two cases above are for the most part different than the issues in the instant case. The issues in the cases currently before the Supreme Court present much more narrow questions of Law. The application of the RFRA is not at issue in either case. The government and Magistrate have contended if the new religious exemptions are allowed to take effect in the *LSOP* case my RFRA claims would be moot. However, a decision for either party will not affect the claims in the instant case. I paid in full the Individual Mandate Penalty each year it was required, for a net total of $5626.22 This sum remains in dispute until it is returned to me.

In addition, the HHS Mandate still exerts a pressure to violate my Religious Beliefs. It skews the market and makes it more difficult for me to find insurance at reasonable cost. The government shifts its argument between the ACA being a government program like Social Security and Medicare to a program administered

by a private third party, whom is free to decide whether to offer plans which will meet my religious objections. Yet, HHS mandates the same insurers provide contraception, sterilization, and abortifacients to women free of charge. The government should not be allowed to shift its argument between the ACA constituting a government program and a third party system when one or the other is to its advantage in a particular instant.

I am now very hesitant to accept health insurance because it may contain coverage which offends my beliefs or political views. I would now require any insurer to provide evidence or attest my money is not used in these areas, which is an additional impediment. Since I will be hesitant to seek medical attention due to the possible crippling cost, I face increased danger to health, which the government has caused by the loss of a "generally available, non-trivial benefit" as recognized by previous courts.[1] Therefore, I retain the three elements of standing required in *Lujan v. Defenders of Wildlife, 504 US 555 (1992)* and this claim is not moot as long as the HHS Mandate or any other which violates my religious, moral, or political views exists.

The *California* case will moot the instant case only if Texas et. al. are completely successful and the entire ACA is declared unconstitutional. Texas et. al. and the instant case both seek to have the ACA declared unconstitutional and unseverable. However, the *California* case turns on a single procedural issue. Does reduction of the Individual Mandate Penalty to $0 by the Tax Cuts and Jobs Act of 2017, Pub. L. 115-97 remove the only constitutional support for the ACA provided by the *Nat. Fedn. of Indep. Business v. Sebelius, 132 S. Ct. 2566, 2597 (2012)*

1 *Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004).*

decision of the Supreme Court? Whereas the instant case is founded on substantive Law.

B – The Public is much better served by the protection of Substantive Law as contained in this case.

If Texas is totally successful and the ACA is declared unconstitutional, a simple act of the legislature can revive it. The legislature merely needs to raise the Individual Mandate Penalty above $0. In the instant case the violation complained of originates in substantive law, specifically the 1st, 4th, 5th, 9th, and 10th amendments to the Constitution. Justice Black observed in his dissent in *Link v. Wabash R. Co., 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2D 734 (1962) - Black dissenting*, the purpose "for which courts were created— that is, to try cases on their merits and render judgments in accordance with the substantial rights of the parties."

The 5th Circuit has unjustly turned the law and the fundamental purpose of the Judiciary on its head and has placed procedural law ahead of substantive. It is procedural Law which is intended to form a fence around substantive Law. This situation is analogous to Jesus siding with the Pharisees. The 5th Circuit decision to place this case in abeyance and continue to delay this case has harmed myself and more importantly the public. (See *Clinton v. Jones, 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2D 945 (1997))* The instant case addresses violations of unalienable rights held by the public, which are not addressed in the *California* case. A proper balance has not been shown. (See *Landis v. North American Co., 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936))*

The very fact the Supreme Court has accepted the *California* case clearly

acknowledges public importance over what are only procedural law issues. The Court should have little trouble understanding the even greater importance of the substantive law issues involving the ACA in the instant case. (See Rule 10(c) and 11.)

III – In Support of this Petition Several Important arguments from this case are selectively presented.

As this case has proceeded, I have learned from the process and from responding to the challenges by my opponents. I have been able to better refine and specify my Claims as my responses progress in time. In order to be as concise as possible I will not repeat background information regarding the ACA and its regulations or many other details which can be found in my Briefs to the lower courts. I will only highlight some of the more important aspects of this case which distinguish it from other cases before this court and which will not receive consideration if this case is not accepted.

A – The HHS Mandate is based on no more than a Belief, not Science. The fraudulent and deceptive basis of this mandate places it in violation of the 1st and 5th amendments as well as the Principal of Unjust Enrichment.

Perhaps one of the most egregious abuses which precipitated this case was the unconstitutional and nonscientific creation of the HHS Mandate. It was created from the recommendations of an IOM panel, "Inst. of Med., Clinical Preventive Services for Women: Closing the Gaps 19-20,109 (2011)." This panel was improperly formed and provisioned. It claimed its recommendations were Science based however on p.66 of their report is the statement, "...evidence and expert judgment are inextricably linked,..." Id. This statement alone by the the panel majority concerning methodology is sufficient to SEPARATE THE PANEL AND THEIR

RECOMMENDATIONS FROM ANY BASIS IN SCIENCE. Many introductory texts explain and define the Scientific Method. "Expert judgment" may aid in the formulation of a proper hypothesis and in drawing appropriate conclusions, but it most certainly is not linked to the data or "evidence." Otherwise, if "expert judgment" is the "evidence" the method is short-circuited and there is no need for any experiment. An appropriately designed experiment is indispensable to the Scientific method as it is a test of the hypothesis against the real world. In addition, one panel member provided a formal dissent on p.207 of the Report indicating the panel was biased. Id. Further, evidence exists the recommendations my harm women.[2] Any hypothesis which does not have confirmation through a valid application of the Scientific Method is no more than a Belief. Therefore, it is inescapable to conclude the HHS Mandate represents only the beliefs of Democrats and the Obama administration which in violation of the first amendment and RFRA are being forced upon the population to the detriment of all four classes created by the regulation.

The four classes are created based upon gender and religious objections to contraception, sterilization, abortion, and related counseling. Despite the classes being similarly situated (both sexes are required to conceive as well as their financial and other burdens are similar) the HHS denies the FDA approved contraceptive to men free of charge which will accrue to the benefit of women in a decreased risk from contraceptive use as well as contraception. The stated compelling government interests of the HHS Mandate of "women's health" and

2 See Brief of the Association of American Physicians & Surgeons et. al. Amicus Curiae, Zubik v. Burwell, 2016 WL 2842449 (U.S. May 16, 2016), Brief for the Breast Cancer Prevention Institute as Amicus Curiae, Zubik v. Burwell, 2016 WL2842449 (U.S. May 16, 2016), Brief of Michael J. New, PH.D., Amicus Curiae, Zubik v. Burwell, 2016 WL 2842449 (U.S. May 16, 2016), and Helen M. Alvare, No Compelling Interest: The 'Birth Control' Mandate & Religious Freedom,58 VILLANOVA L. REV. 379 (2013)

"gender equality" can not be true. This facial violation of equal protection again betrays as mentioned previously a belief system imposed upon these classes. The government often refers to the HHS Mandate as the contraceptive mandate. The preventive services provision of the ACA never required contraceptives, abortion, sterilization, or related counseling. In defiance of the label "preventive" these latter services interfere with the normal functioning of the human body and were imposed by HHS not the ACA. Voluntary cessation of a practice does not take from a court the ability to prevent future abuse.[3] The agencies have hereby been shown to have abused the "minimum essential coverage" provision of the ACA. The fraudulent addition and continued existence of abortion, contraception, sterilization, and related counseling in "preventative services" and "minimum essential coverage" is a serious and continuing abuse of this new power. Without severe judicial limits placed upon this new power, I see nothing to prevent them from placing anything in "minimum essential coverage" thereby forcing the population to pay for any benefit to any group and call it health care. For instance drugs for executions, supplies for a death lottery, etc.

Aside from the constitutional violations including the "excessive government entanglement" and "political divisiveness" as evidenced by the long history of successful suits against the HHS mandate, which is in its 4th revision, the fraud and deception on the part of the government has allowed the acquisition and use of private property tangible and intangible.[4] The "Principle of Restitution" or "unjust enrichment" demands the government not be allowed to keep ill gotten gains and

3 City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982)
4 Lynch v. Donnelly, 465 U.S. 668, 673, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O'CONNOR, J., concurring)

the parties be restored to their original state.

B - The ACA forms a "compelled association" directly analogous to *Janus*. This compelled association is designed to benefit the purposes of government, which are other than the stated purposes for the legislation. Congress is acting outside the authority of the Constitution in violation of the 5th amendment and Art. I Sec. 8.

"Minimum essential coverage," the Individual Mandate Penalty, and especially the Individual Mandate work to form a "compelled association." A direct analogy exists between the union in *Janus* and private health insurance companies in the ACA. The Individual Mandate corresponds to the State law in *Janus* which required all government employees to be represented by a union, which is a private organization, for the supposed government purpose of collective bargaining if a majority of any division voted to join the union. Another state law in the *Janus* case would force all including nonunion members to pay a fee to the union. This law correlates to the fees paid to the Insurance companies for minimum essential coverage.

Per the *NFIB* decision, the Individual Mandate Penalty was a legal option to the required association with an insurance company. However, this penalty is currently set to $0, which leaves the association as the only legal option. This penalty was intended to act as a cudgel to drive people into an association with an insurance company. Even if one opted for this penalty, one would need to either forego an important benefit or pay the penalty AND the cost for perhaps illegal health insurance which does not comply with "minimum essential coverage," if it could be affordably obtained. The government worker in *Janus* has the option to quit, but the citizen has no such option in the ACA, which makes this compelled

association far more egregious.

Before *Janus* the previous scheme was laid out by *Abood v. Detroit Bd. of Ed., 431 US 209 (Supreme Court 1977).* Even if we assume a compelling government interest in the ACA, the *Abood* scheme better protects the non-union members than the ACA protects the constitutional rights of citizens. The government in Oct. of 2017 has admitted to a violation of the religious freedom of individuals so to argue the ACA advances ONLY its compelling interests of expanding health coverage and reducing costs and the means employed are the least onerous is clearly FALSE.

"Making a contribution, like joining a political party, serves to affiliate a person with a candidate." *Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2D 659 (1976).* It is the government's political and religious goals to which the parties are forced to affiliate, not the stated goals of expansion of health coverage and reduction of cost. It is a violation of freedom of speech and assembly for government to mandate an association between parties as well as the terms in a private contract which it has designed to benefit it's goals. Government's legitimate role in a private contract is to prevent fraud and similar criminal violations among the parties, not to benefit itself. As the value of the contract has been decreased to the parties other than the government, the government has made a confiscation of property in violation of the 5th amendment without due process.

Article I sec. 8 of the Constitution allows Congress "to regulate commerce" among the States. From Black's Law Dictionary 1398 (9th ed. 2009) regulation is,

"The act or process of controlling by rule or restriction..." The power to regulate does not include the power to create. Regulation implies rules or restrictions upon EXISTING commerce. The ACA seeks to CREATE a market (or commerce) and force or pressure all to participate in this market through penalties and confiscation of property without due process.

C – The ACA is confiscatory, unreasonable and capricious. The Individual Mandate, Individual Mandate Penalty, and other provisions of the Law are not implemented or designed to further the goals of expansion of Health Care Coverage or Cost Reduction. Therefore, the *Brushaber* and *Nebia* decisions would argue the law is unconstitutional and unseverable.

Severability analysis can be very simple. *Brushaber v. Union Pac. R.R. Co., 24-25, 240 U.S. 1 (1916)*, indicates a 5th amendment due process violation could be applied to a tax which confiscated property. The ACA is also in violation of the court's pronouncement in *Nebbia v. New York, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 (1934)* that "the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

Evidence other than what has been thus far presented abounds which indicates the ACA violates these previous decisions. I will here provide a few notable examples:

a)Despite the government's contention that no private right of action or wavier of sovereign immunity exists in 42 U.S.C. § 18092, statutes such as 5 USC §702, 28 USC §§ 1346, 1340, 1331 and 2674 provide the Court jurisdiction and wavier of sovereign immunity for tax collected by the IRS long before the ACA existed. I have complied with 28 USC § 7422, and 26 CFR 301.6402-2. The

exception which provides government employees a waiver in 28 USC § 2680(c) does not apply here. Therefore, either the agencies in callous disregard for the taxpayer and with gross incompetence and negligence failed to provide the required notice or, more likely they well understood the actual goal of the ACA was not to expand health coverage or lower cost for anyone so any notice or aid to find such coverage would be a waste of time and resources.

b)The government explains the reason for the passage of the ACA as a reaction, "to address a crisis in the national health care market, namely, the absence of affordable, universally available health coverage." The adult non-elderly uninsured rate averaged a fairly steady 16.7%, std. dev. of 0.5 between 1995 to 2013, including a 1.4% increase in 2010 due to the recession. No crisis is evident. In 2015 only a 6% drop from this average occurred, which suggests a very significant number of people remain uninsured after the implementation of the ACA.[5] No evidence is presented by the government that extending health insurance coverage will result in better health in the population or lower cost.

c)If the expansion of health care coverage as stated in the ACA was such a compelling government objective, the fact the Individual Mandate Penalty is not used to provide the payers any sort of health coverage or used toward the goal of expanding health care coverage contradicts the stated objective.

d)Before the TCJA of 2017, a large number of exemptions could be obtained for the Individual Mandate Penalty. These exemptions were both under-inclusive and over-inclusive as to burdens, benefits, and harm. Similarly situated individuals

5 See http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/. As of Q1 2015, 13% did not have health coverage with half of these indicating cost was a factor.

were not treated the same with Democrat constituencies appearing to benefit. Again, the stated goal runs contradictory to the design and implementation.

e)The ACA allows only two religious exemptions to the Individual Mandate Penalty, 26 U.S.C. § 5000A(d)(2)(A) and (B). The ACA purports to regulate activity which is commercial and economic in nature. It explicitly includes the purchase or not of health insurance as commercial activity. However a §1402(g) exemption, which is for the Amish and others who do not participate in Social Security and Medicare, has been previously denied to any who participates in commercial activity other than self employment. See *United States v. Lee, 455 U.S. 252, p260 (1982).* Employment status is immaterial to the ACA as all "applicable individuals" are required to obtain proper health insurance. The government contends that the purchase of health insurance is not a requirement of the ACA and imposes the Individual Mandate Penalty on other religious objectors. For no apparent reason Congress advances religions with an aversion to insurance over those that do not have such an aversion in violation of the Establishment Clause.[6] The second exemption similarly is granted to bill sharing ministries who have a 501(3)(c) in existence since 1999. No standard of care is required of these groups by the ACA. As pointed out by John Gruber, the purported architect of the ACA, these religious exemptions are contradictory to the purpose of the legislation.[7] Certain religions are granted preference for highly suspect and non-neutral reason which should evoke strict scrutiny and at least one government related party indicates the aid to certain religions is contrary to the purpose of the law let alone "not closely fitted"

6 See Estate of Thorton v. Caldor, Inc., 472 US 703 (1985)
7 See https://www.cnbc.com/id/100935430

to furthering the government's compelling interest of expansion of health care coverage and cost reduction.[8] These exemptions violate the 1st amendment and demonstrate yet another fraud.

The foregoing are some specific points illustrating the actual intent, purpose, and effect of the ACA is corrupt, unconstitutional, unreasonable, capricious, and tyrannical. The inevitable conclusion is the ACA is a law which was a sham from the beginning. Since its basis was false and its aim was confiscatory and unequal, any regulation or provision which emanated from it must not be allowed to stand. Certainly, some provisions taken in isolation such as the Religious Exemptions to the Individual Mandate Penalty could be severed, however such an analysis misses the forest for the trees.

IV – The Root Cause for the abuses in the ACA can be traced to a removal of a check in the Constitution by the *Hylton* decision. A declaration of the definition of "direct taxes" to be the most straight forward meaning of the words would go a long way to restoring the Principal of Consent of the Governed.

The "consent of the governed" is a principle spoken of in the Declaration of Independence. It expresses one of the chief complaints of the former British colonists with the tax structure imposed upon them by England. This principle as well as the solution to the British tax oppression in large part can be expressed as "we tax ourselves." It is not intended to be a one time only consent, but on going consent through representatives appropriately chosen. It was not an accident the Constitution contained two statements indicating "direct taxes" be apportioned to the population, Art. I, §2 and §9. It was intended that taxes which target individuals

8 *Larson v. Valente, 456 US 228 (1982)*

were the most subject to abuse. Therefore, it was intended "Direct Taxes" were to be levied in direct proportion to voting strength in the body which originates the tax. At the time the Constitution was passed the founders intended one man one vote, therefore likewise direct taxes MUST be apportioned to the population. Since the *Hylton v. United States, 3 U.S. 171, 1 L. Ed. 556, 1 L. Ed. 2D 556 (1796)* decision the court has left much gray area in what are direct taxes. Direct Taxes such as those imposed in the ACA are most definitely not levied in proportion to representation in the House. The purpose, intention, and effect of the ACA is to impose a system of control and taxation which displays great "partiality" and "oppression," which Hamilton indicates this provision of the Constitution was designed to prevent.[9]

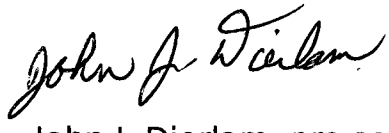
Hylton was perhaps the worst decision in the history of this country. It has deprived the citizens of a constitutional check much more important than separation of powers. At this point, a proper definition of "direct taxes" as suggested in Claim VIII can help to restore consent of the governed. The fundamental requirement of Consent of the Governed is that each individual's representation in the House be in direct proportion to taxes paid by that individual to support the Federal government, therefore a ballot weighted by the individuals tax contributions would also uphold the principle. The corrupt and Fascist purpose and effect of the ACA was made possible by this decision of the Supreme Court.

9 Alexander Hamilton, Federalist 35

Conclusion

For the reasons provided above, I request this Court exercise its power to issue a Writ of Certiorari to the 5th Circuit in this case. I also request this case be set for hearing either before or simultaneously with any case especially *California v. Texas No. 19-840* consolidated case, which could cause the instant case to be moot.

Respectfully Submitted,



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Appendix