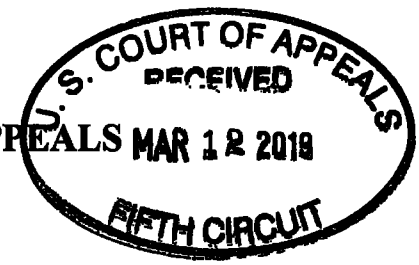
No. 18-20440



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOHN J. DIERLAM
Plaintiff-Appellant
v.
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 SATATES DEPARTMENT OF LABOR; R. ALEXANDER COSTA, SECRETARY, DEPARTMENT OF LABOR, in his official capacity as the Secretary of the U.S. Department of Labor
Defendant-Appelee

On Appeal from the United States District, Court Southern District of Texas
USDC No. 4:16-CV-307

REPLY BRIEF OF APPELLANT

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Fifth Circuit Court of Appeals

John J. Dierlam	§	
	§	
	§	
versus	§	NO. 18-20440
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Donald Trump, President, et. al.	§	
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Argument

I – Several points in the Appellee's Brief require additional clarification

In the Appellee's Response Brief either the government has misunderstood several of my arguments or is setting up Straw Men to shift the argument to more preferential ground. In the following, I will attempt to give further clarification. Unless otherwise noted, page number references apply to the Appellee's Response Brief.

A – Issue 4 on p.6 misstates the basis for the Injunction to Invalidate the HHS Mandate

On p.6, issue #4 is incorrect. The requested Injunction to invalidate the HHS Mandate is not based just on RFRA but other constitutional rights and legal principals. See Section L below for more information.

B – I object to the term "Evidence-based" on p.8 since no valid evidence has been presented by the government

"Evidence-based" is another way of saying "Science-based." I object to either description. The only evidence provided by the Defendants is from the IOM panel. As pointed out by the lone dissenter on this panel, it had a large political bias. This panel's apparent refusal to use only data from properly designed experiments renders their opinion no better than mine and of a highly suspicious nature as pointed out in the Background section of my Motion for Partial Summary Judgment or Preliminary Injunction.

C – The Cases cited by the government starting on p.26 support a finding the

instant case is NOT moot as the Individual Mandate Penalty has NOT been repealed. Only when the Penalty is repealed will my claims relating to it be moot.

The only relevant change made to the ACA was to the amount of the penalty not the language to impose the penalty which is actually the issue in this case rather than any specific penalty amount. The TCJA is to be reduced to $0 for the 2019 taxes due in 2020. The amount and calculation of the penalty have been previously changed by Congress, for example by the Health Care and Education Reconciliation Act of 2010, Public Law No: 111-152. As the language to impose the penalty is still in place, it strongly implies Congress has every intention to change it again in the future. The Law or Rule was NOT repealed; the statute does not require reenactment. Therefore, a careful reading of the cases cited, *Cammermeyer v. Perry, 97 F.3d 1235 (9th Cir. 1996)* and *Log Cabin Republicans v. United States, 658 F.3d 1162 (9th Cir. 2011)*, support the position this case is NOT moot rather than refute it. "...a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 102 S. Ct. 1070, 71 L. Ed. 2d 152 (1982).* (Internal quotations and citations will be omitted throughout this document.) The facts suggest this case is more similar to the latter citation rather than the former two. Only when the language implementing the Individual Mandate Penalty is removed will my claims relating to it be moot.

Clearly danger exists. In addition unless this Court acts, I will be assessed the Individual Mandate Penalty on or about April 15, 2019, which is a date in the future as of this writing. As the Democrats now control the House, it is very likely the Individual Mandate Penalty will be increased perhaps even retroactively especially if *Texas v. U.S., 340 F Supp. 3d 579 (N. D. Tex. 2018)* is not settled to their liking. Likewise, a degree of continuing mental anguish exists as the penalty can be easily increased by Congress at any time.

D – Footnote 2 on p.27 is in error. Injury will still be present as will the other two elements required for standing if the Individual Mandate Penalty is reduce to $0.

I would still have standing to challenge the Individual Mandate in court since a legal requirement to purchase insurance with "minimum essential coverage" harms the market and myself as a participant in that market by reducing or eliminating my choice of Health Insurance products, which will meet MY needs at reasonable prices and do not include coverages which I find offensive or unnecessary. Health Insurance has been considered a "generally available, non-trivial benefit"[1] which I will be denied or hampered in obtaining.

E – The government's negligent violation of 1502(c) prejudiced public interests in opposition to Supreme Court and other legal precedent. It was Congress which placed the Individual Mandate and Penalty in the section of code where the private right of action in 28 USC §§ 1346 and 1340 exists. The only reasons I can envision for what was an important provision of the ACA is gross negligence or knowledge that the purpose of the ACA was not the stated

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

goals.

The government on p.28 cites *Barnhart v. Peabody Coal Co., 537 U.S. 149 (2003)*, which involves the interpretation of a statute by the appellee in that case as forbidding an agency from acting beyond a deadline set by statute so that it could avoid payments to its retirees and transfer that responsibility to the public purse. The Supreme Court in that case indicated that the deadline specified by Congress did not suddenly lift the agency's authority to act, but was merely a spur to act in a timely manner. In the present case, the issue is NOT the authority of the agencies to act. Affirmation of authority to act after the deadline could protect the public interest in *Barnhart*. The instant case is the opposite of *Barnhart*, here agency action to send notice years after the Individual Mandate penalties were assessed accomplished nothing except the waste of taxpayer money as the penalties had been paid. A failure to act timely on the part of the agencies caused harm to the public interest in the present case. As I remember, I did not receive any notice until late in 2016; well after I filled this lawsuit. In *Brock v. Pierce County, 476 U.S. 253, 106 S. Ct. 1834, 90 L. Ed. 2d 248 (1986)*, the Supreme Court stated,

> This Court has frequently articulated the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided."

The agencies failure to act has prejudiced the public interests. It had the effect of

exposing the taxpayer to the harm of the Individual Mandate Penalty when proper and timely compliance may have avoided such in violation of the principle articulated by the Supreme Court.

In reply to the government's argument beginning on p.29, it was Congress which choose to place the Individual Mandate Penalty in the IRS code and have the IRS administer this penalty. Congress could have placed the Individual Mandate and Penalty in some other section or specifically state that the preexisting wavier of Sovereign Immunity and right of private action in 28 USC §§ 1346 and 1340 which normally apply to taxes and penalties in this section does not apply for this tax, but it did not.

Section 1502(c) of the ACA does not list any resource or time limitations other than the notices should commence after 2013. It was possible to create a list of taxpayers in jeopardy of the Individual Mandate Penalty even before this date since HHS had a list of enrollments in essential minimum coverage and the IRS had a list of income tax filers. It only stands to reason, that most taxpayers with a history of filing tax returns will continue to do so.

If the purpose of the legislation is to expand health care coverage and lower the costs of such coverage, it would appear that Section 1502(c) of the ACA directing the agencies would be key to aiding the taxpayer in achieving these goals.

It is critical taxpayers are aware of their NEW responsibilities and what resources are available to fulfill those responsibilities if the purpose is to be served. I can see only two reasons why the agencies would not comply with a section which holds such apparent importance especially at initial implementation, either gross negligence on the part of the agencies or more likely an understanding that the actual purpose of the ACA were not the goals as stated. If the purpose of the legislation were but a means to obtain additional control over the population and the health care industry, the actions of the agencies make complete sense as any aid to the taxpayer is superfluous and a waste of time and money. Any change will cause disruption. However, Congress showed little concern for the disruption the ACA would cause and continues to cause. The agencies display even less concern in their willful violation of 1502(c).

F – Many facts support an Establishment Clause Claim. Strong indications the government's stated purpose for the HHS Mandate is invalid is alone sufficient to support this claim. It is no coincidence the non-evidence based philosophy of the Extreme Left is the group most favored by the HHS Mandate while Catholics are shown the most hostility. Several indications of Excessive Religious Entanglement exist especially the continuing litigation which has forced HHS et. al. to repeatedly alter the exemptions for their mandate.

Although on p.31 the government does not believe an allegation can be made that the government acted with a religious purpose, in the following I will make an argument the true purpose of the HHS Mandate has just such an improper

purpose. To begin, as proclaimed by the Supreme Court in *Edwards v. Aguillard, 482 US 578, 597 (1987)*, "If no valid secular purpose can be identified, then the statute violates the Establishment Clause." The stated purpose has been shown to be "invalid," therefore is a sham, which is sufficient on its own to indicate a violation of the Establishment Clause. (See p.33 of the Appellant's Brief and the Background section the Motion for Partial Summary Judgment or Preliminary Injunction.) Several independent facts are contradictory to the alleged government goal of "improving women's health." a)The government has no proper experimental data substantiating free distribution of all FDA approved contraceptives for women will result in a net improvement of their health. Evidence exists to the contrary. b)The government facially violated equal protection by denying free distribution of FDA approved contraceptives to men. All contraceptive use has health risks. The government HARMS women by discouraging men from shouldering some of the burden. c)In a similar fashion to the agencies decision not to send the §1502(c) notices, the ACA preventive services provision for women was used by the agencies under Obama to mandate contraceptive and abortion services even though this provision was never intended to permit these non-preventive services. These facts even taken separately indicate the government's proclaimed objective of "improving the health of women" is not

their true intention. The Obama administration had a different objective for which they were willing to sacrifice the health of women and their unborn children. It takes very little speculation to understand the true objective.

To go further, if the purpose does not have a science or evidence base, which is the only reasonable foundation in a material and physical world, the only alternative is spiritual or religious especially given the broad definition of those terms by the Supreme Court. Black's Legal Dictionary 9th ed. defines dogma as "A philosophy, opinion, or tenet that is strongly held, is believed to be authoritative, and is followed steadfastly, usually to the exclusion of other approaches to the same subject matter..." A belief system is not required to involve God whatsoever. See *United States v. Ballard, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944).* Many Eastern religions such as Buddhism and Confucianism do not have a basis in a concept of God, but they have dogma and belief. In Science, belief can form the basis of a hypothesis, but it is considered useless if it can not or does not proceed to experiment, which is the case for the IOM panel conclusions.

Leftist philosophy, with out getting into too much detail, is atheist in nature and is antagonistic toward religions which are God centered. Marx, one of the founders of this movement, was an atheist. He believed that the nature of man could be remade and communism would replace religion. He believed aspects of

religion emerged from the class struggle.[2] [3] The extreme Left does not believe in "unalienable rights" "endowed by their creator," as described in the Declaration of Independence one of the founding documents of this country. This movement has a very different idea of rights with the government taking on much of the role of god in other religions. The government, which often is dominated by a dictator such as Stalin or Kim Jong-Un, determines who is important and by how much they are important relative to others. When the government overrode Science with this Leftist dogma by sanctioning and utilizing the IOM report, it is forcing a set of religious beliefs upon American Society.

In specific reply to the government on p.32, religions which are disfavored by the HHS Mandate include religions which have a prohibition against the taking of innocent human life (5th commandment), which would include most Christian religions. In addition, Catholics see all contraceptives as inherently immoral, while other Christian faiths do not see some of the FDA approved contraceptive methods as immoral. Other religions which have no prohibition on the taking of human life or contraceptives such as atheists, agnostics, pagans, and satanists are favored by the HHS Mandate as at least the females of these religions can receive a free benefit. The women of the extreme Left, which are definitely a constituency of the

2 https://archive.is/20070701032423/http://www.worldproutassembly.org/archives/2007/12/the_hidden_link.html

3 https://en.wikipedia.org/wiki/Opium_of_the_people

Democrat Party, receive multiple benefits. a)They can receive unlimited contraceptives free of charge. b)It is a government entity which has determined this right and provided this benefit. It is this government entity which has determined they are more important than any child they may carry. In effect, the government gives these individuals a license to kill their unborn, which is consistent with their philosophy. Participation demonstrates their reverence. c)Those whom they regard as enemies, such as men and Catholics, must pay for their benefit. Even if one prefers to refer to atheists, the extreme Left, and agnostics as "non-religion," the admonition in *McCreary County v. ACLU of Kentucky, 545 U.S. 844, 860 (2005)* against government non-neutrality is the same. The government has "take[n] sides" and a gross violation of the Establishment Clause has occurred.

The Catholic church has an ancient well known history against contraceptives and abortion, which has not escaped the notice of Democrats in power as seen on p.36 of the Appellant's Brief. For the reasons stated above a coincidence is not possible. The government entities created a religious gerrymander very much as in *Larson v. Valente, 456 U.S. 228 (1982)*. The available evidence indicates the compelling government interest was created to justify their decision. In *Larson,* the Supreme Court was able to determine from the Legislative History the intention of the legislature to discriminate against certain religions.

Here, it is similarly possible from the IOM report especially the dissenter's opinion, other contemporaneous Democrat authorities, as well as other evidence the intention of the government to discriminate among religions and send a message of hostility to certain religions.

The legislation at contention in *Bowen v. Kendrick, 487 U.S. 589 (1988)* was designed to work WITH religious groups for a VALID secular purpose of reducing teen pregnancy, which is a concern shared in common. Many religious and non-religious groups may apply for a grant but are not required to do so. Note also, the Court only ruled no facial violation of the Establishment Clause existed. It remanded for a further determination if there were any "in effect" violations. In the instant case, unlike *Bowen* the legislation did not specifically authorize the HHS Mandate issued by the agencies. The mandate cuts AGAINST the goals and ideas of many religious groups; it also promotes ideas through counseling services which are opposite to the religious values of these groups. The government has taken sides. It benefits one and punishes the other. Health Care is a field which involves many issues involving life, death, and related moral concerns which are the subject of greatly different treatment by various religions. One size does not fit all as the government here seeks to coerce. Excessive Religious Entanglement is inevitable and unavoidable with this approach.

On the bottom of p32, the exemptions I am referring to are further explained by reference on ROA.323-324 and are specific to the HHS Mandate only. I do not include the exemption for grandfathered plans contained in the ACA, nor am I challenging government's ability to provide religious exemptions. The web link on p.33-34 of the Appellant's Brief lists several of the Lawsuits which have or are challenging the HHS Mandate. Some of these Lawsuits have caused the Defendants to modify or grant additional exemptions to their Mandate as the agencies have drawn the regulation too narrowly to provide effective religious accommodation. As indicated on ROA.324, numerous, lengthy, and continuing litigation has been taken as one indication of excessive government entanglement with religion.

G – The government appears to shift its argument between the ACA is a private third party system and a government system similar to Social Security. Both can not be true, therefore this defense should be barred by Judicial Estoppel. The two religious exemptions to the Individual Mandate Penalty discriminate between similarly situated religions without just cause which should trigger strict scrutiny and which the exemptions fail.

The governments argument on p.34 is rather amazing in that the government Defendants can issue a requirement that all insurance providers must provide coverage meeting "essential minimum coverage" which includes the HHS mandate, but they can not require the same insurers to provide policies to individuals at reasonable cost with religious objections since the insurers are

private third parties. Here the government shifts its argument back to indicating the system set up by the ACA is similar to Social Security and Medicare with its exemptions and judicial history. It appears the government is trying to have it both ways, indicating the system is private third party or a government program where it is advantaged by one or the other argument. This defense should be barred by Judicial Estoppel.

Evidence exists which indicates a parallel with Social Security and Medicare is not appropriate see ROA.325-329 and p.37-39 of the Appellant's Brief. The two exemptions discussed here are for the Individual Mandate Penalty. Monies collected from this penalty are not used for health insurance or to support the so called "national health insurance system." Only monies collected by health insurance companies are used to fund health care. Citations referring or drawing a parallel to Social Security and Medicare are not relevant since a)this is a third party private system and b)the Individual Mandate Penalty does not go to the purchase of insurance or health care; it is a penalty/tax. The government plainly states that the ACA does not require the purchase of insurance, see ROA.253-254, 286. Religions with an aversion to insurance are similarly situated to myself and have the same option the government previously offered me, the payment of the Individual Mandate Penalty. An aversion to insurance is immaterial in the current situation.

The government now admits to a violation of RFRA and the existence of a "substantial burden" on religious exercise involving the HHS Mandate. For these and other reasons, strict scrutiny should apply and a conclusion the government has discriminated among religions with out a valid purpose or closely fit means is unavoidable. See the references previously cited for more information on these exemptions especially footnote 59 on ROA.329 in which the purported architect of the ACA indicates that Health Care Sharing exemption is counterproductive to the intention of the Law. The government has facially and in effect favored certain religions and inhibited others with these exemptions. The criteria it used to justify these exemptions are invalid and self contradictory. Strict Scrutiny should apply.

H – The HHS Mandate violates equal protection. The government's argument otherwise is flawed for a number of reasons. They lack evidence freely available contraceptives will cause a net improvement in the health of women. At best, their argument is a resource parity argument which indicates their invidious discrimination hides a different purpose. Courts have dismissed resource parity arguments.

The analysis employed by the government Defendants regarding the equal protection claim to the "Contraceptive-Coverage Mandate" on p.35-38 of their Response is greatly flawed for several reasons. a)First, as seen from the quote by Sen. Mikulski on ROA.322, Congress never intended the non-preventative services contained in the HHS Mandate. Any quote indicating an intention of Congress for these services is in serious error and must be ignored. b)The argument women paid

more for the same health insurance coverage is ridiculous especially concerning contraceptives. Men do not have a uterus or other structures which are characteristically female. Therefore, costs and coverages can not be expected to be the SAME and discrimination in this area is not the fault of men or has any irrational or invidious purpose. The argument of the government is self-contradictory. Initially, they indicate women have been discriminated against for the SAME insurance coverage, later they argue that women are different and more needy. Both can not be true. c)Court precedent also indicates women are not to be treated as less evolved creatures. For example, "...the principle that a State is not free to make overbroad generalizations based on sex which are entirely unrelated to any differences between men and women or which demean the ability or social status of the affected class." *Parham v. Hughes, 441 U.S. 347, 354 (1979).* If a women seeks contraceptive services, it must be assumed she is knowledgeable about the risks of sexual activity and has accepted ALL of them. Most if not all of these risks are the same for men engaging in the activity with them. What differences exist are based on biology, no remedy is possible and the effect will be to only invidiously penalize men and others with religious objections forced to pay for a free unlimited benefit, which has no evidence it will be of net benefit to the women receiving it. Denying men the FDA approved method of contraception free

of charge displays invidious intent. If the purpose for the HHS Mandate is contraception as ostensibly stated by the government then it should not matter which party takes the contraceptive. A male contraceptive will also reduce the risk of pregnancy for which he could have 18 years of financial obligation. The contraceptive benefit in this case is the same or greater for the female, who may not need to take the risk of a female contraceptive. The stated purpose is again not the true purpose. d)*Tuan Anh Nguyen v. INS, 533 U.S. 53 (2001)* appeals to biological fact that a mother is closer to a child before and for some time after birth. As pointed out in the previous two points, biology cuts the other way in this case. e)The quote on p.37, "women of childbearing age spen[t] 68 percent more in out-of-pocket costs than men" has no value here. From *Craig v. Boren, 429 U.S. 190, 204 (1976)*,

> It is unrealistic to expect either members of the judiciary or state officials to be well versed in the rigors of experimental or statistical technique. But this merely illustrates that proving broad sociological propositions by statistics is a dubious business, and one that inevitably is in tension with the normative philosophy that underlies the Equal Protection Clause.

This case involved drunk driving, but the observation regarding statistics is just as valid here. The 68 percent does not specify what these costs included. Perhaps, contraceptives may not be a significant proportion. This statistic does not provide any demographic breakdown. Perhaps, devout Catholic women have a lower

percentage of out-of-pocket costs. The government Defendants imply that freely available contraceptives etc. will lower this out-of-pocket cost. The result may be to increase the out-of-pocket costs for these women as increased use will be encouraged, which may in turn increase the risk of pregnancy, disease, and other unanticipated effects. Without a properly designed experiment, it can not be known. e)A mandated free benefit under all circumstances has NO relationship to any sort of rational health insurance coverage, let alone equalizing "access to health-care outcomes" on p.38. The government defendants are making a resource parity argument and implying they can determine where the line should be drawn in all situations, which is patently invidious. See *Gilardi v. US Dept. of Health and Human Services, 733 F.3d 1208, 1221(D.C. Cir. 2013).*

I – As demonstrated in the previous section, the HHS mandate does target at least in effect those of religious motivation which is sufficient to establish a violation of the free exercise clause.

Hosanna-Tabor Evangelical v. EEOC, 132 S. Ct. 694 (2012) involved the decision of a church to fire one of its ministers. The court ruled that the first amendment takes precedence over the ADA enforcement. The "outward physical act" referred to on p.38 was the ingestion of peyote in the *Smith* decision, for which RFRA was passed by Congress to modify the direction of future decisions. It was a sufficient but not a generally necessary condition, and the phrase was used to juxtapose the cases. The large number of lawsuits filed by religious

organizations as seen in the web link on p.33-34 of the Appellant's Brief would tend to differ with the government's conclusion the HHS Mandate does not target those of religious motivation at least in effect. The government's purported purpose was contested in the previous section.

J – The Individual Mandate and the Individual Mandate Penalty are analogous to the State Laws forming the compelled association in *Janus*. A violation of the 1st amendment Freedom of Association does exist.

My understanding of the theory of contract law is that a contract is generally an expression of the private law which sets the terms and conditions between the parties. The contract is generally a written document which determines the expected duties or conduct of each party or limitations thereto. The contract is expressive conduct and speech perhaps even more so than any relation between a nonunion government employee and a union. It was State Law that once a segment of government voted to be represented by a union, ALL employees in that segment would be exclusively represented by the union. It was also State Law "agency fees" would be deducted from nonunion employees to compensate the union. *Janus v. AMERICAN FEDERATION OF STATE, 138 S. Ct. 2448, 2463 (2018).* When the government uses its power to write part of what was previously a private contract and force both parties to agree to or affirm this contract (or even reduce the availability or increase the cost of any alternate contract), my speech and conduct have been coerced by the terms in this contract.

> [F]orced associations that burden protected speech are impermissible. As Justice Jackson memorably put it: If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. Id.

I do not want to be forced into any association in which I do not agree with any terms of the contract forming the relationship whether the offensive terms conflict with my religious or political views, or I simply believe they do not sufficiently meet my needs.

The government in the last paragraph on p.40 has misinterpreted *Janus*. Mr. Janus was NOT a full member of the Union. Under the terms of *Abood v. Detroit Bd. of Ed., 431 US 209 (Supreme Court 1977)*, he had the right to complain of any expenditure which he felt violated his beliefs after receiving his Hudson notice from the Union. His complaint must first be adjudicated by a Union process. Mr. Janus had objections to the collective bargaining promoted by the Union. The Supreme Court found the *Abood* process was not sufficiently protective of the rights of the non-Union participants and overturned *Abood*. Among other issues the Court found it was difficult to cleanly separate out collective bargaining activity on the part of the Union.

In the instant case, the situation is functionally the same. The State Laws mentioned above work similar to the Individual Mandate and Individual Mandate

Penalty. The major differences are the government has stated a different compelling interest. The association is with a private for-profit company rather than a private organization. No *Abood* process exists to protect citizen rights. I dropped my health insurance and have not obtained health insurance because I do not agree with the terms of the contract and the expenditure of the sums it would demand, just as Mr. Janus did not agree with the Union's use of his money. Similarly, I believe at least some of the funds will be used for immoral purposes and will harm society. I have been subject to a penalty generally larger than $535 per year Mr. Janus paid, which was calculated by the Union and was 78.06% of full union dues.

K – If Congress has the power to mandate the purchase of a product the fundamental right of ownership of one's possessions and wealth are in question. As fundamental rights are violated strict scrutiny should be applied to the Individual Mandate's violation of the 4th, 5th, and 9th amendments.

On p.41-42 the violation in contention is more specific to the Individual Mandate and not so much the Individual Mandate Penalty, the government appears to confound the two, and does not fully address the issue. The question of mootness was addressed on p.2 of this document. The issue here is somewhat more fundamental than a "refus[al] to pay for unwanted medical care."[4] It is money which is unquestionably mine and unconstitutionally extracted from me by the Individual Mandate, which requires "minimum essential coverage," and is thus

4 *U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588, 601 (6th Cir. 2013)*

used to fund activities to which I am opposed or otherwise disagree. The value of the contract and the association with the insurance company are greatly reduced or become a liability. If Congress has the power to mandate a transaction for a product real or intangible for which it controls the proceeds and pricing, then it can command the use of ALL of an individual's wealth and more. The 4th, 5th, and 9th amendments mentioned here as well as the 1st amendment will have no value, and we are no better than slaves.

> An alleged fundamental right must be carefully formulated, and it must be objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.[5]

L – Strict Scrutiny should be easily triggered due to the violation of Economic and other rights by the ACA. The ACA is unreasonable and capricious. The means selected have little relation to the goals stated, but better fit a goal of tyranny.

Quite to the contrary of the government's contention on p.43, fundamental rights other than economic have been identified. The ACA shreds the Bill of Rights. Although, from a different perspective it can be viewed that Economic rights have been so threatened that most of the other rights enumerated become meaningless. The principle of Consent of the Governed may have been functionally destroyed in *Hylton v. United States, 3 U.S. 171, 1 L. Ed 556, 1 L. Ed. 2D 556 (1796)*. See ROA.221-227. However, the idea and tradition remain, the

5 Id.

founders intended the people to control the government not the other way around. The previous section demonstrates a violation of property rights by the Individual Mandate. If private property no longer exists as in a Marxist government, then the government can not violate the 4th, 5th, and 9th amendments as there is no private property to seize. It is all government property. Can life and liberty rights be far behind? However, as demonstrated in previous sections, freedom of assembly, speech, privacy, religion, and equal protection have also been violated. The stated reasons for the ACA and related government action have been shown to be invalid, erroneous, and misleading. The actions of the government are consistent with a more sinister purpose. Strict Scrutiny should easily be triggered. I am afraid that if the Court does not act, given the increasing Leftward direction of the Democrat Party, we will only fall more rapidly down the slippery slope to tyranny, which was exactly what the Bill of Rights was enacted to prevent.

M – The government is incorrect. The requested Injunction against the HHS Mandate has a basis more in a violation of the 1st amendment and other legal principles rather than RFRA. A case was cited indicating the reluctance of a third party insurer to provide coverage free of the HHS Mandate. Women will not be denied contraceptives if the HHS Mandate is removed. For several reasons the balance of equities and the public interest will not be harmed and may be improved with out the HHS Mandate.

On p.44 of the government's Response, the government appears to be confusing the issues and the requested relief. Also, the argument now shifts once again from the ACA being a government program like Social Security to a private

third party system. I am well aware of the limitations of RFRA, which is why the first injunction requested concerns only this violation. It requests an injunction against the government from imposing any future Individual Mandate Penalty upon only myself, which of course would include the payment that will otherwise be required about April 15, 2019.

The second requested injunction is to remove all contraceptive, abortion, sterilization, and related counseling services from "minimum essential coverage." This request is based upon much more than a violation of RFRA. It has a basis in the violation of the Establishment and Free Exercise clauses of the first amendment as well as the legal theory of Restitution or Unjust Enrichment. The list of violations on p.13 of the Injunction Motion is not exhaustive. I failed to mention perhaps the most important item which is taken by the defendants due to their fraud and deception, which is a confiscation of property as the HHS Mandate interferes in the value of the contract and other rights as described previously. With this injunction, I am requesting that the government be required to disgorge ill-gotten gains. An exemption means little if no company is willing to provide the insurance at reasonable cost. The HHS mandate affects the market in which I must participate. I am a party to the health insurance contract. I should not be regarded as nonexistent relative to any insurance company. I do not ask for anything more

with this injunction than a level playing field.

Perhaps overlooked by the government on p.46 of their Response, however on p.22 of the Appellant's Brief, I cite a document from *Wieland v. U.S. Dep't of Health & Human Servs., No. 4:13-cv-1577, 2016 WL 3924118, (E.D. Mo. July 21, 2016)*. In this document MCHCP, the insurance provider to the Wielands, expressed hesitation to reinstate a policy free of the HHS Mandate, which is evidence that insurance companies may not be willing to do business with the HHS Mandate in place.

The government is also incorrect on p.46 of their Response. Again, this claim has little basis in RFRA. Nothing will be denied to women if the HHS Mandate is removed. a)The Mandate did not exist prior to 2012. Women were not denied contraceptives before that date. b)Insurance contracts are written for a specific term. Coverage continues until the end of that term. c)Health Insurance companies may continue to provide unlimited coverage free of charge. The government has suggested that these companies actually save money with this so called "preventive" service in place. If true, they will continue to offer the coverage. d)Even if Insurance companies choose not to renew unlimited free contraceptive coverage for all women. These women may opt to pay for such additional coverage or pay for these expenses out-of-pocket. e)On the other hand,

the net health of women may be improved without this free unlimited service and lives may be saved. The government has not provided any proof this service will improve the net health of women. f)Health Insurance companies and most individuals will have less government regulation with which to comply.

N – A request to declare the ACA unconstitutional is contained in the pleadings. The TCJA reducing the Individual Mandate Penalty to $0 can be viewed as simply lending additional evidence for this request. Alternatively, the reduction can be viewed as leaving no Constitutional authority to the Individual Mandate.

On p.52-53 the government requests that the Court reject as forfeited any claim that the TCJA left the ACA without constitutional authority and that the act must be struck down in whole as unseverable since this request was not in the pleadings. The request to declare the ACA unconstitutional was in the original complaint. The basis for this declaration was a violation of due process, equal protection, the first amendment freedom of assembly, as well as the 4th, 5th, and 9th amendments. Even though the TCJA occurred much after the original complaint, its effect may be considered to lend more evidence to these original claims.

26 U.S.C. § 5000A(a) remains a command to maintain "minimum essential coverage," and the TCJA has reduced the Individual Mandate Penalty to $0. It would appear that a choice to pay the Individual Mandate Penalty is no longer a legal alternative. "if someone chooses to pay rather than obtain health insurance, they have fully complied with the law." *Nat. Fedn. of Indep. Business v. Sebelius,*

132 S. Ct. 2566, 2597 (2012). Without a payment the only legal alternative is to maintain "minimum essential coverage." I would submit the result is an unconstitutional and unseverable Law as the Constitution does not provide Congress this power. This argument is very much in line with that which was argued in the sections above and prior pleadings for violations of the Constitution. The analysis is the same and the ACA should be declared unseverable and unconstitutional.

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I certify I have on March 11, 2019 mailed a copy of the above document to the clerk of the court at:

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as I do not have access to the Court's electronic filing system. I have also mailed a copy to Apellee's Counsel at:

Lowell Sturgill
U.S. Department of Justice, Room 7241
950 Pennsylvania Ave NW
Washington, DC 20530

I have emailed courtesy copies to the Defendant's counsel at Lowell.Sturgill@usdoj.gov and Emily.S.Newton@usdoj.gov

Date: March 11, 2019
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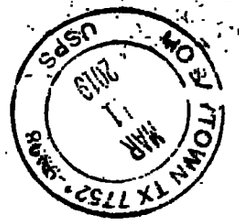

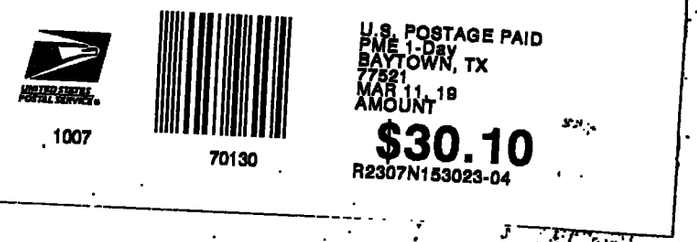

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