UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

John J. Dierlam Plaintiff	§	
versus Joseph R. Biden, PRESIDENT OF THE UNITED STATES, in his official capacity as President of the United States; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; Xavier Becerra, 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; Janet Yellen, SECRETARY, U.S. DEPARTMENT OF TREASURY, in her official capacity as the Secretary of the U.S. Department the Treasury; UNITED STATES DEPARTMENT OF LABOR; Martin Walsh, SECRETARY, DEPARTMENT OF LABOR, in his official capacity as the Secretary of the U.S. Department of Labor	§	Case No. 4:16-cv-00307
Defendants	§	

Third Amended Complaint

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I - Jurisdiction Summary

1. The plaintiff is a citizen of and resides in Harris County, Texas, and the USA. This legal action is the result of activities of the defendants in their official capacities for the Government of the United States. As this case principally involves the Laws, especially the Affordable Care Act and Constitution of the United States, this court is the proper venue, has proper jurisdiction and authority based upon 5 U.S.C. § 702, § 706, 28 U.S.C. § 1331, § 1340, § 1343, § 1346, § 1361, § 1367, § 1391(e)(1)(c), § 1491, § 2201, § 2202, § 2465, § 2674, and 42 U.S.C. § 2000bb-1.

II - Background

A - General and Procedural Background

2. About the year 2010, Congress passed Pub. L. No. 111-148 (PPACA) and Pub. L. No. 111-152 (HCERA), collectively known as the ACA. Provisions of the ACA require every individual, or their guardian, with a sufficient income as calculated in the ACA, to maintain a government approved and regulated health insurance policy or qualify for an exemption, which is referred to as the Individual Mandate (IM). The ACA coerces every individual to maintain the policy or exemption because the consequence for not doing so is a monetary penalty, the "Shared Responsibility Payment" or Individual Mandate Penalty (IMP), of a sum calculated in 26 U.S.C. § 5000A created by the ACA to be equivalent to the cost of the lowest benefit plan in the so called marketplace; various exemptions may avoid this penalty.

3. The ACA specifies little in what should be included in "minimum essential coverage," which are the requirements imposed upon health insurance providers to be provided in all health insurance policies. Instead, the ACA delegates authority

to HHS et. al. to define these specifics, 42 § 300gg-13(a)(4) - Coverage of preventive health services [for women], is but one example of this delegation. This provision does not specify or require the inclusion of any preventive services, but gives the authority to HRSA, a division of HHS, to include these services. In 2011 HRSA set up a 16 member panel at the Institutes of Medicine to make recommendations. This panel produced a report and HRSA accepted the recommendations of this panel and created a set of guidelines. [1] [2] It is here where the requirement that "minimum essential coverage" include contraceptive, sterilization, certain abortion services, and related counseling originated, the HHS Mandate. The ACA did not require or create these non-preventive services nor did Congress refer to this section as a Contraceptive Service or Mandate. In 2012 HHS et. al. promulgated regulations to implement this Mandate via 45 CFR § 147.130 (a)(1)(iv).

4. In the fall of that same year, I was employed at ZXP Technologies, which is not a religiously affiliated employer. I was enrolled in the company's medical, dental, and vision insurance plans. After hearing about these changes and mandates in the news media, I inquired about the changes during the company's open enrollment period. I was informed by the company's insurance representative due to the new regulations dating from August of that year, contraceptive coverage had been expanded and some abortion services probably would be covered within the next year. I decided to follow the teachings of my faith, drop

1 Inst. of Med., Clinical Preventive Services for Women: Closing the Gaps 19-20, 109 (2011) ("IOM Rep."), http://iom.nationalacademies.org/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx

2 HRSA, Women's Preventive Services: Required Health Plan Coverage Guidelines ("HRSA Guidelines"), http://www.hrsa.gov/womensguidelines/

medical coverage, and thereby not support these services through payment of premiums and fees. I continued the vision and dental coverage as there were no moral implications to do so. I am not a Lawyer. I was unaware I could initiate a lawsuit at this time since the government "conditions receipt of an important benefit upon conduct proscribed by a religious faith"[3]

5. Soon after dropping medical insurance through ZXP, I made an attempt to find alternative individual medical insurance. The three or so companies I contacted, indicated they would only provide coverage with the contraceptive and abortion coverage. I found one organization online, which was a Christian medical bill sharing operation and indicated it fulfilled the requirements of the ACA. However, it was Protestant with different beliefs and practices from my faith. I was therefore unable to find acceptable health coverage. In about May of 2013, I decided to make major changes especially to my diet as I found evidence these changes could greatly improve health as well as extend life. As I could not obtain health coverage, these changes could therefore make health coverage much less necessary. These changes do appear to have improved my health and immune system.

6. The Individual Mandate Penalty began in the 2014 tax year. In filing my returns in 2015, I was directed to the healthcare.gov website to check for an exemption from the penalty. I did not qualify for one. The website did not direct me to any help to find an acceptable policy once it indicted I did not qualify for an exemption.

7. 28 U.S.C. § 1346(a)(1), 26 U.S.C. §§ 6532(a)(1) and 7422 provide a District

3 Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 717-18 (1981).

Court with jurisdiction, but require a claim form also specified in 26 CFR 301.6402-2 be filed with the IRS at least six months[4] before a Federal Court is allowed jurisdiction. The taxes in dispute are to be paid in full. I filed the IRS claim forms for the full amount I calculated was due for the Individual Mandate Penalty each year the penalty was due in compliance with 28 USC § 7422 as to full payment and as to filing a claim with the IRS. The IRS honored the 2018 claim form and refunded the Individual Mandate Penalty for that year. Otherwise, the following sums were paid: 2014 => $900.93; 2015 => $1267.39; 2016 => $625; 2017 => $2832.9, for a total sum of $5626.22. As of this writing, all IRS claim forms have been filed well in excess of the required six months before a suit is to be filed. Therefore, the requirements of the statutes have been fully met and this court has jurisdiction. I terminated my employment with ZXP Technologies in May of 2015. The Original complaint was filed Feb. 4, 2016 in US District Court for the Southern District of Texas.

8. The Defendants filed a Motion to Dismiss the First amended Complaint on August 4, 2016. I filed a Motion for Summary Judgment and Preliminary Injunction on 12/08/2016. On 12/19/2016 the defendants filed a Motion to Stay which was granted on 1/19/2017. I appealed the Stay unsuccessfully. On 10/03/2017 the case was reassigned to Judge Ellison. The Motion to Dismiss was referred to a Magistrate judge for a Report and Recommendation on 10/16/2017. Near the end of 2017 the Tax Cut and Jobs Act was passed by Congress. This act changed the tax rate of the IMP to $0. No other part of the law was altered. The IMP, IM, and "minimum essential coverage" remained in place. On 6/14/2018, Judge Ellison accepted the

4 28 U.S.C. §2675(a)

Magistrate's R&R and granted the Motion to Dismiss. I filed an appeal with the 5th Circuit Court. On 11/7/2018 the defendant's adopted a final rule to enable an individual religious exemption to the HHS Mandate, 45 CFR § 147.132. On 8/7/2019 the 5th Circuit Appeals Court placed this case in abeyance for the *State of Texas v. United States, No. 19-10011 (5th Cir. Dec. 18, 2019)* case. I filed Certiorari unsuccessfully to the Supreme Court. The Appeals court on 10/15/2020 vacated and remanded the Dismissal for an analysis of standing and mootness. I again filed Certiorari unsuccessfully to the Supreme Court. The 2nd Amended Complaint was filed on 5/10/2021 and the defendant's filed a Partial Motion to Dismiss (PMTD) on 7/08/2021. It was granted on 12/15/2021.

B - Religious Background

9. I , John J. Dierlam, was baptized into the Catholic faith shortly after birth. My parents were both practicing Catholics. I have regularly attended services and practiced the Catholic faith as best I could throughout my life. I am not a part of the clergy or religious, but simply a member of the laity. The Catholic Church teaches that life begins at conception. The Church has long held that the practice of abortion, contraception, and sterilization are reprehensible and sinful. Supporting these activities even indirectly such as by knowingly voting for a candidate for public office who supports or advocates abortion can be grounds for excommunication from the Church. "Any Catholic who substantially assists another in the deliberate sin of abortion is also guilty of serious sin and incurs a latae sententiae excommunication." (http://www.catechism.cc/articles/abortion-excommunication.htm) I understand this pronouncement is derived from the Code of Canon Law §1398 and §1329.

10. The sacrament of penance is one of seven sacraments instituted by Christ and reflected in the New Testament, "Whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained." (John 20:23) A person who is excommunicated is not in union with the Church and so is separated from the sacraments which includes the Eucharist (Holy Communion). Canon law and the precepts of the Church require all Catholics to receive communion and penance at least once a year. The Catholic church also teaches that salvation is achieved not by faith alone, but through faith and good works (James 2:14-24), which generally requires a life long process. We are called to practice what we believe which includes frequenting the sacraments and defending the teachings of Christ. Excommunication in effect means the excommunicated person is held bound in their sin. They can not receive the sacraments including communion and penance. A sin serious enough to warrant excommunication is generally considered extremely mortal to the soul. As a consequence, although God is the final judge, in the eyes of the Church the excommunicated person is also hell bound unless the person takes steps to amend the ways of his life and remove the excommunication. Therefore, supporting abortion in any way is a very serious matter in the Catholic Church.

1 – My views of the Catholic faith generally follow tradition

11. My religious views are more traditional and orthodox than those which have emerged over the last few decades. In the book, Taylor R. Marshall, Infiltration, the Plot to Destroy the Church from Within, Crisis Publications, Manchester, New Hampshire 2019, beginning on p83, the Dr. Marshall describes how Bella Dodd in

testimony before Congress admitted to being a Communist agent. She among others helped to recruit over 1100 men of like mind to enter the priesthood for the purpose of infiltrating the Catholic Church and corrupting it from within. These corrupt men moved up the ranks. Now many of these wolves in sheep clothing hold some of the highest positions in the church. They promote heresy and apostasy.

12. In *United States v. Ballard, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944)* the Supreme court ruled that all individuals are allowed to believe what they will without interference. The fifth circuit helped to define the parameters of a religious belief,

> Bona fide religious beliefs include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. A court's inquiry is limited to focusing upon the individual's motivation. Specifically, a court's task is to decide whether [the individual's beliefs] are, in his own scheme of things, religious. In this regard, a belief is religious if it is [a] sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by ... God. Conversely, whether the belief itself is central to the religion, i.e., whether the belief is a true religious tenet, is not open to question. *Davis v. Fort Bend County, 765 F.3d 480 (5th Cir. 2014).* (internal quotations and citations omitted.)

13. This court further indicated, "the sincerity of a plaintiff's engagement in a particular religious practice is rarely challenged, and claims of sincere religious belief in a particular practice have been accepted on little more than the plaintiff's credible assertions." Id. (internal quotations omitted) These cases would suggest that this court should follow my definition of my faith and practice and not the interpretation of any one in the hierarchy of the Catholic Church or other person.

2 – The Growing Influence of the Praeternatural

> For our struggle is not against flesh and blood, but against principalities and powers, against the directors of this world of

> darkness, against the spirits of wickedness in high places. (Ephesians 6:12)

14. I have recently come to understand the "principalities and powers" mentioned in the quote above refers to the former ranks of certain fallen angels. Fr. Ripperger is a Catholic priest and exorcist. He has much experience with the demonic. Spiritual warfare is not what is portrayed in movies. He is well educated and has several good videos on youtube, especially on the Sensus Fidelium channel. In several of them he describes how the demonic operates, which has many parallels with the Left and Democrat party. He sometimes points out these parallels. I can see many parallels in the concept exorcist's call "diabolic inversion." I have come to the conclusion it is not possible to be a good Catholic and a Democrat, as this party appears heavily influenced by the demonic. I understand many current U.S. Bishops are Democrats.

15. In the time we live, both the government and the church have been corrupted. It is unfortunate and disappointing, but the Church has had instances of corruption in the past two millennia of its history. However, on this occasion it appears the corrupt instead of trying to cover up their transgressions are trying to make these deviations the accepted norm, which is also one of the tactics of the Left. Previous popes have condemned Communism and Socialism.[5]

16. Although many Leftists attempt to portray the NAZI regime in Germany as extreme right wing capitalism, nothing could be further from the truth. A quote from Ludwig Von Mises illustrates this point,

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5 https://www.tfp.org/what-the-popes-have-to-say-about-socialism/?msclkid=64583b16a31f11ec91d7dd81c2c7f241 and https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19370319_divini-redemptoris.html?msclkid=f633b0c6a31f11ecb4f96eb634d85090

> What Mises identified was that private ownership of the means of production existed in name only under the Nazis and that the actual substance of ownership of the means of production resided in the German government. For it was the German government and not the nominal private owners that exercised all of the substantive powers of ownership…The position of the alleged private owners, Mises showed, was reduced essentially to that of government pensioners.[6]

NAZIs were inimical to free market capitalism and the Christian religion.[7]

17. Corruption in the church has been predicted by multiple apparitions and saints. The effect of this corruption is to place a greater burden upon the laity. My conclusion for a few years now has been that the events we now see unfolding throughout the world with the advance of the Leftists, the Great Reset[8], etc. can not be so well coordinated by men alone but must be inspired and driven by the praeternatural. Near the end of the video https://www.youtube.com/watch?v=0ENylipwTOs this idea is reflected. I understand the title uses a poor translation from Spanish it should read Our Lady of the Good Event of the Purification. This apparition 500 years ago made highly accurate prophecies of the events which have now unfolded. The apparition provided a specific time period. Other apparitions and Saints predict a period of Chastisement; none give specific dates.

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6 https://beforeitsnews.com/alternative/2014/11/25-signs-that-america-is-rapidly-becoming-more-like-nazi-germany-3067072.html

7 Id.

8 See https://imprimis.hillsdale.edu/what-is-the-great-reset/ (Michael Rectenwald, "What Is the Great Reset?" *Imprimis*, Vol.50, No. 12, December 2021, Hillsdale College.) for a historical presentation of the idea. (I would categorize Klaus Schwab's idea of "stakeholder capitalism" more simply as Fascism, which is well rooted in the Left. National Socialism, which is the first part of the root of the acronym NAZI, is still socialism, not as smeared by many Leftist websites as "far right." The socioeconomic spectrum I was taught in high school places maximum individual freedom on the far right, socialism in the middle and, Marxist communism on the far left. The far left represents virtually no individual freedom and maximum government control. Everything is owned by the government. Socialism is where the major means of production are owned by the government. The far right would logically have very small or no government, and would definitely not include the authoritarian regimes which existed just prior to WWII in Germany and Italy. I would therefore place Fascism on the Left somewhere between Socialism and Communism. This redefinition of Right v. Left is but one example of the Left's tactics to control thought. See the philosophy of the Left section below.)

18. The Great Reset is but another manifestation of the Left.

> The Great Reset's corporate stakeholder model overlaps with its governance and geopolitical model: states and favored corporations are combined in public-private partnerships and together have control of governance. This corporate-state hybrid is largely unaccountable to the constituents of national governments. (Michael Rectenwald, "What Is the Great Reset?," *Imprimis*, Vol. 50, No. 12, December 2021, Hillsdale College.)

19. The quote above very much appears to describe Fascism. It also describes the system created by the ACA from design to implementation by the defendants. Any sort of business and government merger is simply NOT allowed under our constitutionally limited republic. See below the sections on the Constitutional violations concerning the ACA, especially the sections on compelled association, lack of congressional power to create commerce, and freedom of contract.

3 - Health Care Bill Sharing Ministries

20. The government herds religious adherents into what the defendant's call "religious health care," which are the ACA allowed health care bill sharing ministries in existence before 1999 and organized as a 501(3)c. I like to think my moral beliefs are based upon Catholic teaching. However, I do not agree with the Catholic hierarchy on all matters as indicated in the previous sections. My interpretations and conclusions can be more restrictive than those of the church. Some members of the Church may accept health care sharing ministries. I have objections to health care sharing ministries which include:

21. a) Most if not all of these ministries are of Protestant origin, not Catholic. Protestants accept some contraceptives; Catholic teaching forbids all contraceptives except abstinence and contains other teachings which Protestants may not follow. 26 U.S.C. § 5000A(d)(2)(B)(ii)(II) requires the "members of which

share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs.," which alone would make these organizations not an acceptable means of health care for me.

22. b)Many if not all of these bill sharing ministries send regular communications directing payments and notes to the patient. I often differ with the current practice of medicine as indicated below. I will be placed in a very difficult moral position if after learning of some medical condition of another member I had doubts about the efficacy of their treatment. I will be torn between suggesting research into alternate treatments or saying nothing to preserve the patient's privacy and peace of mind. Sending payments to individuals for specific needs implies I agree the treatment is correct, necessary, and in the individual's best interest, which can present large moral difficulty. While these objections do not rise to the level of severity of accepting abortion coverage, these are "firmly held beliefs." In other words, I may avoid the fire, but I am forced to jump into the frying pan. If one substitutes "bill sharing ministry" for "health insurance issuer" the argument of the government for its violation of RFRA is identical in their Response to the Magistrate's R&R on p.4. My choices are as equally onerous and similar to the ones presented by the government in the determination of its violation.

23. c)I am not at all comfortable with other individuals paying for my personal medical bills, and even if well meaning, knowing about my medical conditions.

24. d)Health care bill sharing is not insurance and members do not legally accept the risk of loss of others in exchange for premiums. Limits are often placed on the number of bills for a particular treatment as well as a cap on the total cost

per year.

25. e)The ACA imposes no standard of care on these ministries. Therefore, bill sharing is inferior to insurance.

26. f)The government has formed a ghetto in which "religious health care" segregates second class less favored citizens or is purposely penalizing religious adherents. I want a level playing field not unlike *Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).* Although Brown involved constitutional violations based upon racial discrimination in education, I do not want my ability to negotiate or refuse a contract abridged by the government, which impacts my freedom of religion, speech, etc. I should be allowed on an EQUAL basis to find health coverage. Disparate impact here exists based upon religion rather than race or alienage.[9] (See also *Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954)*.) The two requirements of health care sharing ministries function to block any future belief system from "religious health care" as well as any innovation of products with long established religions. The current segregation attempt is at least as invidious as the previous attempt based upon race since the present attempt is to create a 2nd class status for some citizens and declare them or their thoughts essentially illegal and inferior.

C – Information Common to all Claims
1 – Corruption of the Medical Profession.

27. I believe the health care profession has become increasingly corrupt not unlike the rest of society. It has too great a focus on treating symptoms and making profit rather than finding the root cause of a patient's problem. The Hippocratic oath does not seem to have much meaning today. I have been

9 *Arlington Heights v. Metropolitan Housing Corp., 280 429 U.S. 252 (1977).*

misdiagnosed at least twice because the doctor placed their needs above mine and because they were unwilling to invest the time and effort to find the cause of the problem. Although already in progress before the ACA, which hastened and reinforced the process, the health care profession is increasingly used as agents of the government to enforce and implement policies often at the detriment of patients. For these reasons, the health care industry can be as much a threat to one's health as an aid. With the increasing corruption the existing system can not be trusted. The government and the health care industry will increasingly prioritize their own interests ahead of those of the patient. Unless by some means the individual is allowed sufficient control to balance the power with these other more powerful interests, the individual will lose life, property, and health. The system is supposed to exist to serve the individual not the other way around.

28. Government and the Health Care Industries' reaction to the Covid pandemic has helped to prove correct the statements above. Several MDs have taken self-contradictory positions. For example, Anthony S. Fauci M.D., who is the Director of the National Institute of Allergy and Infectious Diseases, was first against the wearing of masks then more than likely when Democrat policy makers saw the advantage and opportunity to wield and demonstrate power, he changed his tune and was in favor. The data I found early on in the pandemic indicated simple cloth masks were of limited efficacy and would not prevent the disease, which suggests the first statement by Fauci was correct.[10]

29. A Houston doctor was recently quoted as saying, "The issues with vaccines and ivermectin really go against patient autonomy and their right to choose their

10 https://pubs.acs.org/doi/abs/10.1021/acsnano.0c03252

treatment."[11] This same doctor has asked the Methodist Hospital questions regarding Covid and the hospital's involvement, such as "How many patients were refused early treatment?" "Under the Freedom of Information Act for non-profit hospitals, Methodist Hospital must release their data. Methodist Hospital has refused to do so."[12] Remdesivir has been approved by the government to treat Covid, however some evidence indicates this treatment may be harmful to patients already hospitalized as well as evidence politically connected individuals have conflicting financial interests in its promotion.[13] Hospitals also have financial interests which can conflict with the best interests of the patient among these are:

> A "free" required PCR test in the Emergency Room or upon admission for every patient, with government-paid fee to hospital.
> Added bonus payment for each positive COVID-19 diagnosis.
> Another bonus for a COVID-19 admission to the hospital.
> A 20 percent "boost" bonus payment from Medicare on the entire hospital bill for use of remdesivir instead of medicines such as Ivermectin.
> Another and larger bonus payment to the hospital if a COVID-19 patient is mechanically ventilated.
> More money to the hospital if cause of death is listed as COVID-19, even if patient did not die directly of COVID-19.
> A COVID-19 diagnosis also provides extra payments to coroners.[14]

Dr. Paul Marik, founder of Front Line COVID-19 Critical Care Alliance (FICCC), has said of the 20% bonus for remdesivir, "Is this not evilness in its purest form?"

30. The article at https://eppc.org/publication/nuremberg-1947/ draws a parallel from the ethos developed in Germany during and just prior to WWII, in which doctors were encouraged to think more about the health of society rather

11 https://amgreatness.com/2022/01/17/houston-doc-sues-methodist-hospital-for-covid-data-and-financial-info-regarding-remdesivir/
12 https://www.educationviews.org/dr-mary-talley-bowden-takes-a-stand-for-texas-patients/
13 https://amgreatness.com/2022/01/17/houston-doc-sues-methodist-hospital-for-covid-data-and-financial-info-regarding-remdesivir/
14 Id. See also https://www.protocolkills.com/

than the well being of the individual patient with the current vaccine mandates. Although Otto von Bismarck began the socialization of medicine in Germany in the 1880s, ironically to prevent further socialism, it was the NAZIs who completed the process. They extended this system over the more "Aryan" countries they conquered primarily to extend their control over the lives of every individual. An eyewitness in Austria relates what happened there,

> Before Hitler, we had very good medical care...After Hitler, health care was socialized, free for everyone. Doctors were salaried by the government. The problem was, since it was free, the people were going to the doctors for everything. When the good doctor arrived at his office at 8 a.m., 40 people were already waiting and, at the same time, the hospitals were full. If you needed elective surgery, you had to wait a year or two for your turn.[15]

31. Medical doctors were often charged to implement the policies of the government such as Euthanasia, or "life unworthy of living," eugenics, in the name of which over 300,000 people were sterilized, and the experiments on and extermination of prisoners and others were all seen as part of health care.[16]

32. The Nuremberg Code, which is a bioethics reform dating from just after the war, requires "free and informed consent", which requires the individual to have sufficient knowledge and make a choice "...without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion..." for any medical procedure or experiment.[17] Based upon the evidence above the Government has violated these principles and involved medical professionals in this corruption to further its purpose over the rights of the

15 https://beforeitsnews.com/alternative/2014/11/25-signs-that-america-is-rapidly-becoming-more-like-nazi-germany-3067072.html
16 https://fee.org/articles/national-health-care-medicine-in-germany-1918-1945/?msclkid=2c1339e5a33d11ec851da96c350e1309
17 https://eppc.org/publication/nuremberg-1947/

individual. (See the Section below on Leftist Abuse of Science and Leftist Philosophy for additional information)

2 – Relevant Science background

33. It is very important to understand the many flaws in the IOM panel and their recommendations. The incorporation of these recommendations by HHS et. al. in minimum essential coverage form the basis of several claims in this Complaint. In Medicine, often due to a lack of resources and information, extrapolation, educated guesses, and consensus opinion are utilized as patients can not always wait for Science to find a definitive solution to immediately urgent problems. Information of this nature appears to be the basis for the bulk of the so called "evidence" considered by the panel. This information was often gathered and intended for a different purpose than recommending insurance coverage. In Science, the proper formulation of the hypothesis or question to be addressed by the experiment is of crucial importance in the correct design of the experiment.

34. It appears that USPSTF categories and recommendations are a synthesis of information from various sources, which may include valid peer reviewed scientific studies, studies of lower quality, and opinions many of which may be intended to provide answers to a different but related concern. Except for valid scientific experiments designed to answer one or more specific questions, much of the USPSTF recommendations as applied by the panel do not meet the standard required to be relevant data from the point of view of Science. The IOM Report beginning on page 61 contains a justification of the methodology used to even further extend available information already of dubious scientific value to a purpose to make additional recommendations beyond the USPSTF. It is here where

the recommendation for sterilization, contraceptives, certain abortifacients, and related counseling is made. On p.66 is the statement, "...evidence and expert judgment are inextricably linked,..." Id. This statement by the the panel majority concerning methodology, on its own, is sufficient to SEPARATE THE PANEL AND THEIR RECOMMENDATIONS FROM ANY BASIS IN SCIENCE.

35. Many texts exist which contain a basic explanation of the Scientific Method and experimental design. Starting on p.1 of Statistics for Experimenters: An introduction to design, data analysis, and model building, George E. P. Box, William Gordon Hunter, J. Stuart Hunter, published by John Wiley and Sons, Inc., (1978) is a description of the Scientific Method, which the authors more generically term the "learning process." "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 method as it is a test of the hypothesis against the real world, which allows the effects of the physical principles involved to be made visible. At its root, Science is a search for truth. As one who was attracted to Science at a young age in part because of this purity of purpose, I find this attempt to destroy the integrity of the process as reflected in this statement by the panel majority very disturbing. I find it difficult to believe that a panel composed of mostly doctorates would simply make a fundamental mistake such as this one. A conclusion the Defendants are seeking to force certain politics, beliefs, and personal opinions upon the populace is unavoidable. By using

the term Science in connection with this report and their recommendations, the panel majority and the Defendants seek to use this term as a weapon against their opposition hoping to make their positions unassailable.

36. A conflict of interest appears to be in evidence as 10 out of the 16 members have Medical Doctorates. Several recommendations could have the effect to increase the eventual payments to themselves or their colleagues. The committee had a very limited time span of 6 months to complete their work. They were not allowed to consider any effects of community based prevention activities nor the cost or cost effectiveness of any preventative measure. The committee report recommends evidence review and the making of coverage decisions be the concern of separate bodies. However, these two functions were combined in this single committee. The committee does not appear to be properly populated, provisioned, or charged for the tasks to which HHS later utilized its recommendations to justify the imposition of the HHS mandate.

37. Enormous error on the part of the panel majority is indicated by apparently the only member of the panel with insurance industry experience. (See p.207 of the Report). In his dissent, he gave a very brief outline of a method to place insurance related decision making on a firmer scientific foundation. He also states,

> The view of this dissent is that the committee process for evaluation of the evidence lacked transparency and was largely subject to the preferences of the committee's composition. Troublingly, the process tended to result in a mix of objective and subjective determinations filtered through a lens of advocacy. An abiding principle in the evaluation of the evidence and the recommendations put forth as a consequence should be transparency and strict objectivity, but the committee failed to demonstrate these principles in the Report.

38. As errors may occur in the application of the Scientific Method at any step,

review and critique can play a very important role in the application of the Scientific method. It is telling the IOM panel majority chose to largely ignore and dismiss the criticism and dissent in their Response rather than address it. Mr. Sasso should be commended for his lone dissent in the face of the obvious pressure from the majority.

39. The panel indicates that HHS did not charge it with cost consideration, which appears to be in complete opposition to the Congressional stated goal of cost reduction. (See pp.2 and 210 et. al. of the Report) Mr. Sasso properly indicates how a hypothesis should be formulated which is appropriate to the situation of what coverage should be included in "preventive services." Cost is a factor which can not be removed as it is required to determine effectiveness and efficiency if the object is actually insurance coverage. For the reasons provided in the previous paragraphs, the recommendations of the panel have no basis in Science and therefore represent only the beliefs of the Obama administration which are being forced upon the population to advance their agenda. In fact, evidence based upon Science exists indicating that the recommendations of the panel may harm women.[18]

40. The Defendants refer to the work of the panel as a "science-based review" or use the term "evidence based."[19] Science is deeply rooted in the Scientific method first described by the ancient Greeks. The scientific Method in a nutshell contains the elements, Hypothesis, Experiment producing data, and Conclusion

18 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)

19 For example, Defendant's Motion To Dismiss the First Amended Complaint (MTD1AC) p.8

based on the data. This method is often cyclic. Anything which does not follow this method can not be termed Science or even "science-based." The IOM panel may have formed a Hypothesis, but no experiments were conducted and the data they employed were either nonexistent or inappropriate to the conclusions they drew.[20]

41. Consensus opinion has little if any importance in Science. I will provide one modern example. Before 1982, the consensus among physicians and experts was stomach ulcers were caused by stress. However, an Australian doctor employed the scientific method and produced data indicating that at least 80% of all ulcers were caused by Helicobacter Pylori.[21] The medical consensus was wrong in large part because the original conclusion was NOT science-based. It was based on the improperly tested Hypothesis that no bacteria could long survive the acid environment of the stomach. Similarly, the Defendants have provided no evidence abortion, contraceptive, and sterilization services with no cost sharing will produce any health benefits. Evidence exists for the opposite conclusion. The IOM panel ignored or diminished the significance of many studies indicating women will face much greater harm from increased risk to cancer and other disease over any protective effect of these services as promoted by the IOM panel. Public health and the environment may be harmed as well since these drugs resist degradation after excretion and can accumulate in the environment.[22]

42. In addition, I have concerns the long term reliance on any drug other than

20 See Section III of Helen M. Alvare, No Compelling Interest: The 'Birth Control' Mandate & Religious Freedom,58 VILLANOVA L. REV. 379 (2013) for a more extensive analysis of the IOM report.

21 See for example https://pubmed.ncbi.nlm.nih.gov/15977368/?msclkid=353c88c2a35b11ecac0392d2a507469b

22 See Brief for the Breast Cancer Prevention Institute as Amicus Curiae, Zubik v. Burwell, 2016 WL 2842449 (U.S. May 16, 2016). Also footnote 4 in this reference indicates that the HHS and FDA definition of contraceptive versus abortifacient is not without controversy. Evidence exists some of the FDA/HHS labeled contraceptives can have an abortifacient effect.

what the body produces naturally can have unintended and very negative effects. Therefore, the widespread multigenerational use of abortifacients and contraceptives causes me great concern not only for serious health consequences in the women taking these drugs but for the impact it may have on the future of the human race. I do not believe the very long term mutagenic and teratogenic effects have been studied sufficiently, and most definitely the impacts of this type of drug reliance on human evolution have not been considered.

43. Footnote 14 of the Defendant's Motion to Dismiss the 1st Amended Complaint (MTD1AC) is very misleading. It implies the position of those who maintain certain drugs and devices have a abortifacient effect have no Scientific basis. This view represents a fundamental misunderstanding of Science. A definition in Science is taken as fundamental. A definition merely sets the meaning of a label. In its pure application, it can be neither right or wrong. For example, English and Metric units define some fundamental quantities of matter. These definitions represent choices for these quantities. In Science such competing definitions are not compared on the basis of right and wrong but on the basis of convenience of use. The Metric system is more convenient to use for many problems in Science and its use predominates. In the present case, we have two different definitions of when human life begins. The FDA defines it at implantation, which currently is politically convenient. The Catholic church and others define it at fertilization. One is no more “scientific” than the other. I submit the latter is the more convenient. Currently, no technology exists to duplicate a mammalian uterus. However, it is not out of the realm of possibility that technology will

advance and an artificial growth medium to support an embryo will be developed. No implantation will be required. Unless the FDA changes the definition of implantation or when life begins, it will be rather inconvenient to describe people resulting from such an artificial process as NOT human life.

3 - Leftist Abuse of Science and Leftist Philosophy

44. The beliefs and power over science attitude of the Left has not stopped with the HHS Mandate. In the following link, Dr. Robert Malone, who is a pioneer in mRNA vaccines, about half way through the interview talks about the "academic thought police" after he posted some information on social media which went against the Leftist political narrative on coronavirus vaccines. He was banned from the platform, but later reinstated. He stated in the interview, "We can't get to scientific truth if we can't discuss things." He also indicated that many people for good reason are mistrusting government information sources.[23]

45. Democrat aligned medical professionals and media stirred fear in the population for a disease, which at worst kills about 1% of the population and mainly in identifiable categories of people with vulnerabilities such as old age. The lockdowns and similar measures resulted in more harm than good.[24] Data indicates these measures were not effective at controlling this disease.[25] The government's suppression of early treatment has caused needless death.[26] Speaking of government policy in the area of early treatment of Covid in a Congressional hearing, Dr. Pierre Kory said, "Almost every single policy serves the interest of a

23 https://www.theepochtimes.com/dr-robert-malone-mrna-vaccine-inventor-on-the-bioethics-of-experimental-vaccines-and-the-ultimate-gaslighting_3889805.html

24 https://health.wusf.usf.edu/health-news-florida/2022-02-02/a-johns-hopkins-study-says-ill-founded-lockdowns-did-little-to-limit-covid-deaths

25 https://noqreport.com/2022/01/30/grading-the-governors-who-locked-down-and-who-opened/

26 https://www.onenewspage.com/video/20220126/14228001/CDC-and-Fauci-Suppressed-Known-COVID-Early-Treatments.htm and https://www.dailysignal.com/2022/03/03/early-covid-19-treatment-sacrificed-to-promote-vaccine-dr-peter-mccullough-says/

pharmaceutical company."[27] Dr. Kory said that a large percentage of deaths and hospitalizations in other areas of the world were prevented by mass distribution of relatively cheap ivermectin. At the same hearing, Dr. Paul Marik said he was forced to watch people die in the Covid pandemic, and when he tried to intervene the healthcare system retaliated and ended his career despite the fact his patients had a 50% better survival rate than his colleagues.

46. The government continues to cause the death and suffering of many with vaccine mandates.[28] Recent actuarial data suggests especially among the 25 to 44 year age group excess deaths are up by as much as 84%. Peaks in this data appear to occur with the release of the Covid vaccines.[29] The number of deaths is roughly equivalent to those which occurred in the Vietnam war, however the North Vietnamese are not responsible, the US government is responsible especially Democrats.

47. The data I obtained on all cause deaths in the State of Texas for the time up to July of 2020 indicated no change in death rate for the youngest bracket available, under fourteen years of age. In other words, Covid did not have a significant effect upon this group. Children are the least vulnerable to this disease and appear to be the most tortured. Hundreds of excess deaths were evident in this data.[30] This statistical analysis can not indicate a cause, but other reports suggest a large increase in suicides, murders, overdoses, and increasingly now vaccine injuries precipitated by the fear and stress caused by the mostly Democrat

27 https://childrenshealthdefense.org/defender/covid-policies-serve-big-pharma-not-people/
28 https://childrenshealthdefense.org/defender/covid-policies-serve-big-pharma-not-people/ and
29 https://rumble.com/vx0yfb-edward-dowd-on-future-recession-shocking-findings-in-the-cdc-covid-data-and.html
30 Unpublished analysis on data obtained from the Texas Department of State Health Services.

driven policies and media. A pattern of behavior on part of the Left displayed most prominently in the ACA and associated regulations obviously continues to this day.

48. Much of the abuse mentioned above stems from fundamental precepts and beliefs of the Left. Certainly, Karl Marx is credited with first formulating much of what we now refer to as Leftist philosophy. He among others are the central authority upon which the Left places the source of their dogma. I define the Left as that group of socioeconomic ideas which hold that government must control most to all means of production, which includes Communism, Socialism, and Fascism. Historian Lee Edwards defined socialism as, "a pseudo-religion grounded in pseudo-science and enforced by political tyranny."[31] Similarly, Marxist Antonio Gramsci long ago wrote,

> [Socialism is] religion in the sense that it too is a faith with its mystics and rituals; religion because it has substituted for the consciousness of the transcendental God of the Catholics, the faith in man and in his great strengths as a unique spiritual reality. Gramsci's Political Thought: Hegemony, Consciousness, and the Revolutionary Process (NewYork: Clarendon Press, 1981)

49. This quote does portray a dogmatic approach to the fundamental ideas of the Left which can not be submitted to any rational or empirical investigation. Not because a test can not be formulated, but because the followers of this belief system will not accept the results of any test to reject what they take as a fundamental indisputable belief. The dogmatic nature of the Left can be seen in their reaction to new knowledge which conflicts with their dogma, instead of causing them to reevaluate and modify their original hypothesis, it merely strengthens the original belief and "triggers" a reprisal against who or whatever

31 https://www.americanthinker.com/articles/2019/05/leftwing_ideology_a_cult_a_religion_or_science.html

challenges the dogma. Further, the very idea of a conflict with fundamental belief must be purged from the mind without further meditation.[32]

50. George Orwell correctly identified the nature of the Left based on the beliefs just mentioned as well as observations of Leftist countries such as the Soviet Union. His book 1984 and Animal Farm although fictional do portray the logical extension of Leftist ideas. As the Left does not recognize God or inalienable rights a central authority is required to define truth, such as the "Ministry of Truth." Without God an absolute truth is not possible so truth is what ever the government says it is when the government says it. Similarly, the Left can not permit any thought which conflicts with the official position. "Thought control" is in part maintained by controlling language as well as speech. The Left have often redefined words which it finds inconvenient. As the Left generally rejects God, Christian regulations of conduct do not apply. Unethical behavior such as described in Saul Alinsky's Rules For Radicals are therefore good as the ends justify the means especially when used against the enemies of the Leftist Utopia.

51. The book, David Horowitz Dark Agenda: The War to Destroy Christian America, Humanix Books, (March 5, 2019), has a main thesis that the Left is openly hostile to religion because those of Christian faith believe man is flawed and Utopian ideas are impossible to achieve, where as Leftists believe that man is fundamentally good. Society makes him bad. If people only choose or can be forced to follow the Leftist idea of political correctness, Utopia can be achieved. Those of Christian faith who founded this country upon Christian principles, stand in their way to achieve the perfect society. This opposition is evil and can not be

32 Id.

tolerated. This idea has lead to millions of deaths under Marxist Communism in other countries.[33]

4 – Case Precedent and the Evidence indicate a "Substantial Burden" does exist

52. Judge Ellison on 6/14/2018 ruled my religious burden was not substantial as required by RFRA as the main reason for the initial dismissal of the entire case. Below I will present arguments from my Appeal Brief in *Dierlam v. Trump, 977 F.3d 471 (5th Cir. 2020)* (ABDvT) indicating this reason is in error and for which I was not afforded an opportunity to defend until the Appeal:

a – *Adkins* and *Wieland* are consistent with Congressional intent in RFRA while *Real Alternatives* and similar decisions are Aberrant and Abusive

53. RFRA was passed by congress in 1993. Codified in 42 U.S.C. § 2000bb is the intention of that body, (1) to restore the compelling interest test as set forth in *Sherbert v. Verner, 374 U.S. 398 (1963)* and *Wisconsin v. Yoder, 406 U.S. 205 (1972)* and to guarantee its application in all cases where free exercise of religion is substantially burdened; and (2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government. The word "substantial" used in RFRA was not defined by that act but it implies a sufficient degree beyond the trivial. The determination whether a "substantial" burden on religion existed in this case was of key importance for Judge Ellison's decision, therefore the following contains a brief legal genesis of this concept.

54. *Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004)* is a RLUIPA case. RFRA and RLUIPA use a common definition of "religious exercise." Other similarities also exist between these acts of Congress. The court indicated that the plaintiff must demonstrate that the government regulation imposes a substantial burden on

33 https://www.c-span.org/video/?458217-1/dark-agenda

religious exercise. Then, based upon this evidence the court needs, "...to answer two questions: (1) Is the burdened activity "religious exercise," and if so (2) is the burden substantial?" This influential case has been cited to contain the definition of "substantial burden" for the 5th circuit.[34] The Adkins court citing *Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963)* and *Thomas v. Review Bd. of Indiana Employment Security Div., 450 U. S. 707 (1981)* as well as influence from the legislative history and other circuit court decisions provided the following definition for a "substantial burden:"

> ...a government action or regulation creates a "substantial burden" on a religious exercise if it truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs. And, in line with the foregoing teachings of the Supreme Court, the effect of a government action or regulation is significant when it either (1) influences the adherent to act in a way that violates his religious beliefs, or (2) forces the adherent to choose between, on the one hand, enjoying some generally available, non-trivial benefit, and, on the other hand, following his religious beliefs.

55. *Adkins v. Kaspar* appears to introduce the phrase "religious behavior," but does not explicitly define it. A change in "religious" behavior was not a requirement for a substantial burden in the *Thomas* or *Sherbert* decisions. To "significantly modify his religious behavior" taken in isolation presents a new requirement for a "substantial burden." The Adkins court paid little attention to the question of "religious behavior" only noting that RLUIPA's broad definition of "religious exercise" easily included the religious services in the complaint.

56. After this pronouncement on substantial burden, the *Adkins* court focused on the government regulations which may violate RLUIPA. A regulation becomes significant in regard to a violation of RLUIPA when either of two conditions are met.

34 See MOUSSAZADEH v. TEXAS DEPARTMENT OF CRIMINAL JUSTICE, No. 09-40400 (5th Cir. Dec. 21, 2012).

The first condition requires that the regulation "influence the adherent to act in a way that violates his religious beliefs." This condition does not require a change in "religious" behavior on the part of the adherent. In its determination the court found, the uniform rule imposed by the prison on all religious denominations did not impose a substantial burden because it did not entirely prevent the religious services. The issue was a lack of properly trained volunteers to oversee a service on all holy days of the religion at issue. The court did express concern over this issue, which could be considered to violate the first condition. Prison officials assured the Court and the Court accepted, this problem would be remedied in the near future, otherwise the decision may have been different. The new requirements concerning "religious behavior" played little or no role in this decision, therefore this phrase can be considered obiter dicta.

57. *United States v. Ali, 682 F.3d 705 (8th Cir. 2012)* is an RFRA case which succeeded on appeal although Ali later lost on remand. This case involved the plaintiff's failure to stand when the judge entered the courtroom. Ali failed to object to a pretrial order to stand, displayed inconsistency in standing, and stood after three clerics of her religion said it was permitted to stand if she felt she was in a difficult situation. The District Court found that Ali's interpretation of Islam was not consistent with other practitioners. The Appeals Court determined the District "...court erred by evaluating the orthodoxy and sophistication of Ali's belief, instead of simply evaluating whether her practice was rooted in her sincerely held religious beliefs." In this case, it is unclear what if any "religious behavior" was significantly modified or what "religious beliefs" were significantly violated. The

court was guided solely by the language of the RFRA and the "sincerely held beliefs" as expressed by the plaintiff.

58. The court in the case *Priests for Life v. DEPT. OF HEALTH & HUMAN SERV'S, p247, 772 F. 3d 229 (Dist. of Columbia Circuit 2014)* in contrast to the previous cases considerably raises the bar and displays increased resistance to allowing the claimant to interpret his own belief and how the law coerces him to violate that belief. "Whether a law substantially burdens religious exercise under RFRA is a question of law for courts to decide, not a question of fact." Id. This conclusion places a court in a position to decide what is reasonable, central, or even other matters within a particular religion. The court ruled against the appellant and indicated it was not a substantial burden to sign a paper to trigger a third party to provide coverage for sterilization, contraception, and abortion services. This case was joined to *Zubik v. Burwell, 136 S. Ct. 1557, 578 U.S. 3, 194 L. Ed. 2d 696 (2016)* appeal to the Supreme Court and later modified by a compromise in that case.

59. *Real Alternatives, Inc. v. Burwell, 150 F. Supp. 3d 419 (M.D. Pa. 2015)*, which Judge Ellison cited, is in step with *Priests for Life*. From section IV(B)(3)(b) of the Real Alternatives decision, "In order to prevail under the substantial burden test, plaintiffs must show more than a governmental action that violates their sincerely held religious beliefs; they must show that the governmental action forces [plaintiffs] to modify [their] own behavior in violation of those beliefs." This test appears to have been first formulated by the *Priests for Life* court. Although *Kaemmerling v. Lappin, 553 F.3d 669 (D.C. Cir. 2008)* is cited as authority, it does

not appear the page cited contains any text consistent with the previous quote. The *Kaemmerling* court indicated it could not find any religious exercise on the part of the appellant related to his objection to the government action. The court then indicated the case was analogous to *Bowen v. Roy, 476 U.S. 693, 106 S. Ct. 2147, 90 L. Ed. 2d 735 (1986)*. The "substantial burden test" is more restrictive than the definition of "substantial burden" from the Adkins court. This test does not contain the obiter dicta requirement for a modification in "religious" behavior, but it requires the plaintiff to identify government action which "forces" the plaintiff to violate belief rather than simply pressures the violation of belief. A significant difference of degree. It is also stripped of the accompanying conditions which were used to indicate a regulation in violation of RFRA. The hurdle to demonstrate such a burden is greatly increased without these conditions, which modify the parameters of what is a "substantial burden" by defining laws which pose a substantial burden. The Real Alternatives court found, "...the Contraceptive Mandate simply does not cause Plaintiffs to modify their behavior in violation of their beliefs — arguably they have not modified any behavior at all..."

60. In *East Texas Baptist University v. Burwell, 793 F.3d 449,456 (5th Cir. 2015) on Petition for Rehearing En Banc*, which was a case similar to *Priests for Life* and also joined in *Zubik*, the complaint lay in signing a paper to trigger a third party to provide the abortion and related insurance coverage. In this decision, the dissenting Justices elegantly point out the inconsistencies of the courts in deciding the law in RFRA cases. As pointed out by the dissenting Justices, Thomas Moore was executed because he would not sign a paper. As the government action did

not "force" a change in his behavior or religious exercise he also would not have passed the "substantial burden test."

61. The District court in *Wieland v. U.S. Dep't of Health & Human Servs., No. 4:13-cv-1577, 2016 WL 3924118, (E.D. Mo. July 21, 2016)* addresses the government's previous claim that it is not a "substantial burden" to subscribe to a health plan which may contain services that will not be utilized by the plaintiffs because of religious prohibition but other individuals may elect to utilize,

> Plaintiffs contend that Defendants' argument is, in essence, an attack on the sincerity of their religious beliefs, which the Supreme Court most recently in Hobby Lobby cautioned against. This Court agrees. Defendants' argument is, in effect, an argument that Plaintiffs religious beliefs are unreasonable. However, the sincerity of Plaintiffs' religious beliefs has not been disputed, and it is not for the Court "to say that [Plaintiffs'] religious beliefs are mistaken or insubstantial." Hobby Lobby, 134 S. Ct. at 2779 (explaining that Court's "narrow function . . . in this context is to determine whether the line drawn reflects an honest conviction . . .") Id.

62. The *Wieland* court, in agreement with the 8th circuit decision in Ali, held that a court may question whether a belief is firmly held, it is prohibited from questioning whether a belief is reasonable or sufficiently sophisticated under RFRA.

b – The current case meets the "substantial burden" definition of Adkins

63. Turning now to the instant case, the HHS Mandate violates both conditions given in Adkins, which indicates this Mandate places a "substantial burden" on religious adherents. As described above Cannon Law forbids even indirect participation or support of abortion upon penalty of excommunication not to mention the very real possibility of eternal damnation. Three of the FDA approved contraceptive methods can be used as abortifacients or have that effect. The HHS Mandate introduced by the Obama administration requires that "minimum

essential coverage" include and encourages use of these services. Therefore, participation in health insurance and the payment of premiums causes me to violate a central tenant of my religion. My faith requires martyrdom rather than violation. The Individual Mandate Penalty adds additional financial pressure to purchase the insurance. Therefore, the regulations "influence[]" me "to act in a way that violates [] religious beliefs." The HHS Mandate requirement in "minimum essential coverage" also violates the second condition in Adkins as I am forced "to choose between" health insurance, which has been considered a "generally available, non-trivial benefit," or follow my "religious beliefs" and face the possibility of crippling costs of health care. Even considering the expanded exemption provided by HHS et. al. in 45 CFR 147.133(b) due to the harm to the market by the defendants few if any insurers may be willing to provide acceptable health insurance and the effect is the same. A "substantial burden" remains.

64. However, the Adkins court would ask a question as a prerequisite which has not yet been addressed, "Is the burdened activity religious exercise?" The Adkins court described the definition of "religious exercise" as broad. My religion requires respect for innocent life. By forcing my participation in a system which DESTROYS innocent life, the regulations "substantially burden" demonstrating the required respect, which is "religious exercise" similar to the plaintiffs in *Sherbert* and *Yoder*. A change in "religious behavior" has occurred as the requirement to silently accept and pay premiums for abortion, contraception, and sterilization coverage did not previously exist. In addition, as the government points out in their Response to the Magistrate Judges R&R (Dkt#73) p.11, "...the shared responsibility payment is

itself significant. Indeed, it could be viewed as more significant than the $5 fine imposed in *Wisconsin v. Yoder, 406 U.S. 205, 208 (1972)*, or the small license tax imposed on Jehovah's Witnesses who sought to solicit as part of the exercise of their religion in *Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 108 (1943)*."

c – The "Substantial Burden Test" in Priests for Life and Real Alternatives creates an Abusive insurmountable barrier in violation of Congressional intent

65. I was compelled by my religious beliefs and "force[d] to modify" my behavior by dropping my employer's health coverage in 2012 as opposed to the plaintiffs in Real Alternatives. I modified my behavior to stay within the confines of my faith and to attempt to mitigate the damage caused by the government, NOT to violate firmly held belief. However, I was and continued to be pressured to violate my religious beliefs. I believe Judge Ellison has properly interpreted the court's ruling in Real Alternatives and similar decisions. Upon information and belief, these decisions were intended to set up a practically insurmountable barrier in the determination of "substantial." Advocates of *Real Alternatives* and similar decisions support the ACA and the HHS mandate as these decisions allow the denial of an entitlement granted by Congress under practically all circumstances given: 1)the question of "substantial burden" is one solely of law and, 2)the use of the "substantial burden test." If one modifies their behavior to violate firmly held beliefs as required by the test, one can question whether those beliefs were firmly held, another requirement of RFRA. Clearly, Congress did not intend to set up such an abusive Catch22.

66. I can not think of any prior successful RFRA plaintiff who could pass the

"substantial burden test." For example, in *Sherbert*, the plaintiff had the option to keep searching for a job which did not require work on Saturday and/or forego a claim for unemployment compensation. In *Yoder*, the plaintiff had the option to pay a penalty rather than send their children to public school. The Law "pressured" the plaintiffs to violate religious beliefs. It did not "force" the plaintiffs to violate religious beliefs.

5 – A Summary of Standing

67. *Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)* establishes the three elements of standing for any plaintiff in a court of law. An (a)actual or threatened injury, (b)traceable to the defendants which is, (c)likely redressable by the court is required. The first element of standing requires an actual or eminent, concrete and particular injury. The following is at least a partial list of injuries which were or will be sustained and traceable to the defendants:

68. RETROSPECTIVE - a)The payment of the IMP for a current total of $5626.22. b)The defendant's regulation forced me to drop my employer's health insurance in 2012. c)The defendant's HHS Mandate made it impossible to find health insurance until at least 2020 as no individual religious exemption existed. d) The defendants did not provide the required 1502(c) notice until after nearly two years of payment of the Individual Mandate Penalty (IMP) and well after this suit was filed. Further, they did not indicate in this notice or at any time preceding it the incorporation of the HHS Mandate in "minimum essential coverage" prevented any insurer from providing coverage free of this Mandate thereby wasting my time and effort. In addition, the defendants mislead this court and myself in their MTD1AC, by indicating health insurance meeting "minimum essential coverage" did exist free

of the HHS Mandate.

69. CURRENT - a)The inability or difficulty to find affordable health insurance conforming to my beliefs which was caused by the defendant's damage to the market in making the HHS Mandate the default, b)I currently have no health insurance therefore I am 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.[35] c)The unconstitutional restrictions and limitations imposed by the ACA on so called "religious health care," make it very much substandard to insurance and prevent it from being an alternative I can choose. d)Unless a willing insurer can be identified, I remain an "applicable individual" subject to the IM and IMP. Even if the IMP is currently at $0, it is the cause of great concern as to when the ax will fall in the raising of the penalty placing me in the same position as before or worse with an even more oppressive mandate and penalty taking its place. The government is causing a state of fear to exist and may at any time use it as leverage to further threaten unalienable freedoms. Also, all my effort and expense in this lawsuit will have been completely wasted if this case is completely dismissed with prejudice before the IMP is raised, which is an injury threatened and actual as the effort and expense have occurred. Under *Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971)*, the government can be held liable for nominal, compensatory, and punitive damages. Although *Bivens* fell under an exception in the FTCA, the FTCA can still apply here. The Tucker Act also permits damages. See below.

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

70. PROSPECTIVE - a)The raising of the IMP above $0 or the imposition of an even more harsh law and penalty. b)The illegitimate expansion by the defendants of other provisions of the ACA similar to the HHS Mandate in the name of health care "if unchecked by [] litigation."[36] c)The continuing difficulty and pressure from the defendant's regulations to violate my beliefs in any effort to maintain health insurance due to the continuing harm to the market. d)the lack of a firm definition of direct and indirect taxes in line with tradition, which can prevent future harm as was caused by the Congress in the ACA. e)the religious exemptions to the IM, which could provide protection from the IMP, unconstitutionally discriminates against my religion and in favor of religions with an aversion to insurance or with a pre-existing bill sharing ministry. f)the continuing abuse of authority especially in the executive branch since they were able to violate individual rights like freedom of speech and religion in the ACA; these violations include for example the vaccine mandates in which religious exemptions are unconstitutionally blocked and the use of "false proxies" in the executive branch directing facebook to remove certain posts.[37] (Not only are these violations "inevitable" they have occurred and will continue "if unchecked by the litigation.")

71. REDRESSABILITY – "Whether an injury is redressable depends on the relationship between 'the judicial relief requested' and the 'injury' suffered. ...Article III standing requires identification of a remedy that will redress the individual plaintiffs' injuries."[38] In *California v. Texas, No. 19-840 (U.S. June 17,*

36 *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000).* p.190

37 https://nypost.com/2021/07/15/white-house-flagging-posts-for-facebook-to-censor-due-to-covid-19-misinformation/

38 From *California v. Texas, No. 19-840 (U.S. June 17, 2021)* quoting *Allen v. Wright, 468 U.S. 737, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984).*

2021), Texas et. al. claimed an injury of the reduction of the Individual Mandate Penalty to $0 however their only requested relief, which was a declaration the ACA was unconstitutional, would not change the IMP. Therefore the requested relief was not redressable by the court.

72. The individual plaintiffs in the *California case* are not similarly situated to myself. The Supreme Court decided the individuals had no current injuries since they indicated solely because of the Individual Mandate they continued to buy unwanted health insurance even though the IMP was $0. For obvious reasons, I have never made such a claim. My injuries are very different and include current injuries as described above. The Court declined to rule on whether the reduction to $0 of the IMP by the Tax Cut and Jobs Act of 2017, Pub. L. 115-97, (TCJA) leaves the ACA unconstitutional.

73. Clearly, if the ACA violates the proscription in *Brushaber* and *Nebia* the only remedy is to declare the entire ACA unconstitutional. Such a declaration would also address most injuries listed above except the declaration of definitions and retrospective relief. Similarly, an *Abood* process to protect all unalienable rights and grant exemptions may be possible relief, except the *Janus* decision overturned *Abood* and declared the State laws involved in *Janus* unconstitutional.

74. A declaration the HHS Mandate is unconstitutional can serve to redress most of the violations of religion, but other violations remain. As the injuries are multiple the remedies must be likewise for proper redress. See the Request for Relief section which contains specific requests for each violation and more on their relationship to the violation. A declaration of the ACA as unconstitutional is

preferred and would be the only single remedy which would address most of the injuries. However, any such declaration MUST specify all violations in order to redress prospective violations and injuries. All three elements of standing have been met.

6 - The effect of the TCJA of 2017

75. The TCJA did not affect the standing or mootness of this case. The government can not show the Individual Mandate Penalty, which was never removed from the ACA, will not be raised as required by the mootness doctrine. The Biden administration has promised to raise the penalty. The exception or refinement to the "standing set in a time frame" doctrine is first "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." The government insists the TCJA of 2017 zeros out the penalty however they make no effort to show the "allegedly wrongful behavior" will not recur, because they can not. Here the "allegedly wrongful behavior," the IMP, is not considered wrongful by current law, *Nat. Fedn. of Indep. Business v. Sebelius, 132 S. Ct. 2566, 567 U.S. 1, 183 L. Ed. 2d 450 (2012)* (NFIB). It is the absence of this behavior, more specifically the lack of any revenue, which was considered wrongful by the Texas et. al. state government plaintiffs who initiated the lawsuit for just that reason in the *California* case.

76. One could make the argument that upon passage of the TCJA the instant lawsuit transformed into one "brought to force compliance." In which case it becomes my burden to show "if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened

injury [is] certainly impending."[39] First, "tax and spend" is a normal inclination of Democrats. (See https://www.washingtontimes.com/news/2019/jun/25/2020-democrats-embrace-tax-and-spend-liberals-labe/)

77. Second, Democrats have indicated they want to reinstate the IMP. According to this article https://www.ff.org/on-tax-day-biden-plan-to-hike-taxes-draws-gop-criticism/ , "...the Democrats are, as a party, committed to TCJA's repeal in its entirety..."

> Democrats also support provisions like raising gas taxes and reinstating tax penalties for the individual mandate to buy healthcare under the Affordable Care Act, which Republicans zeroed out. (From https://www.gpb.org/news/2021/05/19/republicans-pledge-unified-fight-protect-2017-trump-tax-cuts)

Recently, Manchin indicated he is in favor of reversing some of the TCJA of 2017. (See https://www.nytimes.com/2022/03/02/us/politics/biden-pivot-moderate-agenda.html)

78. Third, the IMP, the "allegedly wrongful behavior" here, was never removed from the Law only reduced to $0, which is to say the most offensive part of the law which is in contention was never removed by the TCJA. Therefore, the challenge to my standing is not valid since no substantive change has occurred from the day this lawsuit was filed. In *Cammermeyer v. Perry, 97 F.3d 1235, 1238 (9th Cir. 1996)* a condition for an exception to the rule where a case has been mooted by the repeal of a law is mentioned which "...involve situations where it is virtually certain that the repealed law will be reenacted." In the instant case that condition HAS been met, since no repeal has occurred and no reenactment is required. However, even if the IMP is not increased in the near term, it is certainly a source of worry,

39 Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). p.190

which will "continue" until the IMP is actually repealed completely and in fact.

7 - The religious exemption to the HHS Mandate adopted 11/7/2018 is inadequate

79. I maintain the current Individual Religious exemption is inadequate for several reasons:

80. i)Health Insurance contracts tend to be adhesion contracts. Take it or, leave it. The HHS Mandate continues to be the default requirement for all health insurance contracts. The exemption merely allows a WILLING insurer to change this default and offer a contract which does not include the HHS Mandate. The minimum essential coverage provision of the ACA, of which the HHS Mandate is but one element, mandates what must be in a health insurance contract such that free market forces can not properly operate or act to correct any damage. Insurers are restricted in what they can offer and therefore individuals are restricted in what can be purchased. For these reasons the defendant's have so skewed the market that the playing field is not level. Current insurers have little incentive to change the default contract if they are currently able to make a profit.

81. ii)Due to the numerous lies from the government and its affiliated third parties, I no longer have any trust in their words. At a minimum, I would expect any health insurer in some way to certify their product is free of the HHS Mandate and related services. One would expect few if any insurers would offer such an HHS Mandate free policy or it may be more costly as it requires a change from the default.

82. iii)Even if a health insurance policy can be identified there is no assurance the insurer will remain in business or the policy can be maintained for other

reasons. Thus, necessitating another long, taxing, and perhaps fruitless search without any assistance with which other citizens with belief systems which allow the HHS Mandate or which support it do NOT suffer. This burden even considered alone constitutes government pressure to abandon my beliefs in violation of RFRA and the first amendment. I am placed at a decided disadvantage compared to other citizens because the universe of products has been greatly reduced. I am treated as a disfavored citizen.

83. iv)In *Wieland v. U.S. Dep't of Health & Human Servs. case 4:13-cv-01577-JCH Dkt.79-1 p.11.* MCHCP, the health insurance provider for the Wielands, although initially providing insurance without the HHS mandated coverage was hesitating to reinstate it due to the previous actions by HHS and the need to recreate a policy for a single family.

84. v)Currently, I do not have health insurance. If a willing insurer can not be located, I remain an "applicable individual" as defined in the ACA per 26 USC 5000A(d) and the exemption is useless.

85. vi)As mentioned above the exemption requires a willing insurer to issue the policy, however "minimum essential coverage" and many other mandates upon the insurer indicate it is not a party acting upon its own free will. Yet the government has insisted the system set up by the ACA is the same as Medicare and Social Security and has been given the same exceptions as those programs. See p.19 of the MTD1AC. The government shifts its argument between the system is like Social Security and Medicare and the system is formed of private third parties free to determine what is contained in a policy whenever it is convenient.

Both can not be true. This argument should be barred by judicial estoppel. I submit neither party is free. The government could create a mandate to protect citizen rights and avoid disparate impact. The fact that it will not even after extensive litigation is evidence another agenda is at work, which aims to enslave not protect. From "Restricting the Freedom of Contract: A Fundamental Prohibition," Yale Human Rights and Development Journal: Vol. 16: Iss. 1, Article 2. p.92 on equal protection analysis,

> When discussing impact, the courts are ultimately engaged in a searching examination that asks whether the allegedly unprotected classifications were used as false proxies for categories otherwise eligible for stricter scrutiny.

Here the use of a private third party to do what the government can not do directly is just such a "false proxy." See below for more details.

86. From the case, *Manhattan Community Access Corp. v. Halleck, 139 S. Ct. 1921, 204 L. Ed. 2d 405, 587 U.S. (2019)*,

> Under this Court's cases, a private entity can qualify as a state actor in a few limited circumstances—including, for example, (i) when the private entity performs a traditional, exclusive public function; (ii) when the government compels the private entity to take a particular action... or (iii) when the government acts jointly with the private entity, (internal citations omitted)

In the instant case, the government itself is making an equivalence between social security and medicare to this system of private insurance companies. Therefore the first point is satisfied since as previously mentioned these programs are government programs. The government compels the health insurer to place "minimum essential coverage" into all policies as well as other items meeting the second point. As mentioned in the first point the government views the system as

a joint venture meeting the third point. Again, all points are met when only one was required. The private insurance companies are a "state actor," not an independent third party.

8 - Damage to the Market

87. The term "damage to the market," which I have used above may seem amorphous, however it can be quantified and made very real. The court and defendants have questioned my efforts to find a health insurer willing to provide a policy free of the HHS Mandate and meeting my requirements. It is possible to make a very comprehensive survey of the entire market to determine the number of willing insurers by commissioning an appropriately designed study. I would be willing to fund such a study provided it is reasonably within my means. Alternatively, interrogatories could be issued to all present and past health insurers in the available individual marketplace for the same purpose. FRCP 8 and the prescription in *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)* regarding no probability of success be imposed by Rule 8, should provide standing sufficient to withstand any MTD for all claims involving the HHS Mandate as well as the violation of freedoms associated with the free and fair operation of market forces. Of course, it is certain that any survey will reveal nearly 100% of all policies before the ACA did not offer the abortion and related services in the HHS Mandate free of charge to women. For at least 8 years, the defendant's regulations forced all insurers in the Individual and employer marketplaces to include the HHS Mandate. Likewise, it forced all "applicable individual" Christian adherents to accept by action and word the HHS Mandate or drop coverage. These conditions has forced a new status quo, even assuming the

defendants have not employed methods other than regulation to influence insurers. If even a single company is found which will no longer offer an HHS Mandate free policy, harm will have been shown. I expect this number to be much larger, none may offer a policy fully compliant with my requirements. Therefore, it is "likely" as opposed to "speculative" sufficient evidence will be found in discovery that an objective and fair court will render a ruling in my favor.[40]

9 – Tangled Web

88. All the sections and charges which follow build evidence the ACA was never crafted to be taxation, which is the means the majority on the Supreme Court in the *NFIB* salvaged the Act. The Bill of Rights was passed because many at that time believed the Constitution was insufficient to protect fundamental rights. The Bill of Rights was adopted shortly after the Constitution to protect these rights and help prevent tyranny. It is no accident the ACA violates most of these rights including the 1st, 4th, 5th, 9th, and 10th amendments. The ACA and its various provisions have a better fit to an actual goal of tyranny rather than the stated goals of expanding health care and lowering cost. The "tangled web"[41] of interrelated and overlapping violations and contradictions expose this Act as a sham intended to deceive. The ACA has the intention and effect to create and control a health insurance market not for any purpose of regulation but to rule over the participants and confiscate and direct property from political and religious enemies to constituencies of the choice of the ruling party. Here, "...the act complained of was so arbitrary as to constrain to the conclusion that it was not the

40 *Inclusive Cmtys. Project, 946 F.3d 649, 655 (5th Cir. 2019)*

41 "What a Tangled Web We Weave/When First We Practice to Deceive!" from "the play Marmion by Sir Walter Scott

exertion of taxation,"[42] can be made. Also the "unconstitutional conditions doctrine" is impacted here as the ACA conditions health insurance coverage upon surrendering speech, association as well as other freedoms,

> For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." Such interference with constitutional rights is impermissible.[43] (internal citations omitted)

89. Therefore, the ACA is an autocratic and unrestrained usurpation of power which should be declared unconstitutional based upon the 4th and 5th amendments to the Constitution among others. If in what follows this goal of tyranny is kept in mind, the contradictions and violations make perfect sense although none of the other violations are dependent upon such a finding. Because of the "tangled web" nature of the violations, all evidence presented in every section of this document should be assumed to incorporate all other sections by reference due to these interrelationships.

III - Claim 1 – The Agency Defendants Violated the APA

90. This claim relates specifically to the HHS Mandate, which the defendant agencies created, although the issues here reflect similar problems in the ACA itself. In order to initiate a claim under the Administrative Procedures Act, 5 U.S.C. §§ 551–559, several elements must be in place. From Jared P. Cole, "An Introduction to Judicial Review of Federal Agency Action," Congressional Research Service, R44699, p.2 available at https://crsreports.congress.gov, these elements include Jurisdictional authority, Art. III standing including certain prudential rules, and a final agency action.

42 *Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 24 (1916)*
43 *Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).*

91. 28 USC §1331 is a general grant of jurisdiction to this court for "civil actions arising under the Constitution, laws, or treaties of the United States. The HHS Mandate supposedly was created under the authority of the ACA. The Mandate violates multiple constitutional rights some of which will be presented in this section. *Trudeau v. Fed. Trade Comm'n, 456 F.3d 178, 185 (D.C. Cir. 2006)* held that §1331 was appropriate and sufficient for even nonstatutory and constitutional claims to provide a Court Jurisdiction in APA claims.

92. A related requirement for proper Jurisdiction of a court is a wavier of sovereign immunity. Three statutes provide a specific wavier of sovereign immunity. Id p.4 In addition *Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 689-90 (1949)* held that even without a wavier, agencies can be sued for prospective injunctive relief when ultra vires conduct is involved as is also the case here. A right of private action and wavier of Sovereign immunity exists in 5 USC §702 of the APA for non-monetary damages. The Federal Tort Claims Act (FTCA), 28 U.S.C. §2674, provides a waiver of sovereign immunity and a private right of action. Finally, the Tucker act, codified in 28 U.S.C. §§ 1346(a) and 1491, also provide a wavier of sovereign immunity and right of private action in cases which do not involve tort but are prefaced on other "sources of law." *United States v. Navajo Nation, 556 U.S. 287, 290 (2009).* These latter two waivers provide relief for monetary damages, which in this case would be primarily the IMP paid during the tax years of 2014 to 2017. This court therefore has sufficient jurisdiction.

93. A cause of action should also be demonstrated indicating an individual has a right to legal redress by a federal court. "Absent a specific statutory framework

creating a cause of action, the APA provides a general cause of action for individuals aggrieved by a final agency action if there is no other adequate remedy in a court."[44] In addition, from *R.I. Dep't of Envtl. Mgmt. v. United States, 304 F.3d 31, 44 (1 st Cir. 2002)* p.42,

> As a general matter, there is no statute expressly creating a cause of action against federal officers for constitutional or federal statutory violations. Nevertheless, our courts have long recognized that federal officers may be sued in their official capacity for prospective injunctive relief to prevent ongoing or future infringements of federal rights. Such actions are based on the grant of general federal-question jurisdiction under 28 U.S.C. §1331 and the inherent equity powers of the federal courts."(internal quotations omitted)

94. Standing must be demonstrated by the claimant. For this case, the injuries traceable to the defendants were provided in the Standing section above. These injuries include past, present, and future. For this claim, at least two independent causes of action exist:

95. A) The creation of the HHS Mandate was greatly in excess of what Congress authorized in the Preventive Services Provision of the ACA. See Prong 1 of the Establishment Clause Violation by the HHS Mandate below. See also the evidence for hostility by the agencies and its officers to religion especially Catholics in the section below on the violation of the free exercise clause of the 1st amendment. See the background section above which indicates the agencies did not follow science but instead substituted their own beliefs and political ideas to force this Mandate on the whole population. This ultra vires conduct by the agencies and its officers, on its own provides me with a private right of action etc. and provides me a right of redress for PROSPECTIVE relief.

44 5 U.S.C. §704, Jared P. Cole, "An Introduction to Judicial Review of Federal Agency Action," Congressional Research Service, R44699, p.5

96. I maintain the religious exemption offered reluctantly by the defendants is grossly insufficient to address past, present, or future harm. See the section above on the religious exemption. The current exemption also does not address the future harm of a continuation of this ultra vires conduct. For example, the defendants could just as easily force a similar nationwide Mandate for Euthanasia, which is also in violation of Catholic teaching. Some States currently have a "right to die."[45] Countries like the Netherlands have legalized Euthanasia.[46] Although the laws in the Netherlands indicate the patient must volunteer, evidence suggests this is increasingly not the case.[47]

97. B) The defendants are responsible for conversion of personal property as well as various other constitutional violations as seen below. The FTCA, which can also provide a right of private action and a wavier of sovereign immunity, requires the US be tried for tort under the same laws as a person in the applicable jurisdiction of the offense. In Texas Conversion is defined as, "the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights."[48] A cause of action can be found in *TEXAS INTERN. PROPERTY v. Hoerbiger Holding AG, 624 F. Supp. 2d 582 (N.D. Tex. 2009).*

> To establish conversion of personal property, a plaintiff must prove that: 1) the plaintiff owned or had legal possession of the property or entitlement to possession; 2) the defendant unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner; and 3) the plaintiff suffered injury.

45 https://www.findlaw.com/healthcare/patient-rights/death-with-dignity-laws-by-state.html
46 https://www.government.nl/topics/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request
47 https://www.patientsrightscouncil.org/site/holland-background/ and https://www.catholiceducation.org/en/controversy/euthanasia-and-assisted-suicide/current-euthanasia-law-in-the-netherlands.html
48 *Potomac Ins. Co. of Illinois v. Peppers, 890 F. Supp. 634 (S.D. Tex. 1995).*

98. Other torts are also possible such as trespass to chattel and and damage to personal property. As described in the background section above, I was forced to drop my employer's health insurance in 2012 because of the defendant's HHS Mandate, which satisfies element 1. Element 2 is satisfied as the ACA has as a central effect the mandating of "minimum essential coverage" in all health insurance contracts, which is also an interference with the Freedom of Contract, a fact which the defendants took full advantage. See the Freedom of Contract section below for more information. Further, the defendants draw an analogy with social security and the insurance system created by the ACA, "The same principle applies to the national, mandatory application of a system of health insurance, enforced through the tax code..."[49] This statement is sufficient to indicate the defendant's intention is to use the supposed third party insurance providers as a false proxy to carry out it's confiscation and force its terms on the populace since social security and medicare are government programs subject to constitutional restrictions while private insurers are not. As mentioned in the background section, the insurance companies in this case meet the requirements for "state actors."[50] The many claims in this complaint attest to the many violations of the defendants and indicate the ACA and the HHS Mandate are shams. The defendants in effect took control of the insurance contract and specified how at least in part the money was to be spent. See the section above on Standing for injuries from the actions by the defendants to support element 3.

99. Although the initial injury occurred in 2012 and Texas law sets a time limit of

49 Dkt#37 Defendant's MTD Plaintiff's Original Complaint p.19.
50 *Manhattan Community Access Corp. v. Halleck, 139 S. Ct. 1921, 204 L. Ed. 2d 405, 587 U.S. (2019)*

2 years, the Continuing Tort Doctrine can extend this limit if the tort continues such that "each day creates a separate cause of action."[51] Although other provisions in "minimum essential coverage" present problems, the HHS mandate is definitely applicable. The individual religious exemption to the HHS Mandate was not available until July 2020, even if it is assumed the defendants action has not caused damage to the market, 2 years have not yet passed. If damage to the market has occurred due to the defendants requiring the HHS Mandate to be the default in each health insurance contract, the cause of action for this tort continues to the present.

100. The agency actions concerning the HHS Mandate are final so based upon 5 U.S. Code § 706(2)(A),(B),(C), and (F) this court should "set aside" and "hold unlawful" the HHS Mandate. It is clear from *Chevron U.S.A., Inc. v. Natural Resources Defense Council 467 U.S. 837, 842-43 (1984)* as "Congress has directly spoken to the precise question at issue...the end of the matter" has been reached and courts must enforce the "unambiguously expressed intent of Congress." The very word Congress uses, "preventive," for the authorizing provision set the limit of agency action. The agencies violated § 706(2)(C), by including services such as abortion, contraception, sterilization and related counseling which have never before been considered "preventative." This situation is less complex than the decision in *FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000)* at 159, in which the Supreme Court denied the FDA the ability to regulate tobacco after years of the agency denying any such authority. The court believed that such a large change and grant of regulatory

51 *Achee v. Port Drum Co., 197 F. Supp. 2d 723 (E.D. Tex. 2002).*

authority must be made explicitly by Congress. Further, it is clear in pursuit of their own political and religious goals they exceeded this limit as presented above evoking the remaining items listed in § 706(2).

101. The Court in *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.463 U.S. 29, 43 (1983)*, indicated an agency decision is arbitrary,

> ...if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

102. The agency action described here meets all of the factors above when only one would suffice to indicate the agency action was arbitrary. With at least the first cause of action (A) above, I am entitled to "prospective injunctive relief" of agency action as redress. Not only should the court "set aside" and "hold unlawful" the HHS Mandate, but the court must clearly set limits of any future agency action to prevent further incursions. See the request for relief section below for more on redress.

IV - Claim 2 - Defendants Violation of ACA §1502(c)

103. Section 1502(c) of the PPACA provides a Notification of Non-Enrollment. §1502(c) of the PPACA codified 42 USC 18092 states:

> Not later than June 30 of each year, the Secretary of the Treasury, acting through the Internal Revenue Service and in consultation with the Secretary of Health and Human Services, shall send a notification to each individual who files an individual income tax return and who is not enrolled in minimum essential coverage (as defined in section 5000A of title 26). Such notification shall contain information on the services available through the Exchange operating in the State in which such individual resides.

104. The clear purpose of this statute is to provide assistance to tax payers to find health insurance compatible with "minimum essential coverage" and avoid the IMP. The plain text does not state a start or an end date for the notices. Remember, this law was enacted around 2010, and the defendants did not see fit to send out any notice until the end of 2016, nearly seven years later and nearly two years after the IMP was imposed despite possessing a)lists of filers of tax returns and b)people with insurance compliant with "minimum essential coverage" for most if not all of those years. All the requirements to trigger 42 USC 18092 were in place well before the 2014 tax year; the first year of the IMP. This court nor the defendants can impose additional requirements in light of the clear text.[52] The Statute also specifically instructs the Secretaries of Treasury and HHS to work together to identify the appropriate taxpayers, which implies data other than tax returns SHOULD be employed. This suit was initially filed in February of 2016 well in advance of the letters which were sent out. I did not see or hear of the these notices until near the end of 2016. The late date for these notices can not be interpreted to be within clear congressional intent as no purpose would be served except a wasteful use of taxpayer resources.[53]

52 "It is a fundamental principle of statutory interpretation that absent provision[s] cannot be supplied by the courts. Rotkiske, 589 U. S., at ___, 140 S.Ct., at 360-361 (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 94 (2012)); Nichols v. United States, 578 U. S. ___, ___, 136 S.Ct. 1113, 1118, 194 L.Ed.2d 324 (2016). This principle applies not only to adding terms not found in the statute, but also to imposing limits on an agency's discretion that are not supported by the text. See Watt v. Energy Action Ed. Foundation, 454 U. S. 151, 168, 102 S.Ct. 205, 70 L.Ed.2d 309 (1981). By introducing a limitation not found in the statute, respondents ask us to alter, rather than to interpret, the ACA. See Nichols, 578 U. S., at ___, 136 S.Ct., at 1118." *LITTLE SISTERS POOR SAINTS PETER PAUL HOME v. PA, 140 S. Ct. 2367* (internal quotations omitted)

53 "First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent." *Chevron USA Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984)*

105. Likewise, notification of a website would not serve the intention of Congress in 42 USC 18092. Texas and other states did not set up an exchange, and people with out internet access would not be afforded any benefit by the notice. I checked the healhcare.gov website when directed by IRS tax forms to check for a religious exemption, which occurred in 2015 for the 2014 tax year. It did not direct me to any assistance in finding health insurance when it indicated I did not qualify for a religious exemption to the IMP.

106. It was the Defendant's contention that health insurance coverage which is compatible with Catholic theology existed and which meets all other government requirements to avoid the penalty. The defendants state on p.17 of the government's MTD1AC Dkt#37,

> Plaintiff's argument is based on the mistaken belief that the minimum essential coverage provision requires an individual to purchase health insurance that includes coverage for contraceptive services, but it does not. The minimum essential coverage provision can be satisfied whether or not an individual obtains a plan that covers contraceptive services. See 26 U.S.C. § 5000A(f).

107. If this statement is true, information about these insurers could have been included in the notice or at least a central contact source such as a phone number and mail address to provide comprehensive information about available health insurers and their products. Anything less than this level of information is negligent given the clear intention of Congress. If the defendants would have provided this information and a compliant policy could be located, then much of the basis for this civil action would not exist.

108. However, the defendants statement above is incorrect. They created regulations which do force all health insurance plans which are available to myself

(footnotes omitted)

to provide abortion, contraceptive, sterilization and related counseling services. Tracing the regulations: first, ACA 1302(b)(2) gives the Secretary of HHS discretion to define essential health benefits and therefore "minimum essential coverage." 45 CFR §155.20 provides the definition of Benefit Design Standards. 45 CFR §156.200 requires a Qualified Health Plan, QHP, to comply with the Benefit Design Standards in order to be certified to participate in an exchange. 45 CFR §156.20 defines essential health benefits, which requires compliance with 45 CFR §156.115 which includes 45 CFR §147.130. 45 CFR §147.130 includes the HRSA guidelines. 45 CFR §156.600 is the definition of "minimum essential coverage," it incorporates inter alia, 26 USC §5000A(f). Therefore, all Qualified Health Plans, which include all plans available on the exchanges must provide "Contraceptive Methods and Counseling" to avoid penalty.[54]

109. The Defendants also claim that no obligation exists to purchase health insurance since the Individual Mandate Penalty is an alternative to the purchase. This argument is made on p2-3 and 17 of the Defendant's MTD1AC. However, on p.19 they appear to contradict that argument where they make a case for participation in a "...national, mandatory application of health insurance, enforced through the tax code."

A - Jurisdiction, Wavier of Sovereign Immunity, and Private Right of Action

54 Many court decisions explicitly state that the contraceptive etc. services are a requirement in health care plans. For example, from *Eternal World Television Network, Inc. v. Burwell, 26 F. Supp. 3d 1231 (S.D. Ala. 2014)*: Under federal law, group health plans are generally required to cover women's health services "as provided for in comprehensive guidelines supported by the Health Resources and Services Administration." 42 U.S.C. § 300gg-13(a)(4). Those services "include all Food and Drug Administration (FDA)-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider." 78 Fed.Reg. 39870-01, 39870. The court will refer to those services generally as "contraceptives" and to the contraceptive-coverage requirement as "the mandate."

110. Here again, 28 USC § 1331 is sufficient to grant jurisdiction to this court for "civil actions arising under the Constitution, laws, or treaties of the United States." Two independent sources for a private right of action and a wavier of sovereign immunity exists for this claim, the APA and the FTCA.

1 – APA

111. The requirements to evoke the APA are described in the previous section which itself provides a wavier of sovereign immunity and a private right of action, 5 USC § 702, if no other statue authorizes a cause of action if "there is no other adequate remedy in a court," 5 USC § 704 authorizes review. The Tucker Act mentioned in the previous section provides a wavier of sovereign immunity and a right to private action for cases not based in tort but "other sources of law." 28 USC §§ 1346 is appropriate by reason of item 1) a tax "...illegally assessed or collected..." and item 2) "...founded [] upon the Constitution..."[55] The Tucker Act allows courts to award monetary damages. A favorable decision should lead to a refund of all the monies paid for the IMP. As the Tucker Act is jurisdictional in nature I rely here on the "inherent equity powers of the federal courts."[56] A cause of action may be found from at least two independent sources "harm of the public interest" and "unclean hands" on the part of the defendants.

112. Of particular note, "when it comes to statutes administered by several different agencies...courts do not defer to any one agency's particular

55 From 28 USC § 1346, "...The district courts shall have original jurisdiction...(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws; (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department,..." (See also *Alexander v. Sandoval, 532 U.S. 275, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001)* "We therefore begin (and find that we can end) our search for Congress's intent with the text and structure.")

56 *RHODE ISLAND ENVIRONMENTAL v. US, 304 F.3d 31, 41 (1st Cir. 2002).*

interpretation."[57] "De novo review is appropriate when agencies are interpreting laws that they do not have a special responsibility to administer, like the Constitution, the APA, or Title VII."[58]

113. Also, the IRS honored my claim form for the 2018 tax year, which was similar to the previous years. The IRS either acted without proper authority or tacitly acknowledged the entitlement and waivers mentioned above which are now denied by the government for the previous years.

a – Harm of the Public Interest

114. The defendants are responsible for harming the public interest. In *Barnhart v. Peabody Coal Co., 537 U.S. 149 (2003)*, which involves the interpretation of a statute by the appellee 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 since the penalties would have been paid by that time. A failure to act timely on the part of the agencies, CAUSED harm to the public interest in the present case. 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

57 *Envirocare of Utah, Inc. v. Nuclear Reg. Comm'n, 194 F.3d 72, 79 n.7 (D.C. Cir. 1999)*
58 David Zaring, "Reasonable Agencies", 96 V A . L. R EV . 135, 142 (2010)

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 did "prejudice the rights of the taxpaying public." Id.p261

> First, the protection of the public fisc is a matter that is of interest to every citizen, and we have no evidence that Congress wanted to permit the Secretary's inaction to harm that interest any more than it would permit such inaction to injure an **individual claimant**. Id.p262 (emphasis added)

115. Here the principle is the same, the "inaction" of the defendants had the effect of exposing the taxpayer to the harm of the IMP when proper and timely compliance may have avoided such a violation. In addition, the "public fisc" was wasted by these agencies from their tardy response. Based upon the above, it is clear the defendants are negligent and responsible for the harm caused.

b – Unclean Hands

116. Another independent "source of law" based upon equity springs from the doctrine of "unclean hands." "The general principle is that equity will not lend its aid to enable a party to reap the benefit of his misconduct, or to enable him to continue it..."[59] A court is granted wide discretion when applying the unclean hands doctrine especially when the public interest is involved as in this case. The following quote from *Precision Co. v. Automotive Co., 324 U.S. 806, 65 S. Ct. 993, 89 L. Ed. 1381 (1945)* illustrates this point.

> The guiding doctrine in this case is the equitable maxim that "he who comes into equity must come with clean hands." This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine

59 *Aptix Corporation v. Quickturn Design Sys., 269 F.3d 1369, 1376 (Fed. Cir. 2001).* Quoting McClintock on Equity (2d ed. 1948) § 26

> is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be the abettor of iniquity....This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion...Moreover, where a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public. The determination of when the maxim should be applied to bar this type of suit thus becomes of vital significance. Id. p.814 (internal quotes and citations omitted.)

117. This doctrine indicates the parties must not have been unethical or act in bad faith in their prior actions regarding the subject of the complaint. It is correct that the "unclean hands" doctrine is very often used as a defense against the plaintiff. It can also be used by the plaintiff to bar an equitable defense.[60] The doctrine is "not actually a defense, but a concept designed to protect the court from becoming a party to the transgressor's misconduct."[61] Clearly, the defendants have not properly carried out their duties as directed by §1502(c) and have acted against and been negligent of the "public interest." Further, in their PMTD2AC on p.12 they make the argument there is no duty to act since there is no penalty for violation which is to say the words of Congress hold no value here.

118. The agencies commanded by Congress in §1502(c) to provide notice to applicable individuals are the same agencies who created the HHS Mandate, which placed individuals like myself between a rock and a hard place, i.e. my religious beliefs and the requirements of their regulations, constituting another but

60 See for example, *Merisant Co. v. McNeil Nutritionals, LLC, 515 F. Supp. 2d 509 (E.D. Pa. 2007).*
61 *In re Napster, Inc. Copyright Litigation, 191 F. Supp. 2d 1087 (N.D. Cal. 2002).* (internal citations and quotations will generally be omitted throughout this document.)

interrelated injury, which is yet another strand in this "tangled web." (See the section below concerning a violation of the free exercise clause to the 1st amendment, which presents evidence of malice and hostility in the creation of this rule.) Failure to send the notice also works to the advantage of the defendants as it aids in covering their transgressions by blaming the victim for an insufficiently diligent search. It is my contention that the agencies' bad faith in their failure to provide proper notice and their creation of the HHS Mandate were the proximate cause for much of the injury, which for this claim is the payment of the IMP and loss of insurance coverage, as no injury would exist if the defendants earnestly carried out the intention of §1502(c) instead of trapping and herding the public to their political and religious objectives without any means to find compliant health insurance. As previously indicated, the defendants also made statements which were very misleading and self-contradictory about what coverage was available and the degree of their culpability.

119. This duplicitous negligence with impunity on the part of the defendants meets the definition of "arbitrary" action given in the previous claim. The defendant's violations reward Democrat constituencies[62] and goals while punishing others who are not sympathetic to their belief system. This claim encapsulates and reflects many of the violations at a larger scale in the ACA itself. It is not my purpose to enforce §1502(c), as the injury has occurred and can not be made right by sending out proper notices now or even at the late date the defendants sent notices. My purpose is in part to illustrate additional evidence and motivation for these violations, which will be expanded later. See the Request for Relief section

62 https://brandongaille.com/26-key-democratic-party-demographics/ (last visited 12/29/2020)

below for redress.

120. Under the doctrine of "unclean hands," my standing is based upon the equity powers of the court which have a "wide range" and are "[un]restrained by any limitation that tends to trammel the free and just exercise of discretion." Are the defendants to be allowed to profit from their egregious behavior and harm of the public interest thereby making this court an "abettor of iniquity"?

2 – FTCA

121. The FTCA can also provide a wavier of sovereign immunity and a private right of action here. A cause of action can be found in *Missouri Pac. R. Co. v. American Statesman, 552 S.W.2d 99, 102 (Tex. 1977).* The Texas Supreme court defined "negligence per se."

> *In Southern Pacific Company v. Castro, 493 S.W.2d 491 (Tex.1973)*, this Court discussed the doctrine of negligence per se and adopted the view of the Restatement (Second) of Torts, Sec. 288 B (1965):
>
> "(1) The unexcused violation of a legislative enactment or an administrative regulation which is adopted by the court as defining the standard of conduct of a reasonable man, is negligence in itself."
>
> Thus, for negligence per se, there must (1) be a violation of a legislative enactment, (2) which is unexcused.

122. In the instant case, violation of §1502(c) by the defendants can not be considered a "discretionary duty" or "exercising due care"[63] The violation mentioned here also involves the imposition of an unconstitutional tax/penalty therefore this quote from *Loumiet v. United States, 828 F.3d 935, 939 (D.C. Cir. 2016)* applies,

> We conclude, in line with the majority of our sister circuits to have considered the question, that the discretionary-function exception does not categorically bar FTCA tort claims where the challenged exercise of discretion allegedly exceeded the government's constitutional authority to act.

63 28 U.S. Code § 2680(a)

123. 28 USC § 2680(c) provides a government employee an exception from liability in 28 USC § 1346(b) for, "...Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer..." From the case *Johnson v. Sawyer, 980 F.2d 1490 (5th Cir. 1992)*

> It is axiomatic that not every employee of the IRS is engaged in assessing or collecting taxes even though those are the primary functions and missions of the Service. It is equally true that not every official act of those agents who are thus engaged is sufficiently related to assessing or collecting taxes to have the nexus required to enjoy the protection of § 2680(c). We refuse to expand this exemption as far beyond its already broad range as the government suggests.

124. In the present case, as multiple agencies were involved, it is very likely the decision to ignore the Law and not send the notifications was not made by any employee of the IRS. Therefore, the exception in § 2680(c) does not apply.

125. In addition, it is necessary to show that the violation was at least a contributing factor to the injury,

> Under Texas law, proximate cause consists of two elements: (1) cause in fact, and (2) foreseeability. Both elements must be present. Cause in fact as an element of proximate cause means that the negligent act or omission was a substantial factor in bringing about the injury and without which no harm would have been incurred. Foreseeability is satisfied by showing that the actor as a person of ordinary intelligence should have anticipated the danger to others by his negligent act. *Missouri Pac. R. Co. v. American Statesman, 552 S.W.2d 99, 102, 103 (Tex. 1977).*

126. Here, multiple acts and omissions all on the part of the defendants culminating and including the violation of §1502(c) brought about the injuries. The defendants created the HHS Mandate which made it IMPOSSIBLE for me to find "minimum essential coverage" compatible with my beliefs and forcing me to drop

my insurance. The defendants provided no notice that the Mandate forced ALL insurance companies to comply. As recently as the defendant's MTD1AC indicated such insurance existed, wasting my time and efforts in previous searches and misleading the court. In effect a trap was set by the defendants to expose me to the IMP. Hostility especially to Catholics is demonstrated in the free exercise violation section below. The clear intention of Congress in §1502(c) was to aid the taxpayer to avoid the IMP as indicated above. If as the defendants contended in the MTD1AC compatible policies existed, the §1502(c) notice would be the perfect vehicle to mitigate the harm of the IMP, instead the defendants chose to not provide timely notice or aid, which the defendants should have easily foresaw given the manner in which the HHS Mandate was passed and its nearly continuous opposition.

127. The four required elements for negligence, a)a required duty to the plaintiff, b)unexcused breach of that duty by the defendants, c)resulting in injury to plaintiff, d)proof the injuries were caused by the breach of the duty, have been shown.

V - Claim 3 - Violation of The Religious Freedom Restoration Act in the HHS Mandate

128. The Religious Freedom Restoration Act, U.S.C. 42 § 2000bb-1(b) indicates,

> (a) In general Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b). (b) Exception Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. (c) Judicial relief A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.

129. Section 1302 of the PPACA gives the secretary of HHS the discretion to define what "essential coverage" is required in a health care plan. However, in Section 1303 of the same act, Congress specifically instructs that Federal funds not be used for abortion services and that no plan be forced to include abortion services. HHS et. al. chose to adopt the HRSA guidelines as essential coverage for women in all plans to be provided without cost sharing, as shown above. The HRSA guidelines adopt, "All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." The Food and Drug administration has approved "Ella", which upon knowledge and belief can be used as an abortifacient. "Plan B" and copper IUDs also approved by the FDA may have the same effect. The FDA has also approved numerous other unnatural birth control drugs and devices. The ACA does not use the term "contraceptive mandate" but instead uses the term "preventive services provision" in line with the actual purpose of this provision. This term is employed by the defendants to prejudice the court and provide them with a more substantial authoritative position than exists. The so called "contraceptive mandate" or "HHS Mandate" was created out of thin air by the defendants. As will be better established latter in this document HHS et. al. intended to force this coverage upon all health insurers to advance their belief system.

130. First, evidence indicates the HHS Mandate is not nor was it intended to be "generally applicable" in the legal sense. It is designed to reward and harm selectively. The extensive litigation and the history of multiple revisions of this

mandate is evidence indicating the defendant's stubborn enforcement of their belief system is to maintain their grip on as many people as possible and provide as little relief to free exercise as possible. However, even assuming it is generally applicable, the defendants have not demonstrated applying the burden on my religious exercise furthers a compelling government interest let alone it is the least restrictive means. See the following sections for additional details. Therefore, I am entitled relief from the HHS Mandate. The RFRA does not break any violation or relief into prospective and retrospective. The intention of the Law implies total and complete relief in perpetuity, which has been the experience of other past successful RFRA litigants. For example, of what benefit would only retrospective relief be to the plaintiffs in *Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U.S. 418, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006)* if they only received retrospective relief for the sacramental use of hoasca? A violation is a violation whether it is retrospective or prospective, the law provides an entitlement to relief in both cases.

131. In the background section above, I identify how the HHS Mandate prevents my free exercise of religion, which proscribes any association with abortion etc. Also in the background section, I present an analysis indicating the burdens here do meet the 5th Circuit definition of a "substantial burden" on religion. Section IV above traces the defendant's regulations to show the HHS Mandate requires all health insurers available in the marketplace to incorporate this Mandate as part of "minimum essential coverage" by default. The background section also contains information indicating how the Individual Exemption is inadequate and does not

include myself. In violation of my beliefs I am still being coerced to support abortion, contraception, and sterilization. Therefore, all the elements necessary for standing in this claim have been shown. The defendants have admitted to some culpability for this claim near the end of 2017.

VI - Violation of the 1st Amendment in the HHS Mandate
A – Claim 4 - Violation of the Establishment Clause in the HHS Mandate

132. As no obvious facial discrimination exists in the HHS Mandate, the Lemon Test first developed by the Supreme Court in *Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1973)* is appropriate to determine a violation of the Establishment Clause. The three prongs of the Lemon test can be summarized as 1)whether the defendant's regulations have a secular legislative purpose, 2)a primary purpose which neither advances not inhibits religion, and 3)do the regulations foster an excessive entanglement with religion.

1 - Prong 1

133. The compelling interest or legislative purpose of the HHS Mandate is listed on p.20 of the government's Partial Motion To Dismiss the 2nd Amended Complaint (PMTD2AC) as,

> Congress intended to end the "practices of the private insurance companies in their gender discrimination" against women, who "paid more for the same health insurance coverage available to men." *Priests for Life v. U.S. Dep't of Health & Human Servs., 772 F.3d 229, 263 (D.C. Cir. 2014)* (citing 155 Cong. Rec. 28,842 (2009) (statement of Sen. Mikulski)) (cleaned up), vacated on other grounds sub nom., Zubik v. Burwell, 136 S. Ct. 1557 (2016).

134. On p.24 they also indicate a purpose for the regulations to "promote public health and gender equality." Although on first read these reasons may appear to indeed be important, several facts indicate the reasons given here are not the true intentions or purpose for the inclusion of abortion, contraception, sterilization, and

related counseling in this regulation.

135. Statements from the author and proponent of the "Preventive Services Provision" indicate a much different purpose for this provision which does not include or even imply abortion, contraception, sterilization, or related counseling services should exist in this authorizing provision.

> Ms. MIKULSKI. Yes, that is correct. This amendment does not cover abortion. Abortion has never been defined as a preventive service. This amendment is strictly concerned with ensuring that women get the kind of preventive screenings and treatments they may need to prevent diseases particular to women such as breast cancer and cervical cancer. There is neither legislative intent nor legislative language that would cover abortion under this amendment , nor would abortion coverage be mandated in any way by the Secretary of Health and Human Services. (Congressional Record-Senate, Dec. 3, 2009, p.S12274)

136. Similarly, Democrat Congressman Bart Stupak, who negotiated the executive order to forbid any abortion associated with the ACA, indicated he believed the preventive services mandate from HHS, violated the Law and the executive order. (See http://www.lifenews.com/2012/09/04/stupak-admits-obama-violated-his-executive-order-on-obamacare-abortion/)

137. The case of *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-46 (1984)* set the conduct of a court in determining issues of interpretation by the executive branch for statutes passed by the legislative. First, did Congress address the issue in the legislation. In this case, it has, based upon the quote from Senator Mikulski the intention of the provision was definitely not in accord with HHS et. al. interpretation. The very name of the subsection, "Preventive Services Provision" in the ACA was more in line with a purpose to prevent DISEASE not to provide contraceptive and abortion services to women.

Abortion, contraception, and sterilization were NOT previously defined as preventive services. Next, if Congress left some sort of gap, the court must decide, "whether the agency's answer is based on a permissible construction of the statute." Id. In the instant case the answer would be NO. Pregnancy is considered a normal condition not a disease only women are at risk of contracting and which some insurance plans legally have not covered. See *Gen. Elec. Co. v. Gilbert, 429 U.S. 125, 136 (1976).*

138. The Background section above concerning Science indicates the IOM panel and their recommendations have no basis in Science, but instead reflects the Leftist beliefs of Democrats. As can also be seen from the background section above, concerning Leftist philosophy or religion any pronouncement from a Leftist authoritative body establishes what is the current truth. No need exists for standard methods of Science. All other speech must be silenced, which also partly explains why the defendants can not cite any other data or study to support their position. The treatment of the dissenter by the panel also reflects this idea.

> Upon close scrutiny, however, it turns out that the IOM Report is quite weak and cannot support the government's claim to demonstrate a "compelling governmental interest." It fails to show the required links between forcing employers to provide free contraception and ECs, and improving the health of women and girls. (Helen M. Alvare, No Compelling Interest: The 'Birth Control' Mandate & Religious Freedom,58 VILLANOVA L. REV. 379 (2013) on p.13)

139. Considerable evidence exists the abortion, contraception, and sterilization coverage causes net harm to women. (See footnote 18 above.) See also the section below which provides additional evidence on the harm caused women and increased cost by this coverage free of charge to women. As explored more fully in

that section, the defendant's belief system was the main motivating factor to cause the violation of equal protection, which is additional evidence of how the Leftist belief system overrides objective truth.

140. No evidence is provided by the government to support their argument concerning discrimination by insurance companies in the area of contraceptives, etc. It is also simply illogical to believe that insurance cost or coverage of male and female reproductive systems can or should be the same. Men do not contract cervical cancer, and women do not contract prostate cancer. The defendant's argument concerning "gender equality" is baseless. It is more an argument for resource parity which has been rejected by the previous courts. The Appeals Court in *Gilardi* noted,

> ..."gender equality" is a bit of a misnomer; perhaps the government labeled it as such for the veneer of constitutional importance attached to the term. More accurately described, the interest at issue is resource parity—which, in the analogous abortion context, the Supreme Court has rejected as both a fundamental right and as an equal-protection issue. See Harris, 448 U.S. at 317-18, 100 S.Ct. 2671 ("Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom."); Maher v. Roe, 432 U.S. 464, 471, 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977) ("But this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis.") *Gilardi v. US Dept. of Health and Human Services, 733 F. 3d 1208, p1221 (Court of Appeals, Dist. of Columbia Circuit 2013)*

141. The above evidence strongly indicate all the stated purposes and compelling interest stated by the defendants are false. As noted above, in the section on Leftist Philosophy a consistent tactic of this philosophy is to sacrifice the very people they proclaim to protect. Leftists have most recently imposed mask and

vaccine mandates, which has caused net harm to the people they claim to protect, again indicating their true intention is tyranny. Therefore, the "legislative purpose" claimed by the defendants is neither secular, compelling, or "sincere," from *Edwards v. Aguillard, 482 US 578 (Supreme Court 1987)*, "...it is required that the statement of [the government's] purpose be sincere and not a sham." The first prong fails.

2 - Prong 2

142. As the primary purpose is a sham, this prong automatically fails. However, even assuming there exists a legitimate primary purpose, it still fails both sub-prongs. It advances the Leftist Philosophy/Religion and inhibits all other religions which do not align with its objectives. Even if one does not accept the evidence that Leftist Philosophy can be considered a religion this prong still fails by the 2nd sub-prong as certain religions, especially Christian, are inhibited. See the section on the violation of the free exercise clause of the 1st amendment for evidence of hostility toward certain religions. See the section on the equal protection violation of the HHS Mandate for a break down of the religious and gender classes created by this mandate.

143. The regulations are designed to advance the belief system of the Democrats/Leftists, which would include many atheists, pagans, and satanists. Satanists believe abortion to be a sacrament in their church. (See this interview with a former High Wizard of the Satanic Church who was involved in over 200 abortions, https://www.youtube.com/watch?v=w0F7QrLilAM) The regulations also reward its proponents with an indirect subsidy through a free insurance coverage benefit while simultaneously placing the majority of the burden for this subsidy on

opposing belief systems, which includes Christians especially male Christians.

3 - Prong 3

144. "Excessive government entanglement" and "political divisiveness"[64] can be seen in the long history of suits against the HHS mandate as well as the multiple revisions of the mandate or its exemptions.[65] Contrary to the governments contention of accommodation, the number of cases and protestations of the too narrow regulations calls this assertion in to question. Any accommodation other than the original very narrowly defined exemption for religious organizations seemed to arrive only after court adjudication and lengthy litigation. [66]

145. The following sentence from the *Forest Hills* court decision is very prophetic in light of the present situation:

> The burdensome issue-by-issue free exercise litigation that would be necessary absent a general exemption "results in considerable ongoing government entanglement in religious affairs." (citation omitted) (*Forest Hills Early Learning Ctr., Inc. v. Grace Baptist Church, 846 F.2d 260 (4th Cir. 1988))*

The defendant's in pursuit of their agenda have never been willing to grant a sufficiently general exemption which has lead to much litigation over this Mandate. The third prong also fails.

146. The Supreme Court indicted in *United States v. Ballard, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944)* it is not necessary to profess beliefs consistent with any organized religion. A sincerely held belief is sufficient to define a religion in the context of the first amendment. It has been well publicized President Obama

64 *Lynch v. Donnelly, 465 U.S. 668, 673, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O'CONNOR, J., concurring)*

65 See https://www.becketlaw.org/research-central/hhs-info-central/hhs-case-database/ for a partial list of cases against the HHS Mandate and https://www.becketlaw.org/research-central/hhs-info-central/ for a timeline of the rule changes.

66 For example, *Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014)*

wanted to "transform America." It was not infrastructure about which he was speaking. Instead, a more straight forward interpretation of his words appears to be his intention to replace the current values of the American public with another set of moral beliefs which are in line with Leftist philosophy thus "transforming" the whole of society. Therefore, not only does the regulation fail all three prongs of the Lemon test, it violates the letter and spirit of the Establishment Clause of the Constitution which was intended to prevent the imposition of just such a system of beliefs on the nation.

B - Claim 5 - Violation of the Free Exercise Clause in the HHS Mandate

147. On p30 of the defendant's MTD1AC, the defendant's succintly paraphrase *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, pp.533, 545 (1993)*, which states the requirements of neutrality and general applicability for any law to avoid triggering strict scrutiny in a violation of the free exercise clause,

> A law is neutral if it does not target religiously motivated conduct either on its face or as applied, and has as its purpose something other than the disapproval of a particular religion, or of religion in general. A law is generally applicable so long as it does not selectively impose burdens only on conduct motivated by religious belief. (internal citations omitted)

148. As no mention of any particular religion or religious practice exists in the HHS Mandate, no facial violation is evident. The Supreme Court in *Lukumi* also stated, "The Free Exercise Clause protects against governmental hostility which is masked as well as overt." Id p.534 The Supreme court in *Lukumi* pointed out that evidence may be "both direct and circumstantial." Among other sources, evidence can include, "historical background," "administrative history," and "contemporaneous statements made by members of the decisionmaking body." Id p.540 As indicated

by Prongs 1 and 2 above, strong evidence indicates the purported purposes of the regulation are a sham and the regulations doubly burdens Christians. "...a neutral, generally applicable governmental regulation will withstand a free exercise challenge when the regulation is reasonably related to a legitimate state interest." *Littlefield v. Forney Independent School Dist., 268 F. 3d 275 - Court of Appeals, 5th Circuit 2001.*

149. Evidence of hostility by the Defendants toward certain religions does exist. Statements from high ranking members of the Democrat party and the Obama administration as well as affiliations of the IOM panel reveal favoritism and hostility. In support of equal protection and 1st amendment violations, which are related, a "discriminate intent" and "lack of neutrality" should be present. Hostility to certain religions and favoritism to the Leftist belief system can be seen in the following: a)

> Michael O'Dea, executive director of Christus Medicus Foundation, wrote to Sebelius, "It is clear that the Institute of Medicine has an agenda. Virtually all of the Women's Preventive Services committee members are affiliated in some way with Planned Parenthood." Further research by HLI America has substantiated O'Dea's concern, revealing that many of the committee members have strong relationships with both Planned Parenthood and NARAL Pro-Choice, and have actively supported pro-abortion candidates for public office. [67]

150. b)Although President Obama provided assurances to Bishop Dolan around November of 2011, religious freedom would be protected in the implementation of the ACA, two months later Obama rather abruptly told him he had until August to figure out how he was going to comply with the birth control mandate. [68]

67 https://www.thepublicdiscourse.com/2011/09/4031/

68 https://freerepublic.com/focus/f-religion/2866637/posts Other Catholics in the hierarchy of the Church also felt betrayed by Obama. See http://usatoday30.usatoday.com/news/religion/story/2012-01-25/catholic-obama-birth-control/52794196/1 and http://www.npr.org/2012/02/07/146511839/weekly-standard-

151. c)A very likely reason for Obama's change to a confrontational and hostile stance in the previous point was later revealed in a wikileak email from John Podesta, the Clinton Presidential Campaign Chairman, dated 2/11/2012. In the email he admits to complicity in the creation of groups whose purpose was to subvert the Catholic Church specifically in the area of contraceptive coverage. Hostility toward the orthodox Catholic faith is evident in this email among the higher ranks of the Democrat Party. [69] d)In October of 2011, Kathleen Sebelius, Secretary of HHS at that time, gave a speech at a NARAL luncheon where she announced that the Obama administration favored health insurance coverage of birth control without copays. She said, "We are in a war," with reference to a few pro-life demonstrators at the entrance to the event.[70] The HHS Mandate is clearly not neutral.

152. The Court in Conestoga quoting other case law stated,

> A regulation is not generally applicable "if it is enforced against a category of religiously motivated conduct, but not against a substantial category of conduct that is not religiously motivated and that undermines the purposes of the law to at least the same degree as the covered conduct that is religiously motivated." (internal citations omitted). [71]

153. Several nonreligious exemptions were provided to the HHS Mandate including grandfathered plans. However, Medicare which covers about 1 million women of child bearing age, was defined as meeting "minimum essential coverage" in 26 U.S. Code § 5000A(f)(1)(A)(i) by Congress. Medicare does not contain the HHS

obamacare-vs-the-catholics

69 https://wikileaks.org/podesta-emails/emailid/57579 and https://www.catholicvote.org/ongoing-updates-clinton-campaign-anti-catholic-wikileaks-scandal/

70 http://www.catholicculture.org/news/headlines/index.cfm?storyid=12008 See also,https://www.lifesitenews.com/opinion/evangelical-leader-chuck-colson-obama-birth-control-mandate-must-be-stopped

71 Conestoga Wood Specialities Corp. v. Sebelius, 917 F. Supp. 2d 394, p409 (Dist. Court, ED Pennsylvania 2013)

Mandate.[72] This group of women is a very sizable "not religiously motivated" group which undermines the defendant's purported purpose. This large exception also indicates Congress never intended to create a "contraceptive mandate" as the defendants propose. In *Fulton v. City of Philadelphia, Pennsylvania, 141 S. Ct. 1868, 210 L. Ed. 2d 137, 593 U.S. (2021)* the court indicated the existence of individualized exemptions can render a law not generally applicable. Therefore, the HHS Mandate is not "generally applicable."

> If a law is not neutral or generally applicable, it is subject to strict scrutiny. Lukumi, 508 U.S. at 531-32 ("A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest."). *MARCH FOR LIFE v. Burwell, No. 14-cv-1149 (RJL) (Dist. Court Aug. 31, 2015).*

154. Obviously, no compelling government interest exists nor is it even possible for a "contraceptive mandate" to be "narrowly tailored" to meet a very broad purpose such as "promote public health."[73] The HHS Mandate violates the free exercise clause of the 1st amendment.

C - Claim 6 – Violation of the Freedom of Speech Clause in the HHS Mandate

155. The following quote from a speech by Justice John Paul Stevens summarizes his thoughts on the necessary guidelines for a successful case concerning a violation of freedom of speech,

> In sum, it seems to me that the attempt to craft black-letter or bright-line rules of First Amendment law often produces unworkable an unsatisfactory results, especially when an exclusive focus on rules of general application obfuscates the specific facts at issue and interests at stake in a given case. I offer this observation not only as a matter of academic interest, but also as a practical guide, for advocates, as well as scholars and judges, may emphasize legal abstractions at the expense of facts that could win a case. Indeed, a litigant's misplaced reliance on propositions of law instead of the special facts of the case

72 https://www.medicare.org/articles/does-your-medicare-plan-include-birth-control-coverage/
73 See *Korte v. Sebelius, 735 F.3d 654, 686 (7th Cir. 2013).*

> may snatch defeat from the jaws of victory. (John Paul Stevens, The Freedom of Speech, The Yale Law Journal Vol. 102 p.1293.)

156. As the instant case does not fit neatly into any particular precedent, I will specify the facts involved and how the principles underlying freedom of speech are violated by the defendants. The freedom of speech has been expanded by the Supreme Court to include certain conduct, which are related to speech as both are expressions of ideas, for example, burning flags[74], burning crosses[75], and commercial advertising.[76] A contract specifies in effect certain policies between the parties. Politics has to do with the implementation and formulation of policies. Therefore, a contract is inherently political speech whether or not government has an interest in the policies contained in any particular contract. The instant case involves both speech, which is written in the form of a contract, and conduct in the affirmation of that contract by signature and the fulfilling of its terms such as premium payments.

157. My understanding of the theory of contract law is that a contract is generally an expression of private law which sets terms and conditions between parties. The contract is generally a written document which determines the expected duties or conduct of each party or limitations thereto. A contract is definitely a written form of speech. When the government uses its power to mandate part or the majority 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 are under pressure to conform to the government's terms, speech, and belief system. As the value of the contract is

74 Texas v. Johnson, 491 U.S. 397 (1989)
75 R.A.V. v. City of St. Paul, 112 S.Ct. 2538 (1992)
76 Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976).

diminished to the contract holder because of the government's terms which are designed to benefit itself as well as by transfer of property intended to provide a free benefit to certain individuals favored by the government. The HHS Mandate is a confiscation by the government even if a third party is tasked with the actual confiscation. See the sections below on taking for more information. As mentioned in the background section above, health insurance is considered an important benefit.[77]

158. Other sections speak to the inadequacy of the religious exemption to the HHS mandate and the damage to the market caused by the ACA and the HHS Mandate which is continuing. In effect, the government is at least pressuring citizens to affirm by speech and conduct an allegiance to the belief system of the defendants. This pressure is greater than that suffered by the plaintiffs in *Zubik v. Burwell, 136 S. Ct. 1557, 578 U.S. 932, 194 L. Ed. 2d 696 (2016),* which was later settled by a compromise. These plaintiffs were harmed by a government imposed requirement to sign a document requesting their health insurer provide the HHS mandated coverage. This requirement similarly forced their speech and conduct to trigger the HHS Mandate supporting the defendant's belief system which is in opposition to that of the plaintiffs.

159. Two cases in which "compelled-speech" were invalidated are *West Virginia Bd. of Ed. v. Barnette, 319 U. S. 624 (1943)* and *Wooley v. Maynard, 430 U. S. 705 (1977)*, in the latter a State logo on the license plate of a couple's vehicle was found to be impermissible as compelled speech. "Government speech" is granted an exception to the 1st amendment. (See *Johanns v. Livestock Marketing Assn., 544*

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

U.S. 550, 125 S. Ct. 2055, 161 L. Ed. 2d 896 (2005).) However, the government here attempts to improperly blur the line between government action and that of a supposedly private party. It is judicial estoppel to claim both simultaneously or when one or the other advances its argument.

160. In addition, the Supreme court also mentions a compelled-subsidy analysis which potentially, "invalidates an exaction not because being forced to pay for speech that is unattributed violates personal autonomy, but because being forced to fund someone else's private speech unconnected to any legitimate government purpose violates personal autonomy." Id. p580 n8. In the instant case, it is the government's contention the decision to provide a policy without the HHS Mandate is solely up to the private insurer after being provided an individual religious exemption. In regard to compelled-speech the same court indicated, "...there might be a valid objection if 'those singled out to pay the tax are closely linked with the expression'... in a way that makes them appear to endorse the government message." Id. In the instant case, those forced to pay for the free benefit of abortion, contraception, sterilization, and related counseling to certain women are tacitly blamed for the harm to this group, therefore males and christian religious adherents are closely linked to the expression.

161. General principles of 1st amendment free speech have clearly been violated.

> In 1779 Jefferson wrote that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves ... is sinful and tyrannical." A Bill for Establishing Religious Freedom, in 5 The Founder's Constitution, No. 37, p. 77 (P. Kurland & R. Lerner eds. 1987), codified in 1786 at Va. Code Ann. § 57-1 (Lexis 2003). Id. JUSTICE SOUTER, with whom JUSTICE STEVENS and JUSTICE KENNEDY join, dissenting. p.570

Similarly,

> When official power is used to prescribe what shall be orthodox in politics and matters of opinion, and to force citizens to adhere to those views, then the central purpose of the Amendment is threatened. (John Paul Stevens, The Freedom of Speech, The Yale Law Journal Vol. 102 p.1309.)

Government may not condition an important benefit on acceptance of its political speech and belief system.

VII - Violation of the 5th Amendment by the HHS Mandate
A - Claim 7 – Violation of the Equal Protection Clause

162. HHS et. al. adopted the HRSA, which is a division of HHS, recommendations for all FDA approved contraceptive methods for women to be provided without copay or additional cost as part of "minimum essential coverage." One of the FDA approved contraceptive methods is vasectomy, which is a surgical procedure intended to leave the male sterile. Catholic teaching forbids this practice no less than contraception and sterilization for females. I do not endorse or desire an extension of the HHS Mandate to include vasectomies free of additional cost or copay to males, nor do I want to be forced to accept or pay for such coverage. My point here is to indicate an inconsistency and a violation of the equal protection clause of the Constitution on the part of the defendants. HHS et. al. did not approve vasectomies be provided without copay or additional cost.

163. The court in R*eal Alternatives, Inc. v. Burwell, 150 F. Supp. 3d 419 (M.D. Pa. 2015)* stated the requirements for a successful case claiming a violation of equal protection,

> To prevail on an equal protection claim, a plaintiff must show that the government has treated it differently from a similarly situated party and that the government's explanation for the differing treatment `does not satisfy the relevant level of scrutiny...Statutes that

> substantially burden a fundamental right or target a suspect class must be reviewed under strict scrutiny. . . (internal quotations and citations omitted)

164. "Laws that involve a suspect or quasi-suspect classification, such as race, religion, alienage, or gender, are subject to a heightened standard of review." *Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).* Courts may sometimes apply a reasonableness test, which seeks to evaluate how well the government encapsulates in its classifications the group causing the harm, the group deserving of some benefit or protection, and the relationship between these groups in advancing the purpose of the legislation.[78] Classifications can be under or over-inclusive.

165. Here both a violation of a constitutional right, the first amendment in effect, and a facial violation of a protected class, gender, are involved. Thus, four classes are created. 1)The class of females who share the beliefs of the defendants and can receive all FDA approved contraceptive methods for women without additional cost. 2)Females who do not share the beliefs of the Defendants and for religious reasons can not use one or more of the contraceptive services. 3)Males who can not receive the FDA approved method for male contraception cost free because of the Defendant's gender discrimination, but who do not object to the defendant's beliefs. 4)Males who do object to the defendant's beliefs on religious grounds and who can not receive contraceptive benefits for the same reason as Class 3.

166. Class 1 receives an unlimited free service benefit. This benefit must come from the remaining classes as the insurance company must obtain sufficient funds from premiums and fees to pay all claims, overhead, and profit. Class 2 may

78 *Wygant v. Jackson Bd. of Ed., 476 U.S. 267, 106 S. Ct. 1842, 90 L. Ed. 2d 260 (1986).*

receive a partial benefit if their moral beliefs allow use of some of the contraceptive services. Classes 3 and 4 must pay for the benefit given to classes 1 and perhaps 2 without any benefit. Violation of the free exercise of religion and the protected class of gender, which has been upheld by the courts as a protected class, including the male gender, require heightened scrutiny. [79] In this instance, classes 3 and 4 are not responsible for any harm allegedly suffered by classes 1 and 2, nor have defendants presented any evidence to this effect. By forcing contraceptive coverage on these latter groups a group is created which is over-inclusive containing persons who are not responsible for the harm allegedly suffered by the first two classes. Similarly, the group to receive the benefit to cure past discrimination and of which deserve to have their health and "gender equality" promoted is under-inclusive as many Christian women especially Catholic may not participate. [80] [81] It has been shown in previous sections that the

79 See for example: *Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979).* and *Mississippi Univ. for Women v. Hogan, 458 US 718 (Supreme Court 1982)*

80 The term "gender equality" implies that there is some inherent inequality between men and women, and the defendants know and can establish the proper balance between the sexes. Other than implying women an inferior, victimized class, the defendants do not specify who has victimized them, the nature of the harm, or how their proposed solution addresses these harms. Simply pointing out a distinction as the appellees in *Women Prisoners of the D.C. Dep't of Corr. v. D.C., 93 F.3d 910 (D.C. Cir. 1996)* does not necessarily indicate a harm or an actual violation of equal protection.

81 The use of the term "gender equality" also aids in understanding the belief system of the Defendants. It appears the defendants believe that the natural and normal functioning of the female reproductive system places the female at a disadvantage for those activities the defendants believe females should engage, especially in comparison and competition with men. It is necessary to provide the female with drugs and devices, which alter the functioning of their bodies to level the field while at the same time at least financially penalizing males so these females can be on a more equal footing . This belief system has many flaws. For example, studies have shown, see http://www.ncbi.nlm.nih.gov/pubmed/8477683 and http://health.howstuffworks.com/wellness/diet-fitness/personal-training/men-vs-women-upper-body-strength.htm, that males have on average over 50% more muscle strength than females. The difference in life expectancy between the sexes is about 5 years in favor of females according to http://www.usatoday.com/story/news/nation/2014/10/08/us-life-expectancy-hits-record-high/16874039/. If health outcomes were so biased against women compared to men as indicated by the defendants one would expect this statistic to be reversed. My hypothesis is the difference is genetic, and can not be changed without changing what it is to be male or female.

defendants stated purposes for the HHS Mandate are a sham and a hostility to Christian faiths exist. The classifications here are additional evidence for the same.

167. In Gabriel Ascher "Good for the Gander, Good for the Goose: Extending the Affordable Care Act Under Equal Protection Law to Cover Male Sterilization" 90 N.Y.U. L. Rev. 2029 2015, the author starting on p.2038 reviews the history of litigation in this specific field. In *Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975)* the Court stated its treatment of equal protection claims were the same whether under the fourteenth or the fifth amendment. In *Reed v. Reed, 404 U.S. 71, 76-77 (1971)* the Court found that laws classifying individuals on the basis of sex may violate equal protection. However, a court must first determine if the law creates a sex classification. See *Geduldig v. Aiello, 417 U.S. 484, 494-97 (1974).* If not, the law will only be held to the rational basis standard, and so long as it is "rationally related to a legitimate government purpose," it will be upheld. *Hodel v. Indiana, 452 U.S. 314, 331-32 (1981).* Id. p.2039 Otherwise, “intermediate scrutiny” will apply. Virginia, 518 U.S. at 531, 532-533 (1996). Under this standard the sex classification must "serve important governmental objectives" and be "substantially related to [the] achievement of those objectives." *Craig v. Boren, 429 U.S. 190, 197 (1976).* Id p.2038

168. Courts have found that discrimination only occurs when a benefit which could be provided to both sexes is only provided to one. If biological differences require different procedures or treatments then the law can acknowledge these without violating equal protection. Id p.2041 Under intermediate scrutiny, the law must substantially advance the government objective. However, courts have allowed

laws establishing sex classifications in order to remedy discrimination. See *Miss. Univ. for Women v. Hogan, 458 U.S. 718, 728 (1982)*. Id p.2046

169. Even though the sterilization procedures are different between the sexes, it takes both sexes to conceive, the risk of unintended pregnancy occurs to both sexes simultaneously. This situation is closer to *Craig v. Boren* in which a classification based on sex did not advance the purpose of the law, however the HHS Mandate is much more invidious. Not only is there no history of discrimination favoring male sterilization or against female sterilization, but 10 to 20 women die every year from tubal ligation surgery compared to not a single recorded death due to a male vasectomy. Id p.2058 Female sterilization is also more likely to fail than male sterilization. The cost of the procedure is many times more expensive for women than men and the cost of the complications which may develop are also much higher for women. Offering female sterilization free of charge and not male sterilization creates a perverse incentive which places the life and health of women at a greater risk, contrary to the stated purpose of the law. Id p.2034 The government may be giving some women a free service benefit, but they are sacrificing the lives of at least some these women to their belief system.

170. The previous sections on violation of the free exercise and establishment of religion indicate the defendants compelling government interests are a sham. The information in the previous paragraphs add evidence the defendants are advancing their belief system and a conclusion no "legitimate public purpose" exists to justify their actions is reasonable.[82] Gender discrimination by HHS et. al. is invidious. Every contraceptive, except abstinence, carries a risk of failure and

82 *Plyler v. Doe, 457 U.S. 202 (1982)*

serious complication. A male contraceptive will place the burden for these risks on the male. Providing free contraceptives to females only, places a perverse incentive on females, perhaps even from their male partners, to take more risk to enjoy this free benefit.

171. By seeking contraceptives females indicate they are aware of the risks involved such as pregnancy, sexually transmitted disease, possible emotional upset from the relationship, and long term financial obligation if children should result and has accepted ALL of them. Most if not all of these risks are NOT exclusively female but impact both parties from consensual sexual activity. Thereby,

> Underlying these decisions is the principle that a legislature may not "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." (citations omitted) (*Michael M. v. Superior Court of Sonoma Cty., 450 U.S. 464, 469, (1981))*[83]

172. The government in their Appellee Brief in *Dierlam v. Trump, 977 F.3d 471 (5th Cir. 2020)* (GABDvT) cite *Tuan Anh Nguyen v. INS, 533 U.S. 53 (2001)* on p.37 indicating discrimination based on gender is justified due to the unique relationship a mother has with children. However, here the activity concerns BOTH sexes BEFORE conception. Therefore, here the biology cuts the other way.

173. On the same page the government quotes Sen. Gillibrand from 155 Cong. Rec. 28,843 (2009), "women of childbearing age spen[t] 68 percent more in out-of-pocket costs than men." Again, here the government seeks to justify their gender discrimination. From *Craig v. Boren, 429 U.S. 190, 204 (1976)*,

83 See also *Parham v. Hughes, 441 U.S. 347, 354 (1979)* "...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."

> 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.

174. *Craig v. Boren* involved drunk driving, but the observation regarding statistics is just as valid here. The 68 percent does not specify what these costs include. 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 cost 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 determined and the statistic is of no value.

175. On p.38 of the GABDvT, the government switches its argument from intentional discrimination of women on the part of health insurance companies as the cause for higher costs women suffer to women are just more needy, which greatly undermines the former argument. A mandated free benefit under all circumstances has NO relationship to any sort of rational health insurance coverage. As the dissenter on the IOM panel pointed out, insurance coverage should be determined by a cost-benefit analysis, not the whim of an autocracy. The government's statement concerning equalizing "access to health-care outcomes" on the same page is a resource parity argument dismissed by previous courts. (See the quote from *Gilardi v. US Dept. of Health and Human Services, 733 F.3d 1208,*

1221(D.C. Cir. 2013) above.) It also implies this same autocracy can and should determine where the line should be drawn in all situations, which is patently invidious. Democrats also claim women as a special constituency, not so much men. Therefore, it is expected they will direct benefits to women, and not so much to men. HHS deviated from standard procedures or used their authority to ignore and set aside the concerns of other parties as well as violate the equal protection clause of the US Constitution. This arbitrary and invidious discrimination by HHS supports strict scrutiny and a violation of equal protection.

B - Claim 8 – Violation of the Due Process Clause by the HHS Mandate

176. The Court in *Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)* although indicating 5th amendment due process requirements can vary depending on the situation provided certain factors which should be taken into account for the proper execution of due process.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

177. In the instant case, the private interest is the deprivation of property, freedom of speech and religion. The property is in the form of a contract with a company taking a monetary risk in exchange for a premium payment for health insurance. The contract for this service has been considered an important benefit by prior courts. If the value of the contract is diminished to the individual by the action of the government, property has been taken. "A seizure of property occurs when there is some meaningful interference with an individual's possessory

interests in that property."[84]

178. The HHS Mandate greatly diminishes the value of the contract and makes it impossible to be maintained for certain groups. Large penalties are imposed on other groups for noncompliance with "minimum essential coverage." No due process exists for the citizen before the taking of this property from the individual and other institutions. Extensive litigation has occurred because no other means of due process existed for this confiscation and diminishment of value. The government at the time the ACA and HHS Mandate were enacted could have at a minimum created some process similar to the one created in *Abood v. Detroit Bd. of Educ., 431 U.S. 209, 235-36, 97 S.Ct. 1782, 1799-1800, 52 L.Ed.2d 261 (1977),* which was later overturned by *Janus v. American Federation of State, 138 S. Ct. 2448, 585 U.S., 201 L. Ed. 2d 924 (2018),* however the government made no effort to protect any Constitutional rights of the people affected. As shown above, the government does not have a legitimate interest in the HHS Mandate. A great deal of litigation, cost, and effort could have been avoided if the defendants would have created fair and equitable due process.

C - Claim 9 – Violation of the Taking Clause in the HHS Mandate

179. The HHS Mandate as shown in previous claims was created by the defendants from thin air, which suggests the defendants have no limits on what provisions they can impose as part of "minimum essential coverage." This is yet another abuse in itself which "if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury [is] certainly impending."[85] The HHS mandate currently exists and continues to have

84 *United States v. Jacobsen, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984).*
85 *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693,*

many victims. Given the existence of this unchecked Mandate, I see nothing to restrain the agencies from placing anything in "minimum essential coverage" thereby forcing the population to accept and pay for any benefit or injury to any group under the name of health care. For example, required insurance to cover drugs for executions or euthanasia, supplies for a death lottery if the government should determine the country contains too many white people, etc. With this new power, the defendant agencies could confiscate more property than the IRS brings into the treasury. Citizens would have little recourse or ability to protest as a so called private third party is charged with the government mandated confiscation other than go without an important benefit and risk potentially crippling costs.

180. The HHS Mandate was fraudulently and deceptively incorporated into "minimum essential coverage" as discussed in previous sections: 1)The "preventive services provision" was not intended nor did it authorize any of the non-disease, non-preventive, services of abortion, contraception, sterilization, or related counseling. 2)Evidence exists these services may cause net harm to women. 3)Science was not employed as claimed by the Defendants to justify the inclusion of these services 4)The stated compelling government interests to justify the imposition of these services, "women's health" and "gender equality," also discussed in the sections above have been shown to be a sham. Among the reasons such a conclusion can be drawn is the evidence of a net detrimental effect on women's health and the facial, invidious discrimination against free male contraceptive coverage which could ease the burden on women. The defendant's political agenda and belief system is the true goal here. The defendants have

145 L. Ed. 2d 610 (2000). p.190

illegitimately confiscated and redirected property through fraud and deception to which it had no right.

181. The actions of the defendants 1)interfered with the freedom of contract, 2)had the effect of exposing especially Catholics to the IMP, 3)caused increased risk to health due to the loss of a "generally available benefit," health insurance, 4)have had the effect to inhibit coverage which is free of the HHS Mandate even with a religious exemption since facing potential penalties and the need to administer different coverages, health insurance providers will be reluctant to offer policies free of the HHS Mandate as seen in the statements by MCHCP.[86]

182. Therefore, the Principle of Restitution or unjust enrichment demands HHS et. al. not be allowed to keep ill gotten gains and to restore the parties to their original state. "...the Government's liability is predicated...on a benefit it has received and retained for which it owes restitution." *Campbell v. Tennessee Valley Authority, 421 F.2d 293 (5th Cir. 1969)*

> A party may recover under the unjust enrichment theory when one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage. *Harris County, Texas v. Merscorp Inc., 791 F.3d 545, 561 (5th Cir. 2015)* quoting *Heldenfels Bros. v. City of Corpus Christi, 832 S.W.2d 39, 41 (Tex.1992).*

VIII - Violations of the Constitution by the ACA

183. In section 1501(a) of the PPACA, Congress appears to list much of their motivation for this Law and their justification of the penalties imposed. Many of these findings are fallacious and/or misleading as pointed out in the Supreme Court decision, *Nat. Fedn. of Indep. Business v. Sebelius, 132 S. Ct. 2566, 567 U.S. 1, 183 L. Ed. 2d 450 (2012)*, especially in the opinion of the dissenters. The expansion of the power of Congress in the ACA would place in effect no limit on its ability to

86 *Wieland v. U.S. Dep't of Health & Human Servs. case 4:13-cv-01577-JCH Dkt.79-1 p.11*

control the population of the US, which is why the court disallowed the claim set forth in section 1501. The Supreme Court ruled the power to impose the penalties and regulations does NOT stem from the power of Congress to regulate interstate commerce. The court narrowly allowed the penalty referred to as the "shared responsibility payment" or Individual Mandate based on the Congressional power to tax.

184. Heretofore, insurance was sold by one party willing to take the monetary risk of some possible future adverse event of another party in exchange for a payment of some type. This payment is often calculated based on probability so as to provide a net profit to the first party. The ACA in effect eliminates or invalidates this type of transaction for health care while maintaining the name insurance for this contract. The ACA forces coverage of preexisting conditions, which by definition is not a future event. It has 100% probability as the event has occurred. This provision along with other provisions make the insurer in this transaction essentially a conduit for government mandated benefits. In order to mitigate the cost to the medical insurer, this law forces additional participants to buy contracts for which the cost and probability of collecting is not to the advantage of the purchaser. The ACA refers to the exchange of these new government mandated contracts as a marketplace, however market forces are not at work in this so called marketplace. This system will be difficult to maintain in proper balance as indicated by the dissenter's opinion in the Supreme Court ruling previously mentioned.

185. The ACA is "arbitrary and capricious" and "oppressive and partial" in effect and by design. The objectives actually sought conflict with the stated goals of the

legislation and the means employed are not the least restrictive. The ACA violates the 1st, 4th, 5th, 9th, and 10th amendments of the Constitution. The details of these violations follow.

A - Claim 10 - Violation of the Establishment Clause of the 1st Amendment in the ACA

186. The ACA, as codified in 26 U.S.C. § 5000A(d)(2)(A) Religious Conscience Exemption and (B) Health Care Sharing Ministry, provides only two religious exemptions to the Individual Mandate (IM) and therefore Individual Mandate Penalty (IMP). 26 U.S.C. § 5000A(d)(2)(A) provides a 26 U.S.C. § 1402(g) Exemption to sects which were opposed to Social Security and later Medicare. The Supreme Court in the case of *United States v. Lee, 455 U.S. 252, p260 (1982)* ruled that an Amish farmer when he entered into a commercial venture could no longer use the §1402(g) exemption. In the present situation, Public Law 111-148 (ACA) 1501(a)(1) declares the Individual Mandate Penalty is designed to regulate activity "commercial and economic in nature, and substantially affects interstate commerce." The Supreme Court did not accept this reasoning for the Penalty, [87] however the intention of Congress is clear. The decision not to purchase is commercial. It granted the same § 1402(g) exemption to the individuals it determined were engaging in commercial activity, which is clearly a contradiction. Both can not be true.

187. Congress intentionally granted an exemption which does not meet the purpose stated by the defendants on p. 19 of their MTD1AC for a "national, mandatory application of a system of health insurance, enforced through the tax code." In addition, the defendant's MTD1AC (p2-3 and p35) appears to insist no

87 *Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012)*

requirement exists to purchase health insurance in the ACA, which makes immaterial whether an individual purchases an insurance policy or not. Given, Congress intended to create a system like Social Security which does not provide a § 1402(g) exemption for commercial activity or the ACA does not require the purchase of insurance, Congress has discriminated between similarly situated religions.

188. A similar case is the Estate of *Thornton v. Caldor, Inc., 472 US 703 (Supreme Court 1985)*. The Court determined the State of Connecticut violated the establishment clause by creating a Law giving Sabbath observers their chosen Sabbath day by preventing any private employer from enforcing any work requirement on that day. In applying the Lemon test the Supreme Court found that it failed because the primary effect was to advance religions with a Sabbath over religions without one. In this case, religions with an aversion to insurance payments or proceeds are advanced over others while for two independent reasons, this aversion is of no importance in this situation. [88]

189. The defendants cite *Liberty University, Incorporated v. Lew, 733 F. 3d 72 (Court of Appeals, 4th Circuit 2013)* on p25 of their MTD1AC in stating two "secular legislative purposes" for the health care sharing ministry exemption. The first purpose "(1) to 'ensure[] that the ministries provide care that possesses the reliability that comes with historical practice'" can not possibly be correct as no standards are specified by 26 U.S.C. § 5000A(d)(2)(B) created by the ACA other than an accounting standard. No size or wealth limitation, only a ten year operating history, and no particular level of care or coverage is specified or

88 See also *Board of Ed. of Kiryas Joel Village School Dist. v. Grumet, 512 US 687 (Supreme Court 1994)*

monitored. "(2) to 'accommodate[] religious health care without opening the floodgates for any group to establish a new ministry to circumvent the Act.'" A narrowly drawn exemption such as this one does not accommodate religious health care; it in large part inhibits it. If a new ministry can adequately cover its members it would meet the stated purpose of Congress, unless the actual purpose of Congress was to favor specific religious ministries.

190. Despite numerous assertions in judicial decisions indicating the religions receiving either Congressional exemption will provide adequate protection to individuals in these plans is assured. [89] No means or assurances are given or required in the ACA that individuals covered under either Congressional exemption will have adequate coverage or will not at some point be a burden on the public system. Neither the requirement for continuous existence since 1999 or the 501(c)(3) structure can be considered relevant to the stated purpose of Congress.

191. Here the analysis the Supreme Court applied in *Larson v. Valente, 456 US 228 (Supreme Court 1982)* appears to be the most appropriate. In that case, the State of Minnesota created a law in which religions were granted an exemption to an otherwise general reporting requirement based upon if less than 50% of their donations came from outside their membership. The appeals court invalidated the law based upon failure of the 2nd prong of the Lemon test. The opinion of the Supreme Court in this case indicated:

89 See for example *Cutler v. US Dept. of Health and Human Services, 797 F. 3d 1173, p1181 (Court of Appeals, Dist. of Columbia Circuit 2015.)* "The religious exemption in the Affordable Care Act, like its counterpart in the Social Security Act, accommodates religion by exempting all believers whose faith system provides an established, alternative support network that ensures individuals will not later seek to avail themselves of the federal benefits for which they did not contribute." See also *Droz v. Comm'r of IRS, 48 F.3d 1120, 1124 (9th Cir.1995).* which asserted the purpose of the exemption was "to ensure that all persons are provided for, either by the [Act's insurance] system or by their church."

> ...the Lemon v. Kurtzman "tests" are intended to apply to laws affording a uniform benefit to all religions, and not to provisions, like § 309.515, subd. 1(b)'s fifty per cent rule, that discriminate among religions. Although application of the Lemon tests is not necessary to the disposition of the case before us, those tests do reflect the same concerns that warranted the application of strict scrutiny to §309.515, subd. 1(b)'s fifty per cent rule. (*Larson v. Valente, 456 US 228 p252 (Supreme Court 1982))*

192. With strict scrutiny triggered the Court required the law to have a compelling government interest and be "closely fitted" to that purpose. Id. The court found that the government's stated interest was compelling, but the law did not closely fit the purpose. The court used the legislative history to indicate the intention of the legislature was to discriminate among religions. In the instant case, Congress has in a similar manner made distinctions between religions based on criteria which are not related to the stated purpose. [90] The court in *Liberty University, Incorporated v. Lew, 733 F. 3d 72 (Court of Appeals, 4th Circuit 2013)* on p102 indicated the "history" lacked "any deliberate attempt to distinguish between particular religious groups." However, the legislative history of the ACA is very incomplete with much of it occurring off the public record to evade opposition. [91] Therefore, this exemption in a similar manner to *Larson*, provides certain religions a benefit of less government intrusion and denies it to others based on criteria which does not fit the purpose of the government. Granting certain religions preference in contradiction to the purpose of the law which is also "not closely

90 See http://www.cnbc.com/id/100935430 . Gruber is a purported architect of the legislation. Here he indicates that the health care sharing ministry exemption undercuts the intention of the law. "The whole goal of health-care reform is to ensure that people are protected against risk and illness, and this violates that fundamental goal," said John Gruber, an MIT economics professor and the director of the health care program at the National Bureau of Economic Research. He also served as a technical consultant to the Obama administration on the Affordable Care Act.

91 See "A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative History" John Cannan, LAW LIBRARY JOURNAL Vol. 105:2 [2013-7], p138

fitted" to the government's purpose should evoke strict scrutiny. [92] Both exemptions fail the 2nd prong of the Lemon test indicating a violation of the Establishment clause of the 1st amendment.

B - Claim 11 - Violation of the implied Association Clause of the 1st Amendment by the ACA

> It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny. (*NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460–61 (1958).)*

193. "Minimum essential coverage," the Individual Mandate Penalty, and especially the Individual Mandate work to form a "compelled association." These provisions are analogous to the State Laws forming the compelled association between employees and a union, which is a private organization, in *Janus v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 138 S. Ct. 2448, 2463 (2018)*. 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 requires that once a segment of government employees voted to be represented by a union, ALL employees in that segment would be exclusively represented by the union for the supposed government compelling interest of collective bargaining. It was also State Law "agency fees" would be deducted from nonunion employees to compensate the union. This law correlates to the fees paid to the Insurance companies for "minimum essential coverage."

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

194. However, under the previous terms of *Abood v. Detroit Bd. of Ed., 431 US 209 (Supreme Court 1977)*, all non-union members had a right to complain of any expenditure which they felt violated their beliefs after receiving a "Hudson" notice from the Union. The complaint must first be adjudicated by a Union process. Mr. Janus was such a non-union member who had objections to the collective bargaining promoted by the Union. He filed suit for violation of constitutional rights. The Supreme Court in the *Janus* decision 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 their decision they stated,

> [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. *Janus v. AFSCME 138 S. Ct. 2448, 2463 (2018).*

195. The *Janus* decision severely limits government's ability to form "compelled associations." The ACA creates a "compelled association" much more egregious than the one described in *Janus* as no due process to protect Constitutional rights is provided by the ACA and, the government employee before *Janus* could always quit their job. It is not any expressive activity on the part of the health insurance providers, which I see as a violation. The violation is the expressive activity on the part of the defendants, which use the providers as a "false proxy" and "state actors." The insurers are required to provide "minimum essential coverage." These insurers are not independent third parties as claimed by the defendants when ever they need to shield their actions. At other instances when it is to their advantage,

the defendants proclaim the insurers form a system like social security and medicare.

196. A violation of the 1st amendment Freedom of Association does exist. The health insurance contract is expressive conduct and speech perhaps even more so than any relation between a nonunion government employee and a union. When the government uses its power to mandate part or the majority 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 are under pressure to conform to their belief system.

197. 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 the $535 per year Mr. Janus paid, which was calculated by the Union as 78.06% of full union dues. The fact many of my faith have buckled under this pressure does not lessen the infraction on the part of the government, but does indicate a deviously successful strategy to destroy or weaken any opposing belief system by the government.

C - Claim 12 - Violation of the Speech Clause of the 1st Amendment by the ACA

198. As described in a previous section, my freedom of speech has been abridged by the HHS Mandate. The structure of the ACA is the perfect vehicle for violations

such as are described in that section. The HHS Mandate is but one example of the ability of the structure of the ACA to be abused. This danger to free speech remains in the ACA. Nothing in the ACA protects the free speech rights of citizens. In essence, the government at least pressures me to accept and affirm a contract which does not serve my needs and which violates my beliefs and political views in subjugation to the beliefs of the government. Citizens are not allowed to opt out or express objections to any provision of "minimum essential coverage," or any other government mandated portion of the contract forced upon them. The Individual Mandate and "minimum essential coverage" are still in full force. The violations and arguments employed in the previous section on the violation of free speech by the HHS Mandate applies here to the ACA as well.

199. Justice Brandeis speaks of the founder's motivation to establish the 1st amendment,

> Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law-the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed. *Whitney v. California 274 U.S. 357, 372 (1927) (Brandeis, J., concurring).*

200. The very design of the ACA is to silence the voice of the minority. Health Care necessarily involves issues of life and death, which often have deep religious implications. One size does not fit all. The ACA does not allow for differences in coverages required by different groups nor does it permit these groups any due process to redress these grievances. Tyranny is imposed by coercing speech in the form of a contract with terms mandated by government upon a dependent and regulated insurer as well as the insured who is required to affirm and accept the

terms of the contract or possibly risk the crippling costs of health care without insurance coverage. This tyranny will certainly continue and become more egregious as the defendants are allowed to escape with impunity on each new encroachment upon our freedoms. Therefore, unless "...[]checked by the litigation, the defendant's allegedly wrongful behavior will likely..." continue.[93]

D - Claim 13 - Violation of Equal Protection Clause of the 5th Amendment by the ACA

201. The requirements to successfully show a violation of equal protection are presented above in Section VII(A). The ACA violates equal protection by at least two different provisions. In 26 U.S.C. § 5000A(d)(2)(A) and (B) the ACA provides an exemption to the IM and IMP to certain religions although similarly situated religions are not allowed a similar exemption. Exemptions to the IMP are also offered to a large number of individuals before the TCJA of 2017 came into effect, many of which aligned with Democrat constituencies.

202. The ACA allows only two religious exemptions to the Individual Mandate, 26 U.S.C. § 5000A(d)(2)(A) and (B). The ACA explicitly states the purchase or not of health insurance is commercial activity. However a §1402(g) exemption, which consist of religions who do not participate in Social Security and Medicare, have 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)*. 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

93 *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). p.190*

Clause.[94] The second exemption similarly is granted to bill sharing ministries who have a 501(3)(c) in existence since 1999. As pointed out by John Gruber, the purported architect of the ACA, these religious exemptions are contradictory to the purpose of the legislation.[95] Granting certain religions preference in contradiction to the purpose of the law which is also "not closely fitted" to the government's purpose should evoke strict scrutiny.[96] These exemptions violate the 1st amendment and demonstrate an arbitrary and capricious objective.

203. For those individuals who did not qualify for a religious exemption from the IM, Congress created two basic classes under the ACA, those taxpayers who purchased a policy with "minimum essential coverage" and those who did not. Exemptions from the Individual Mandate Penalty may be applied to the latter class. The ACA provides for eight exemptions. [97] To these the Obama administration has added 14 more exemptions it deems related to hardship. [98] [99] Over 90% of uninsured Americans will qualify for an exemption.[100] Many of these exemptions

94 See *Estate of Thorton v. Caldor, Inc., 472 US 703 (1985)*
95 See https://www.cnbc.com/id/100935430
96 *Larson v. Valente, 456 US 228 (1982)*
97 1)income too low to file a tax return, 2)health care sharing ministry, 3)religious objection to insurance, 4)incarceration, 5)illegal aliens, 6)lowest priced plan more than 8% of income, 7)members of federally recognized Indian tribes or people eligible to obtain care from an Indian health services provider, 8)uninsured for less than three months.
98 1)homeless, facing eviction, 2)foreclosure, or were evicted in the last 6 months, 3)recent victim of domestic violence, 4)received a shut off notice from a utility in the last year, 5)recent death of a close family member, 6)property damage due to disaster, 7)filed for bankruptcy in the last six months, 8)substantial unpaid debt from medical expenses in the last two years, 9)unexpected cost increases from caring for a ill or aging family member, 10)exemption for dependent child denied enrollment in medicaid and CHIP but a court ordered another person to pay child medical support, 11)an eligibility appeal decision was granted for the time a person was not enrolled making them eligible for a marketplace qualified health plan, lower monthly premiums, or lower cost-sharing, 12)ineligibility of medicaid because state of residence did not expand medicaid, 13)previous insurance plan was canceled and a belief that other Marketplace plans are unaffordable, 14)some other hardship in obtaining health insurance.
99 See http://www.benefit-revolution.com/2014/08/revisited-total-evisceration-of.html
100 See http://online.wsj.com/articles/fewer-uninsured-face-fines-as-health-laws-exemptions-swell-1407378602

excuse irresponsible behavior, which suggest they are Democrat constituencies,[101] and many have little or no relationship to health insurance coverage or the ability to pay. The Individual Mandate Penalty will thereby fall more heavily on honest, responsible citizens. Several of these exemptions involve people who can be expected to require more health care services and/or be a greater burden on the taxpayer. Similarly situated individuals are most definitely NOT treated alike.

204. The Supreme Court stated in *Armour v. City of Indianapolis, 132 S. Ct. 2073, 2080 (2012)*, "a classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the dis-parity of treatment and some legitimate governmental purpose." The Individual Mandate Penalty as determined by the Supreme Court in *NFIB* can not be justified as commercial activity due to inaction. In addition, the "essential minimum coverage" exaction can not be considered "ordinary commercial transactions" as commercial transactions do not ordinarily involve compelled association, false proxies, or involve violations of due process, religious freedom, unjust enrichment etc. Id. Therefore, "deference to reasonable underlying legislative judgments" is neither required or justified. Id. It also can be argued, "...the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational" is not true here. Id. In other words, the individuals who qualify for an exemption to the IMP and those that do not are similarly situated and any distiction between these two groups is "arbitrary and

101 Democrats as recently as 2020 have shown tolerance to looting, arson, and other crimes in the BLM/Antifa riots after the death of George Floyd in the face of Covid restrictions on gatherings however hypocritical Democrats deemed these protests/riots to have more importance than preventing the spread of Covid. See https://spectator.org/the-real-insurrection-the-blm-riots/ and https://townhall.com/tipsheet/katiepavlich/2020/09/08/new-study-shows-majority-of-blm-protests-turned-violent-n2575801

irrational" as they have little or nothing to do with advancing the stated goals of the legislation. The overwhelming number of possible exemptions demonstrates this fact as well. The Individual Mandate Penalty is not used to fund health insurance for any one including the person forced to pay it, even though expansion of health insurance coverage is the stated goal of the ACA.

205. An equal protection violation can be seen in an infringement upon the freedom of contract in the vital area of health care coverage. (See the next section for more information about the freedom of contract.) To trigger strict scrutiny a suspect class or fundamental right must be involved as well as evidence of discriminatory intent.

> In *Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252 (1977)* the Court elaborated on the factors of discriminatory intent and noted that it could be found from disparate impact, a pattern of discriminatory government behavior preceding the enactment of the law, the historical background of the enactment of the law especially as it relates to the racial animus, and the degree of departure from normal operations either procedurally or substantively. Id. at 267. When discussing impact, the courts are ultimately engaged in a searching examination that asks whether the allegedly unprotected classifications were used as false proxies for categories otherwise eligible for stricter scrutiny." Weber, David P. (2013) "Restricting the Freedom of Contract: A Fundamental Prohibition," Yale Human Rights and Development Journal: Vol. 16: Iss. 1, Article 2. p.92

206. Here, although there is no overt racial discrimination or animus visible in the ACA other protected classes are affected as previously mentioned. The passage and negotiation of the ACA is a departure from prior procedure, which occurred mostly in secret to avoid public and opposition scrutiny. Much of the history is therefore unknown. See "A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative History" John Cannan, LAW LIBRARY

JOURNAL Vol. 105:2 [2013-7]. Disparate impact among several classes is visible from the legislation and regulations. The Left and the Democrat Party have a long history of animus to conservative, orthodox, religious groups. Statements by Karl Marx (For example, "Religion is the opiate of the people.")[102] and the actions of Communist governments amply demonstrate this fact. The government uses the health insurer to do its bidding of confiscation of property and oppression of constitutional rights claiming it is the free will of an independent third party insurer, which in this case acts as the "false proxy" and a "state actor."[103] If this so called independent third party were truly acting on its own interests alone and not following government mandates, directions, and pressure, then there would be no Constitutional violations as only government is restricted from denying inalienable rights. This artifice of a "false proxy" third party is crucial to the operation of the ACA as well as other violations which use this same idea up to the present.

207. In *Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954)* constitutional violations based upon racial discrimination in education rather than religion or speech were involved. The concept and laws concerning "separate but equal" were overturned as a violation of equal protection. In like manner, I do not want my ability to negotiate or refuse a contract abridged by the government, which impacts my freedom of religion, speech, etc. I should be allowed on an EQUAL basis to find health coverage. Disparate impact here exists based upon religion and political opposition rather than race or alienage.[104]

208. For the reasons of impact on multiple constitutional rights and evil, tyrannical

102https://en.wikipedia.org/wiki/Opium_of_the_people (last visited 1/2/2021)
103*Manhattan Community Access Corp. v. Halleck, 139 S. Ct. 1921, 204 L. Ed. 2d 405, 587 U.S. (2019)*
104*Arlington Heights v. Metropolitan Housing Corp., 280 429 U.S. 252 (1977).*

purpose, strict scrutiny should apply. [105] The partiality and overwhelming expanse and breadth of the exemptions render the Individual Mandate Penalty arbitrary, irrational, and capricious in actual application, in contradiction to the stated goal of Congress to encourage health insurance coverage. Therefore, just as indicated by the cases previously cited the ACA violates equal protection.

E - Claim 14 – Violation of the Due Process and Takings Clause of the 5th Amendment by the ACA

209. Through the agency of a false proxy, the government infringes upon the freedom to contract thereby violating both equal protection and due process. In a case, *Allgeyer v. Louisiana, 165 U.S. 578 (1897)*, the court elaborated on the freedoms provided in the 14th amendment.

> The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned. Id. *p.589*

210. At the time of this decision, and through to the *Lochner v. New York, 198 U.S. 45, 45 (1905)* decision, courts held that the right to contract was a fundamental right in which government should least interfere. However, with the decision in *West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)* the court began to move to protect the liberty of those who suffered from contracts which favored a more powerful party in the contract by allowing a federal minimum wage for women.

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105 From *COLORADO CHRISTIAN UNIVERSITY v. Sebelius, Civil Action No. 11-cv-03350-CMA-BNB (D. Colo. Jan. 7, 2013).* "Unless a statute provokes strict judicial scrutiny because it interferes with a fundamental right or discriminates against a suspect class, it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose." *Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450, 457-58, 108 S.Ct. 2481, 101 L.Ed.2d 399 (1988)*

Similarly, in *Nebbia v. New York, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 (1934)*, the Supreme Court delineated a more restrictive area in which a court may act to satisfy due process.

> If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio. Id. p.537

211. In other words, "courts will use the traditional rational basis analysis where the laws or regulations are presumed valid, and thus will be upheld if they bear a rational relationship to the end sought."[106] The ACA can be shown to be irrational and capricious as well as discriminating against the fundamental rights of citizens. The ACA violates the 1st, 4th, 5th, 9th, and 10th amendments, however this section will deal primarily with violations of the 5th amendment as it deals with liberty of contract and associated property rights.

212. It should be pointed out, "...the freedom to contract was a prime component of the common law legal system upon which our country was founded, making the right 'deeply rooted in this Nation's history and tradition.'"[107]

> 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. [108]

213. Courts have considered health insurance an "important benefit." (See *Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114 (10th Cir. 2013).*) Therefore, one could reason the ability to contract for these services is a fundamental right and should fall within the 5th amendment's protection. In the case, *Omnia Commercial Co. v.*

106Weber, David P. (2013) "Restricting the Freedom of Contract: A Fundamental Prohibition," Yale Human Rights and Development Journal: Vol. 16: Iss. 1, Article 2. p.88
107Id. p.89
108*U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588, 601 (6 th Cir. 2013)*

United States, 261 U.S. 502, 43 S. Ct. 437, 67 L. Ed. 773 (1923) the Supreme court held that the government was liable under the Takings clause of the 5th amendment for action which reduced the value of a contract for steel plate between private parties when it diverted steel production for public use. The freedom of contract should include refusing a contract which the individual deems unacceptable as provided in 42 U.S.C. § 1981(b). Therefore, government must have a compelling reason and a means narrowly tailored to achieve it's goal under strict scrutiny.[109]

214. The government's stated purpose for the ACA is to expand health care coverage and to lower cost.[110] The means are definitely not narrowly tailored. In the *West Coast Hotel* and *Nebbia* decisions, the government's justification to infringe upon the private contract rights of the parties was found compelling to protect the interests of the weaker party to the contract. Contrary to its stated purposes, it is the government and the ACA which has become the oppressor and dominant party dictating the terms of the contract upon the population to government's benefit and that of it's allies while harming opponents. Health Insurance contracts are often adhesion contracts in the sense they are, take it or leave it. A perfect vehicle for TYRANNY. The government does nothing to safeguard the constitutional rights of the end users.

215. The issue here is somewhat more fundamental than a "refus[al] to pay for unwanted medical care."[111] It is money which is unquestionably mine and unconstitutionally extracted from me by the Individual Mandate and "minimum

109Weber, David P. (2013) "Restricting the Freedom of Contract: A Fundamental Prohibition," Yale Human Rights and Development Journal: Vol. 16: Iss. 1, Article 2.
110See https://www.healthcare.gov/glossary/affordable-care-act/
111*U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588, 601 (6 th Cir. 2013)*

essential coverage." It is used to fund activities to which I am opposed or otherwise disagree. Not only does the ACA confiscate property directly via the Individual Mandate Penalty, it also confiscates the property from all health insurance policy participants and redirects it to serve the will and purpose of Congress without the need to first pass through the treasury. The HHS Mandate is but one example of how this confiscation and re-purposing occurs without recourse to proper due process. Therefore, the intention of the ACA is not "the exertion of taxation, but a confiscation of property" and for this reason the entire act is arbitrary and in violation of the Due Process Clause.[112]

216. The value of the contract is reduced or eliminated due to the terms inserted by the government, a confiscation has occurred and the principle of "unjust enrichment" is applicable. If Congress has the power to mandate a transaction for a product real or intangible for which it can control the proceeds, then it can command the use of ALL of an individual's wealth and more. Congress has no power to pressure or require individuals to enter a contract or purchase any product.

1 – A Due Process violation exists if the IMP is considered a penalty

217. The IMP is only imposed upon individuals who have not purchased a health insurance policy compliant with "minimum essential coverage." The IMP maybe scaled by income but it is not levied on income. The income tax is exempt from other Constitutional restrictions on direct taxation by the 16th amendment. It is the intention of Congress that every one submit to the IM or face the IMP. Economic

112 'the Supreme Court has held that the Due Process Clause should not be read to limit the taxing power, with the possible rare exception for cases where "the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property."' *Brushaber v. Union Pac. R.R. Co., 240 U.S. 1 (1916).*

burden on the person is the same in either case. Exemptions and subsidies may be granted, but the intention of Congress is clear. The IM-IMP combination is a capitation. (See section VIII(E)(2)(d)) It is not apportioned by population in compliance with the Constitution. 26 U.S. Code § 5000A(b)(1), (b)(3), and 5000A(c) refer to the IMP as a penalty. If we are to take the words as written, then it violates the due process rights of the accused again in violation of the Constitution. (See section IX(A) below on Taxing Authority in the ACA for additional information.)

2 - Claim 15 – Additional Evidence for an "arbitrary and capricious" violation implied from the Due Process Clause of the 5th Amendment by the ACA

218. Section 1201 of the PPACA allows discrimination "...only by individual or family coverage, rating area, age, or tobacco use." Many other significant factors which will affect the cost of health care and the burden an individual will place on the health care system exist. These include drug use, illicit sex, overeating, as well as other factors. If Congress actually intended to improve health outcomes in the population, it should seek to reward healthy behavior and punish unhealthy behavior, however this action would place the Democrats, who passed the ACA without any Republican endorsement, at odds with some of their constituencies. A similar view of the situation came from former President Bill Clinton,

> ...so you have got this crazy system where all of a sudden, 25 million more people have health care and then the people who are out there busting it, sometimes 60 hours a week, wind up with their premiums doubled and their coverage cut in half. It is the craziest thing in the world.[113]

219. From a low in 2018, the number of health insurers have been increasing in large part due to increased premiums and further expansions of subsidies such as

113Laxmaiah Manchikanti MD et. al., Pain Physician, "A Critical Analysis of Obamacare: Affordable Care or Insurance for Many and Coverage for Few?", 2017; 20, 111-138, p.115, available at https://www.painphysicianjournal.com/linkout?issn=&vol=20&page=111

in the American Rescue Plan Act.[114] The increase in premiums has hit the middle class especially hard since this group does not qualify for many of the tax credits and subsidies.[115] Premium increases of 105% have occurred from 2013 to 2017.[116]

> A recent report released by the Department of Health and Human Services (HHS) claims that 31 million Americans were enrolled in coverage related to the Affordable Care Act (ACA). Without proper context, this number is misleading and is being misinterpreted. Here is what you need to know:
> There has been virtually no change in private health insurance coverage because of the ACA.
> The net gain in health coverage because of the ACA is entirely or almost entirely due to an increase in Medicaid enrollment.
> A sizeable percentage of the new enrollees in Medicaid do not meet eligibility rules for the program.
> On a per enrollee basis, the ACA's cost is far higher than was projected.[117]

220. The HHS report mentioned in the article above, which the article indicates is misleading is not surprising as the government is increasingly a source of misinformation and propaganda. Private insurance is only up by about 2 million people from pre-ACA levels, however that number is offset by the number of small employers which dropped coverage so that their employees could get subsidized health insurance on the exchanges.[118] Ironically, this situation is the opposite of the situation in *Barnhart v. Peabody,* mentioned above, where the Supreme court ruled to protect the public purse from an employer who was trying to shift an employee cost burden onto it. "...the ACA resulted in about a $46 billion increase in federal

114 https://www.kff.org/other/state-indicator/number-of-issuers-participating-in-the-individual-health-insurance-marketplace/?currentTimeframe=0&sortModel={"colId":"Location","sort":"asc"} See also https://galen.org/assets/Expanded-ACA-Subsidies-Exacerbating-Health-Inflation-and-Income-Inequality.pdf
115 https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2021.00945
116 https://galen.org/assets/Expanded-ACA-Subsidies-Exacerbating-Health-Inflation-and-Income-Inequality.pdf
117 https://www.healthaffairs.org/do/10.1377/forefront.20210715.739918
118 Id.

subsidies for no net change in the number of people with private insurance."[119] The ACA can be more properly referred to as the "Medicaid Expansion Act," because nearly all the increase in enrollments are from these subsidized programs.[120] In addition, around 3 million of these new enrollments are ineligible as verification is often lax. Almost never mentioned is the 6 million people who lost coverage with the implementation of the ACA.[121] Cost overruns of about 53% over the estimates have been reported.[122] An incentive now exists to avoid the loss of government subsidies as an individual's income increases by avoiding work and income. The "...CBO projects that..." the ACA will "...reduce work by about 2 million full-time workers and reduce gross domestic product by about 0.7 percent."[123] As the government is the payer in many of the new policies neither the insured nor the insurer has much concern with cost thus creating inflationary pressure.[124] Projected spending reductions in health care costs have not materialized.[125] The increase in deductibles, premiums, and inflation has outpaced the growth in worker wages.[126] Increasing regulation has helped to precipitate decreasing labor productivity of health care providers.[127] The approach of the ACA as well as other legislation in "granting government-protected monopolies to drug manufacturers...combined with coverage requirements imposed on government-funded drug benefits" has

119 https://galen.org/assets/Expanded-ACA-Subsidies-Exacerbating-Health-Inflation-and-Income-Inequality.pdf p.16
120 https://www.healthaffairs.org/do/10.1377/forefront.20210715.739918
121 Laxmaiah Manchikanti MD et. al., *Pain Physician*, "A Critical Analysis of Obamacare: Affordable Care or Insurance for Many and Coverage for Few?", 2017; 20, p.111
122 https://www.healthaffairs.org/do/10.1377/forefront.20210715.739918
123 https://galen.org/assets/Expanded-ACA-Subsidies-Exacerbating-Health-Inflation-and-Income-Inequality.pdf p.19
124 Id. p.26
125 Laxmaiah Manchikanti MD et. al., *Pain Physician*, "A Critical Analysis of Obamacare: Affordable Care or Insurance for Many and Coverage for Few?", 2017; 20, p.121
126 Id. p.122
127 Id. p.127

lead to increasing drug prices.[128]

221. The largest beneficiaries are now hospitals and insurance companies. Profits for insurers are up roughly 20 times pre-ACA levels in California where 1/3 of the population is on medicaid.[129] Profits can be seen to be up considerably in California hospitals and the source of the revenue is clearly from medicaid as can be seen in the charts on this web page, https://www.aeaweb.org/research/charts/aca-impact-hospitals-california . Evidence suggests the care received by these patients has deteriorated as well as the access to that care.[130] This article at https://www.nytimes.com/2021/05/13/business/health-insurance-cash-Biden.html from the New York Times indicates profits are up for hospitals, but also makes the observation,

> We have estimated that 60 percent of government spending to expand Medicaid to new recipients ends up paying for care that the nominally uninsured already receive, courtesy of taxpayer dollars and hospital resources...The United States has a longstanding tradition of providing free medical services to the indigent. Hospitals emerged in the 18th century largely to care for those with no other sources of help. In modern times, federal and state governments have enacted a grab bag of policies to help defray some of the costs incurred by hospitals and clinics in providing humanitarian care.

222. This article advocates for cash subsidies directly to the low-income rather than further increasing health care benefits and indicates Democrats have been increasing subsidies in this form. The report at https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/03/The-Profitability-of-Health-Insurance-Companies.pdf from the Council of Economic Advisers indicates greatly increased profits for Healthcare related companies

128Laxmaiah Manchikanti MD et. al., *Pain Physician*, "A Critical Analysis of Obamacare: Affordable Care or Insurance for Many and Coverage for Few?", 2017; 20, p.129

129https://www.latimes.com/business/la-fi-medicaid-insurance-profits-20171101-story.html

130Id.

resulting in their stocks outperforming the S&P 500, which also suggests a transfer of wealth is occurring from "taxpayers to insurers."

223. Health Care and patient access to that care has deteriorated under the ACA.

> Overall, in 2015, more than one-third of full year insured adults reported going without some type of needed care including dental care or prescribed drugs during the prior year, with some of that unmet need reflecting difficulty finding providers who would see them and difficulty getting timely appointments. Osborn et al showed that the lack of access to health care has been increasing specifically for low income workers. The ACA has rendered medical care less affordable for many across the nation.[131]

224. One of the supposed objectives of the ACA was keeping people healthy rather than only treating them when they become severely ill. However, "...the ACA has failed in this aspect with minimal contribution to preventive services and increased waiting times."[132] In sum, the effect of the ACA has been to increase cost and lower the availability of health care, which is the exact opposite of the stated goals. However, it has succeeded at greatly expanding medicaid and bringing much of the population under its control. Other examples of arbitrary and capricious action by the defendants include:

225. a)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."[133] 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

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131Laxmaiah Manchikanti MD et. al., *Pain Physician*, "A Critical Analysis of Obamacare: Affordable Care or Insurance for Many and Coverage for Few?", 2017; 20, p.118 (footnotes omitted)

132Id. p.129

133John J. Dierlam v. Donald J. Trump et. al., US Southern District of Texas Houston Division, case no. 14:16-cv-307. DKT.#37 DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, p.6.

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.[134] No evidence is presented by the government that extending health insurance coverage will result in better health in the population or lower cost.

226. b)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 coverage, such as a high deductible plan, contradicts the stated objective.

227. c)The government has also indicated the system of private health insurers which the ACA creates is similar to Social Security.[135] However, Social Security is a government program supported through federal taxes. The government greatly undermines its argument the health insurers are independent third parties, who can choose to provide a plan which is free of the HHS Mandate or not. A combination of private industry and government such as this is often referred to as Fascism.

228. d)A catastrophic or high deductible insurance plan is the most affordable and cost efficient. I fully realize especially as I age, the probability for serious disease and crippling cost increases, which is a large area of concern to me. From the website, https://www.healthcare.gov/health-coverage-exemptions/exemptions-catastrophic-coverage/ , permission is required from the government to obtain such a plan. That permission is conditioned upon one of the 14 exemptions to the

134See http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/. (last visited 1/2/2021) As of Q1 2015, 13% did not have health coverage with half of these indicating cost was a factor.

135John J. Dierlam v. Donald J. Trump et. al., US Southern District of Texas Houston Division, case no. 14:16-cv-307. DKT.#37 DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, p.20 and p.21.

IMP listed in footnote 93 above. First, simply the requirement to obtain permission from the government to purchase a product is objectionable; it is an interference in the right of contract. Possessing a high deductible health plan is not immoral, fraudulent or otherwise illegitimate. Congress does not have the power to destroy or create commerce. (See Section IX(B) below.)

229. However, the reason for the provision is obvious. A high deductible plan will make it more difficult for the government to confiscate and direct what is in effect an exaction by government. As a high deductible plan has a much lower cost, Government will obtain less if any money to direct to its purposes such as the HHS Mandate. This provision in the law certainly inhibits the extension of insurance coverage in direct contradiction of the stated purpose of the ACA. The limitations imposed by this provision are clearly to control the population and its wealth without concern for their well being. Congress may have the power to encourage or discourage the purchase of products with its taxing power, however if that is the power which justifies this exaction, it is also an admission by the government "minimum essential coverage" is or contains federal taxes. The IM-IMP is therefore a capitation. This provision is evidence for the arbitrary nature of the law and its true goal of tyranny.

230. e)Health care providers are running a business. The business needs of these providers and obviously the political needs of the government as seen in other sections can result in harm to the patient as these entities increasingly place their needs over those of the patient. Given the self interest of health care providers as well as the self interest of government, the ACA places the life and health of every

individual at greater risk. Each individual is their own best advocate. The ACA provides no reasonable method to self-insure and in effect makes self insurance by individuals illegal. As indicated in § 1501 of the PPACA, the authors intended a prohibition of all self insurance. If the Democrats were serious about enhancing the health and well being of patients, they would increase the autonomy, authority, and options for the patient, expand health education, advance tort reform, as well as many other reforms which could reduce the cost while improving health care, rather than mandating benefits to some constituents and seeking to harm opponents, like the middle class, as they have in the ACA. If health care for the less fortunate, the government's implied "vital government end," is the intent then the expansion of the system of low cost clinics would be at least one possible and much better "means that is least restrictive of freedom."[136]

231. The implementation of the ACA achieves few if any of its stated goals. It has made health care more costly considering the cost to the taxpayer as well as the increase in premiums, etc. Health care quality and availability have not improved and may have deteriorated. Private insurance coverage has not expanded, but remained relatively steady. A slight trend upward in the number of individuals without insurance coverage is evident.[137] It is very difficult to believe the information presented above could not have been anticipated by the Democrats who created the ACA. A failure of this magnitude is not excusable as "room for play in the joints."[138] A complete take over of the health care industry to establish a "single payer" system has been a much advocated goal of many Democrats as

136*Elrod v. Burns, 427 US 347, 362 (Supreme Court 1976)*
137http://kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/
138Walz v. Tax Comm'n of New York City, 397 U. S. 664, 696 (1970)

seen in the last Democrat Presidential Debates. The ACA was supposed to be a fix for the health care system, however it appears better suited to be a step in the direction of "single payer." The object of the law was never the goals stated as the information above indicates it made many of the problems it sought to address worse.

232. *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. Also from *Nebbia v. New York, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 (1934)* "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." Id p.525. The means selected are unreasonable and do not relate to the goals stated in the ACA. For the most part the means have the opposite effect upon these goals. The ACA is confiscatory, unreasonable and capricious. The Individual Mandate, Individual Mandate Penalty, "minimum essential coverage," and other provisions of the Law are not implemented or designed to further the stated goals but better support a goal of tyranny. The inevitable conclusion is the ACA is a law which was a sham from the beginning. Therefore, the *Brushaber* and *Nebbia* decisions would argue the law is unconstitutional and unseverable.

3 - Claim 16 – The same perpetrators use very similar violations of Constitutional Rights to the current day for which the ACA served as a blueprint.

233. The government has accelerated a growing corruption in the medical field. The government has applied pressure on Medical Doctors and others to act as their agents to report certain activity and to limit patient choice. The federal government and Leftist media have pushed the vaccine to the exclusion of many

therapeutics which have been shown to have effectiveness against the Covid-19 virus.[139] The result has been to greatly increase the death toll. It is very possible more people have died due to a variety of actions by government rather than due to the virus. (See the background sections above.)

234. The "wrongful behavior" mentioned in this Complaint was primarily caused by members of the Democrat Party for the goal of tyrannical rule. In pursuit of the same goal this behavior has not changed as seen by recent events such as the violation of Constitutional rights using a so called private third party as a false proxy. See https://nypost.com/2021/07/15/white-house-flagging-posts-for-facebook-to-censor-due-to-covid-19-misinformation/."If unchecked by the litigation" such as this lawsuit, I am afraid we will only fall deeper into the abyss in which the Constitution becomes irrelevant and we are ruled by an authoritarian Fascist/Communist government.[140]

F - Claim 17 – Violation of right to privacy implied in the 4th and 9th Amendments by the ACA

235. Provisions of the ACA violate the implied 4th and 9th amendment right to privacy. To be clear, I do not claim a violation of any intimate association with an insurance company in the instant case. I claim a violation of the right to be free from governmental intrusion and compulsion in a PRIVATE contract with a supposedly PRIVATE third party to direct PRIVATE, personal, and intimate health care decisions for myself and any potential family. The right to privacy is implicated where there is an "expectation of privacy."[141]

139https://www.usnews.com/news/world/articles/2022-01-31/japans-kowa-says-ivermectin-effective-against-omicron-in-phase-iii-trial

140*Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000).* p.190.

141*Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).* at 353. Justice Harlan, concurring

236. The minimum essential coverage provision is a confiscation of property without due process. "A seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property." [142] At least a portion of a private transaction for health insurance is taken over my objection and used at the direction and coercion of government not for taxation and revenue but for purposes with which I disagree, violating private property rights guaranteed by the 4th and 5th amendments. In footnote 24 of *Whalen v. Roe, 429 US 589, pp598-600 (Supreme Court 1977)*, Professor Kirkland describes two of the three facets of the right to privacy as "...the right of the individual to be free in his private affairs from governmental surveillance and intrusion...," and "...the right of an individual to be free in action, thought, experience, and belief from governmental compulsion..." It is these elements of the right to privacy which have been violated by the ACA.

237. Slavery is the confiscation of the labor of an individual, which is the supply side of a person's wealth. However, if government has the power to direct and control the demand side of a person's wealth, it in effect has similar power over the individual as provided by slavery. In *Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965)*, the court found a right to privacy in the 9th amendment among others to choose contraceptives in marriage. The government lacks the power to force me to maintain contraceptive or any other health coverage as part of a private contract. I have a right to direct my health care, which may involve intimate and familial decisions such as NOT to choose contraceptives or associated coverage, as I see fit and to be "let alone" by

142*United States v. Jacobsen, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984).*

government. [143]

238. In a truly free and private contract both parties must be allowed to accept, reject, propose, or insist on ANY article in the contract. Here, neither party other than the government is free. The government dictates terms such as the HHS Mandate and the remainder of "minimum essential coverage" which must be in the contract. It is also not just a matter of rejecting unwanted medical care or coverage, for example the services in the HHS Mandate are not intended or usable by males. People forced to pay for coverage which the government fully intends to use to fund services for others is a government exaction, not unlike a tax, regardless of whether a third party collects the funds. Sales taxes are also collected by nongovernmental third parties, but "minimum essential coverage" is clearly not a sales tax. The government insists this redirection of confiscated property without due process is within its interests. However, the Constitution limits the federal government to certain explicit powers, all others are reserved to the States or the people. This concept is embodied in the 9th and 10th amendments. The Constitution indicates a usurpation of a power reserved to the people has occurred here.

IX – Lack of Congressional Authority under the Constitution in the ACA

239. The Congress which passed the ACA assumed several powers which the Constitution does not provide. These violations deal with a lack of Congressional authority to impose provisions of the ACA, which should be viewed as a whole since its provisions interact, rather than isolated and independent as the defendants constantly suggest. The Supreme Court in *NFIB* indicated most of the authority Congress claimed to authorize its actions were fallacious. The majority

143 *Olmstead v. United States, 277 US 438, 478 - Supreme Court 1928 (Brandeis dissenting)*

isolated the IMP and indicated it could be supported if it were interpreted as a tax. However, they provided no justification for the isolation of this Penalty from the rest of the Law. The ACA assumes Congress to have the following powers which the Constitution does not grant, the invalidity of any one invalidates the entire law since it leaves Congress without authority to enact most if not all of the act.

A - Claim 18 – Taxing authority in the ACA

240. In *Janus v. AFSCME, 138 S. Ct. 2448, 585 U.S., 201 L. Ed. 2d 924 (2018)* the court laid out principles to overturn stare decisis:

> ...stare decisis applies with perhaps least force of all to decisions that wrongly denied First Amendment rights...Our cases identify factors that should be taken into account in deciding whether to overrule a past decision. Five of these are most important here: the quality of Abood's reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision. After analyzing these factors, we conclude that stare decisis does not require us to retain Abood. Id.

241. See also *Knick v. TP. OF SCOTT, PENNSYLVANIA, 139 S. Ct. 2162, 204 L. Ed. 2d 558, 588 U.S. (2019)*. The factors cited above are operational in the instant case as well. Any reasonable and consistent interpretation of the Constitution would indicate the Supreme Court majority was incorrect in *NFIB* as to the taxing authority of Congress to support the ACA. The mandates imposed by the ACA in section 1501 are direct and unconstitutional taxes. If Congress grants exemptions to a tax, it does not change the general character of that tax especially here as it is clear from the text Congress intended an exaction of the purchase of a product or a like sized penalty be generally applied to the entire population including children.

242. Some relevant history is required to understand the current situation. Congressional power to tax is NOT plenary. Direct taxes must be applied in

proportion to population. The Individual Mandate and the Individual Mandate Penalty together form a direct tax, which is not levied in proportion to population. The power of Congress is limited by the Constitution, but it is also limited by legal principles which may not be explicitly defined but form part of the framework upon which the Constitution was created and are often rooted in tradition. In their opinions in *NFIB et. al. v. Sebelius et. al.* the justices seem to agree there has been much controversy as to what is a "direct tax." The definition of direct and indirect taxes, which the Supreme Court has yet to comprehensively define, must be viewed in this context.

243. Art. I, §9, cl. 4 of the US Constitution states, "No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken," which is a simple restatement of the same idea in Art. I §2, cl. 3. The Constitution embodies several general principles well understood by the framers and not detailed in the Constitution, but presumably understood by the people at the time. On p.157 of Commentaries on the Constitution of the United States, Justice Story writes referring to the Constitution, "The people make them; the people adopt them; the people must be supposed to read them, with the help of common sense..." Therefore, the simple, plain meaning of the words should be used.

244. One of the general principles embodied in the Constitution is often termed "consent of the governed." It is mentioned explicitly in the Declaration of Independence. One corollary of this general principle is that power flows from the people. The people by their vote for the Constitution formed the government and

made it legitimate. Neither the Federal nor the State legislatures have power to undue what the people have formed.[144]

245. Another corollary of this general principle involves taxation. It was reasoned that the authority to tax must also flow from the people. This idea is sometimes reflected in the phrases, "no taxation without representation." "That taxation ought to go hand in hand with representation had been a favourite theory of the American people..."[145] This grant of authority MUST be ongoing and subject to periodic elections. The Constitution does not explicitly define direct or indirect taxes. What the framers wrote can shed some light on the meaning.

246. In Federalist 36, Hamilton indicates that only direct taxes are subject to "partiality" and "oppression." In Federalist 12, Hamilton believed government would for some time be dependent on taxes on land and "taxes invisible to the populace." One can infer based upon these statements, direct taxes are visible to the population and can be levied more heavily on minorities which are not in favor with the legislature. From context, Hamilton appears to regard "invisible" as meaning a tax very easily afforded by the population or, a tax collected in a manner the population was not aware of as in the case of import duties. In speeches by Patrick Henry and George Mason given in 1788, it is clear they regarded any tax collected by the Federal government from an individual as a "direct tax." They believed direct taxes should NOT be allowed to the Federal government due to a likelihood of oppression.[146] This latter definition of "direct tax"

144Alexander Hamilton, Federalist 22

145Joseph Story, Commentaries on the Constitution of the United States; Cambridge; Brown, Shattuck and Co.; 1833. p.237

146The Anti-Federalist Papers; ed. Bill Bailey. available at https://www.thefederalistpapers.org/wp-content/uploads/2012/11/The-Anti-Federalist-Papers-Special-Edition.pdf

is the most reasonable, straight forward and plain meaning of the words. It is therefore the definition most likely intended by the framers.

247. In Federalist 54, Madison indicates in some of the States, wealth was given separate representation in some governing body. However, the Constitution as a practical matter made an approximation that wealth would be in proportion to population. Thereby, "personal rights" and wealth were BOTH to be given importance and representation in the House. Judge Story refers to the apportionment of direct taxes together with representatives as a "remedial check upon undue direct taxation..."[147] He further states,

> ...in every well-ordered commonwealth, persons, as well as property, should possess a just share of influence...By apportioning influence among each, vigilance, caution, and mutual checks are naturally introduced, and perpetuated.[148]

248. Judge Story however appears to fully agree with the *Hylton v. United States, 3 U.S. 171, 1 L. Ed 556, 1 L. Ed. 2D 556 (1796)* decision in that poll and property taxes are the only direct taxes but, this conclusion completely contradicts the principles he articulated previously regarding the protection and representation of wealth.[149] Constricting the definition to these objects leaves much wealth unprotected and unrepresented especially today.

249. What is important is not whether the tax is internal, external, direct, or indirect, it is the substantive underlying principle of "consent of the governed" the procedural rules on apportionment are intended to protect. What may have been difficult for the framers is today with current technology fairly simple. An accurate

147Joseph Story, Commentaries on the Constitution of the United States; Cambridge; Brown, Shattuck and Co.; 1833. p.237
148Id. p.238
149Id. p.340

determination of the total dollar amount each citizen pays in ALL taxes to the federal purse is possible.

250. Much of the predictions of the Federalists were wrong and those of the Anti-Federalists came to pass, albeit over a century later in many cases. Vital interests such as "consent of the governed" were protected by a couple phrases to the effect "direct taxes and representatives are to be apportioned..." Once destroyed, disenfranchised taxpayers were disproportionately burdened with no ability to restore the balance; much of the evil we see today was set in motion. If the Constitution were allowed to function as intended, the greater representation afforded to taxpayers shouldering a heavier burden would allow them to reverse and counterbalance the load. Instead, we descend deeper into debt, corruption, mob rule and disunion.

251. Judge Story on p.344 also makes the point in Art. I Sec. 8, the power to "lay and collect Taxes, Duties, Imposts, and Excises" is moderated by the next phrase in the Constitution. If the tax is not for the purpose of the payment of Debts, provide for the common defense, or the General Welfare, then the tax is unconstitutional. The Individual Mandate Penalty does not fall into any of these categories. If the government has the power to require or coerce the purchase of a product, then the basis for the protection of private property embodied in the 4th, 5th, and 9th amendments would be greatly eroded or eliminated.

252. The taxes from the ACA are neither exactly uniform nor apportioned to population, and even if they were, it would not provide the group bearing a heavier burden of taxation any increased representation as is required by "Consent of the

Governed." This court can help to remedy this situation for the future if it properly outlines the "consent of the governed" and defines "direct tax" consistent with what has been written here. (See section X below for more information.)

253. Returning to the consideration of the IM and IMP in the ACA, Chief Justice Roberts after rejecting the government claims of authority to impose the IM as emanating from the commerce clause as well as the necessary and proper clause, states the next government claim for authority:

> The Government's tax power argument asks us to view the statute differently than we did in considering its commerce power theory. In making its Commerce Clause argument, the Government defended the mandate as a regulation requiring individuals to purchase health insurance. The Government does not claim that the taxing power allows Congress to issue such a command. Instead, the Government asks us to read the mandate not as ordering individuals to buy insurance, but rather as imposing a tax on those who do not buy that product. [150]

254. Here the Chief Justice severed the question of whether the requirement to purchase minimum essential coverage is constitutional and instead only proceeded to answer the question of whether the Individual Mandate Penalty, imposed upon people who do not purchase minimum essential coverage, is constitutional viewed in isolation. In the view of the majority, Congress lacked the constitutional power to impose the minimum essential coverage provision, therefore Justice Roberts ignores it. The IM and IMP were intended to work in tandem, and make little sense if either one is eliminated. If the funds collected are used for the will and purpose of Congress, it is an exaction. The choice of label is immaterial. A more proper view is to consider the IM and IMP a single exaction. Is the requirement to obtain "minimum essential coverage" OR pay the Individual Mandate Penalty the result a

150 *Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, p2593 (2012)*

constitutional exaction?

255. In *NFIB*, the Supreme Court held that the justification of the government's use of the commerce clause was unconstitutional as it would permit the government to regulate inactivity and force activity in this case a purchase taking the decision from the individual. [151] The separation of the requirement to purchase minimum essential coverage from the Individual Mandate Penalty is a back door which has the same effect using the taxing authority of Congress. Congress could simply demand the purchase of ten widgets per month, some or all the proceeds of which would be used for government purposes, otherwise the non-purchaser will be subject to a similar or higher tax. It is hard to imagine the Founders would have thought this application of the taxing clause to be legitimately considered an indirect tax.

B - Claim 19 – Violation of the Regulation of Commerce clause in the ACA

256. Congress does not have the power to create or destroy a "market," a term which the ACA itself uses in 42 U.S.C. § 18024. Article I § 8 authorizes Congress to "regulate commerce" not to create or destroy it, which is clearly the real intention of the ACA. Further, it coerces the citizen to join in that commerce by law and a potential exaction on those who do not join in violation of due process.

257. The word **regulation** implies rules or restrictions upon EXISTING commerce. Judge Story on p.363 of his book Commentaries on the Constitution of the United States indicates it was argued a perpetual embargo is unconstitutional as it was

151 *Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, p2587 (2012)*: "Construing the Commerce Clause to permit Congress to regulate individuals precisely because they are doing nothing would open a new and potentially vast domain to congressional authority. Every day individuals do not do an infinite number of things. In some cases they decide not to do something; in others they simply fail to do it. Allowing Congress to justify federal regulation by pointing to the effect of inaction on commerce would bring countless decisions an individual could potentially make within the scope of federal regulation, and — under the Government's theory — empower Congress to make those decisions for him."

not a regulation of commerce but an annihilation of it.[152]

C - Claim 20 – Reduction of the IMP to $0 has left the ACA without any Constitutional Authority therefore it is Unconstitutional

258. *NFIB* saved the entire ACA as a constitutionally allowed tax because it brought in some revenue conditioned on not possessing a health insurance contract. However, the TCJA of 2017 reduced the IMP to $0 and therefore the ACA no longer brings in any revenue to the treasury. The only remaining leg to support the entire structure for the ACA as determined by the Justices in *NFIB* has been kicked out from under the Law. The ACA no longer has any Constitutional authority and should be stricken in its entirety.

X - Claim 21 – Improper Definition of "direct" and "indirect" taxes lead to many of the abuses in the ACA and a continuing violation of due process

259. 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. See the history concerning direct and indirect taxes as well as "consent of the governed" provided in Section IX(A) above. Here, I will attempt to continue the history and outline the events which enabled the passage of the ACA. The Supreme Court in 1796 decided a case, *Hylton v. United States, 3 U.S. 171, 1 L. Ed. 556, 1 L. Ed. 2D 556 (1796)*, on a carriage tax enacted by Congress. The plaintiff held it to be a direct tax. Two factors weighted heavily on the Judges. No explicit power was granted to them in the Constitution to rule a law unconstitutional. They were also aware of the enormous trouble pre-Constitution federal governments had with raising money. They did not want to impede the collection of taxes. I believe these factors very much influenced their opinions. They did not provide a definition of direct or indirect taxes. Justice Chase believed that direct taxes consisted only of a

152Joseph Story, Commentaries on the Constitution of the United States; Cambridge; Brown, Shattuck and Co.; 1833.

capitation and a land tax, but refused to give an official opinion to this effect. Justice Paterson appeared to indicate that direct taxes may include other taxes than the two mentioned by Justice Chase. Justice Paterson disagreed with and was opposed to the apportionment concept in the Constitution itself. He seemed to consider it unworkable and unfair to apply to any tax, not just direct taxes. Justice Iredell went a step further, he appears to have concluded that any tax which can not be fairly apportioned can not be considered direct. The other Justices did not express much opinion on the subject of direct and indirect taxes, but affirmed the opinion the carriage tax was permissible under the Constitution. The judges did not seem to question if the tax passed by Congress would have awkward consequences if it were treated as a direct tax. If so, perhaps the Constitution did not anticipate such a tax to be levied. The wording and effect of the Law appear to tax the ownership and possession of the carriage. By the definition given in IX(A), this tax would be direct as it is imposed directly upon certain citizens by the federal government instead of some intermediary which passes the tax unseen to the carriage owner as in a sales tax.

260. From the *Hylton* decision until the *Pollock* decision the Supreme Court has found every tax passed by Congress to not be a direct tax "in the meaning of the Constitution," unless Congress defined it a direct tax. Capitation is explicitly mentioned in the Constitution. If a tax on land is the only other possible direct tax, why did the founders not simply add the word "land" instead of introducing a supposedly indistinct category like "direct" tax? The founders seemed to anticipate more than two taxes which could be considered direct.

261. The question of whether the tax could be imposed fairly is a completely separate one from the question of whether it is a direct tax. The Judges improperly confounded these two questions. Such a tax can be imposed fairly and be apportioned. I shall give an example. First, it should be recognized that an apportionment by State according to population is equivalent to apportionment by population of the entire United States. Congressional districts are drawn based upon nearly equal population. They become smaller where the population is more dense. If the number of carriages in a district is not known, as mandated by the Law a sum of $10 could be collected for each carriage. The total sum for each district could be calculated, The district with the smallest sum or some other reasonable value could set the total to be collected in each district. Thus the rate could be determined in all districts. Monies collected in excess of the determined sum could be returned to the taxpayer or held for credit to the following year. If the number of carriages is known or after the first year a more suitable tax per carriage could be determined for a particular district. This system would be no different than dissimilar tax rates in cities and other jurisdictions existing today. It may also have an ameliorative effect on the drawing of congressional districts by the State Legislatures. The incentive to Gerrymander may have been lessened. The course of American history would have been very different. Other ways to satisfy the apportionment requirement of the Constitution and impose a direct tax exist. Even if communication and computational skills posed a substantial challenge in the days of this decision, that is no longer the case with the computer and communication capabilities of today.

262. In *Pollock v. Farmers Loan & Trust Co., 157 U.S. 429 (1895)*, an income tax passed by Congress was challenged as a direct tax. The court felt constrained by previous decisions, but declared the Law unconstitutional based upon some aspects of the new law which were not covered by previous Supreme Court decisions. This decision motivated the passage of 16th amendment to the Constitution. Chief Justice Fuller reviewed many of the thoughts of the founders and others at the time on the meaning and understanding of direct and indirect taxes in the Constitution as well as the motivation for joining the apportionment of the house and direct taxes in the majority opinion of the court. The simple meaning of the words direct and indirect appear to be the ones accepted by many people at the time the country was founded. Quoting Justice White, who was opposed to the ruling of the Fuller Court,

> Black, writing on Constitutional Law, says: "But the chief difficulty has arisen in determining what is the difference between direct taxes and such as are indirect. In general usage, and according to the terminology of political economy, a direct tax is one which is levied upon the person who is to pay it, or upon his land or personalty, or his business or income, as the case may be. An indirect tax is one assessed upon the manufacturer or dealer in the particular commodity, and paid by him; but which really falls upon the consumer, since it is added to the market price of the commodity which he must pay... Id.

263. It is no coincidence the Constitution requires that representation in the House and direct taxes are to be apportioned by population, which is stated twice in the Constitution, and all appropriation bills must start in the House. I quote from Chief Justice Fuller's majority opinion,

> The men who framed and adopted that instrument had just emerged from the struggle for independence whose rallying cry had been that "taxation and representation go together." The mother country had taught the colonists, in the contests waged to establish that taxes

> could not be imposed by the sovereign except as they were granted by the representatives of the realm, that self-taxation constituted the main security against oppression. As Burke declared, in his speech on Conciliation with America, the defenders of the excellence of the English constitution 'took infinite pains to inculcate, as a fundamental principle, that, in all monarchies, the people must, in effect, themselves, mediately or immediately, possess the power of granting their own money, or no shadow of liberty could subsist.' The principle was that the consent of those who were expected to pay it was essential to the validity of any tax.

264. Thomas Jefferson referred to this principle as the "consent of the governed" in the Declaration of Independence. Regardless of the exact definition of direct tax, clearly the authors of the Constitution intended to institute a check no less important than the checks and balances between the branches of government and perhaps more important as it was intended to be a check by the people on their government. Alexander Hamilton indicated such in Federalist No. 35. The provisions in the Constitution were intended to prevent the abuses of the past while providing for the future economic and political stability of the Union. The passage of the income tax was a violation of this structure as I believe Justice Fuller was trying to point out.

265. At first it was only a carriage tax affecting few people. One hundred years later it was a 2% income tax, which has grown considerably since that time. The destruction of this check in the Constitution along with a general moral decline in the country is resulting in increasing instability in the country. The Left has used the destruction of this check for demagogic purposes. The rise in popularity of their ideas has allowed them to increasingly concentrate taxes and burdens on a minority of the population without any concomitant increase in representation for this group as intended by the founders. The ACA is simply a result of this

continuing effort on the part of the Left to benefit allies, to influence votes, and increase their power.

266. Congress intended to tax what they perceived as luxury or wealth as indicated by the words of Madison at the time of the carriage tax. The question of fairness of the tax was raised by the judges in the *Hylton* case. It has also been raised by many politicians to this day. The proponents of the income tax when it was first proposed had a similar motivation. The proponents of raising of income tax rates to this day claim similar motivation and exclaim, "It is only fair" usually when they want to raise tax rates. The *NFIB* decision did not resolve important questions of the limitations of Congress' ability to tax as set forth in the Constitution. The dissenter's opinion points out this problem,

> ...the meaning of the Direct Tax Clause is famously unclear, and its application here is a question of first impression that deserves more thoughtful consideration than the lick-and-a-promise accorded by the Government and its supporters. [153]

267. The Constitution assumes each enfranchised citizen would have one vote, and therefore consistent with the principle of consent of the governed each individual must have an equal share in all direct taxes. The assumption was made by the founders, wealth was in proportion to population. One man, one vote, and the division of congressional districts into units of equal population was sufficient to uphold "consent of the governed." In the current situation, is it fair for some voting block to saddle all the taxes on a minority with out giving them a proportionate voice in how their money is to be used? Previous courts have in effect diluted and diminished the voting rights of those groups adversely affected,

153*Nat. Fedn. of Indep. Business v. Sebelius, 132 S. Ct. 2566, 567 U.S. 1, 183 L. Ed. 2d 450 (2012)* p.2655

and denied them the "Consent of the Governed" in violation of the Constitution. In addition, the constitutional right of due process has been denied to voters who are denied their proper voting strength.

268. To restore the consent of the governed and solve the disenfranchisement of the voters mentioned above, a couple options are available. These include: a)all federal taxes are brought back into line with a proper definition of direct and indirect taxes as the founders intended, which will use the founder's assumption of wealth is proportionate to population. A major upheaval of the current system to preserve one man, one vote will be required; b)Instead of focusing on the tax side of the equation, we could balance the representation side of the equation. Each vote for a representative in the house could be weighted by the voter's proportionate share in that district of federal taxes he pays. Similarly, the vote of each representative in the house must be weighted by the proportionate share his district contributes to the total federal purse.

269. Given the infrastructure and institutions built up around the current tax system as well as the 16th amendment, it will be difficult or impossible to return to the same check as provided by the founders. The second option provided in the paragraph above would be preferable. It would be even more consistent with the original intent of the founders than the system they created as it avoids their assumption. It better preserves the Principle of "Consent of the Governed" to include all taxes direct and indirect in the calculation of the weighting factor used during the casting of a vote. However, indirect taxes due to their anonymous nature will be some what more difficult to determine but not impossible with

modern techniques, which is further evidence for the segregation and different treatment given these two categories of taxes by the founders. The IRS currently tracks individual incomes for federal tax purposes. This system would have the added advantage of being self regulating and help protect affected numerical minorities from oppressive taxation. Any time the tax burden is shifted the weighting factor will change in favor of the newly burdened parties in the next election cycle. The balance of power of competing groups intended by the founders would be restored. Of course, unconstitutional taxes like the IMP and "minimum essential coverage" should not be allowed. As previously stated, minimum essential coverage contains government exactions which do not go through the treasury. It may be possible to account for these exactions in the weighting factor, but it would present another level of difficulty.

270. Although the Supreme court caused this due process problem, the courts can not easily repair this damage. However, a clear declaration of the definition of "direct" and "indirect" taxes is redressible by the courts and would be a great step in the direction to solve this problem. Otherwise, the fundamental stability of the Republic is at stake if this issue is not successfully resolved.

XI – Discovery Plan

271. I outline in the following preliminary plan for discovery what additional information I would like to obtain, which should exist and be available, as well a method to obtain it. The purpose of this section is to demonstrate the "plausibility" condition that additional information can be obtained to better show the liability of the conduct of the defendants and establish redressibility of the claims in this Complaint.[154] However, I believe the information in the sections above provide

154 *Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)*

sufficient evidence for summary judgment for some of the claims:

272. A)As previously described to quantify the "damage to the market" a study or interrogatories to insurance companies which at one time offered policies or who are current participants in the health insurance market can quantify the damage to the market and demonstrate the defendants regulations have made it more difficult for me to find affordable health insurance without compromising my beliefs.

273. B)A discovery request for all email or other communications in searchable format between the white house and possibly Congress or certain of its members with health care industry officials and bill sharing ministries in the development of the ACA prior to its passage. These communications will better outline the true intentions and objectives of the parties and demonstrate the violations in the claims above.

274. C)Interrogatories and/or depositions to better tie more recent events to the violations which occurred in the ACA to prevent the ongoing violations and abuses of authority. This evidence will better establish that the behavior of the defendants which caused the injuries in this complaint have continued to the present.

275. D)Interrogatories or depositions directed to the IOM panel members, agencies and their heads, insurance providers, as well as communications between these entities may be in order to better establish prejudice toward certain religions or the establishment of belief systems hostile to these faiths.

XII - Specific address of Judge Ellison's Clarification

276. First, I do thank the Court for providing the Clarification. It does provide me some idea of what goals I need to achieve and what areas I need to address in this

Complaint. Although I have tried to address Judge Ellison's concerns regarding standing and mootness scattered in the sections above, I am creating this section to ensure the issues are comprehensively addressed in full here.

277. P.5-6 of the Clarification mentions the "definition of exempt religious employers has been broadened." Employers have much larger buying power, which places them in a stronger position to negotiate with any provider. They may be able to self ensure as well. The religious exemption applicable to individuals is at 45 CFR § 147.132(b). It specifically states a "willing health insurance issuer" can issue a policy free of the HHS Mandate. An individual has far less negotiating power with an insurance company. This exemption was not in effect until July of 2020, which gave the defendants from 2012 to 2020 to damage the market and force individuals such as myself to be without insurance coverage or compromise their beliefs. As seen by the statements from MCHCP[155] insurers have less incentive to change. By default, the defendants regulations require these insurers to provide the HHS Mandate coverage. The existence of the HHS Mandate creates a segregation based upon religion rather than race as in *Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).* These are some of the reasons the religious exemption is inadequate and pressure to violate my religious beliefs continues. See the sections above for more detail.

278. From p.7 of the Clarification, "Mr. Dierlam cannot show causation where his putative injury 'results from the independent action of some third party not before the court.' *Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 41–42 (1976).*" In this case the court indicated the respondents lacked standing because the injury they

155Wieland v. U.S. Dep't of Health & Human Servs. case 4:13-cv-01577-JCH Dkt.79-1 p.11

claimed, a denial of indigent care at certain hospitals, could not necessarily be traced to the petitioners, the secretary of the Treasury and Commissioner of the IRS. The alleged controversy was a change in an IRS ruling to allow a more lenient interpretation of tax status for non-profit hospitals. The respondents alleged a more restrictive ruling would encourage these hospitals to provide more indigent care. The court found that it was very uncertain any change in tax status would cause the third party hospitals not part of the suit to change their policies as their funding was more complex than tax status alone, and even if the court were to compel such change redressibility would be in doubt as the hospitals may not change their policies for those other reasons.

279. The instant case, is very much different from the previously mentioned case. The injuries listed in the background section are definitely traceable to the defendants for several reasons. Absent the ACA and the HHS Mandate the insurance providers would not have changed their contracts to comply with these new laws. I had health coverage previous to the implementation of these laws. Without these laws in existence, market forces would again operate and these insurers, who are obviously not independent third parties, would be under considerable pressure to again serve their customers and not the government. The central issue here is the insurance contract. Not only is the insurance provider a party to the contract but so is the insured. The government regulations affect the contract, which dictate specific terms in at least parts of that contract. As the insured must sign or affirm the contract, he is DIRECTLY affected by the government regulations, which do not originate from the insurer. My complaint

involves the terms in the contract mandated by the government. Therefore as no issue concerns the insurer, the insurers have no role in this lawsuit. This situation is very different from the previous case cited, where the respondents injury was at least two steps removed from the actions of the party sued. Although here and the sections above should provide sufficient evidence to show causation the Discovery Plan section above demonstrates how additional evidence can be obtained.

280. The reduction by the TCJA of the IMP to $0 did NOT grant all the relief requested. It does not eliminate the pressure to violate my beliefs in obtaining health insurance. The cases cited on p.6 of the Clarification work against the idea relief was granted, since the Act did not "discontinue a challenged practice" nor is there any need to "reenact the statute" as it was never repealed.[156] The condition for the exception "to this general line of holdings are rare and typically involve situations where it is virtually certain that the repealed law will be reenacted," has been met since no repeal has occurred.[157] However, I have added another current harm in the standing section above, which is worry concerning the raising of the IMP. Since the IM, IMP, and HHS Mandate remain in place it greatly concerns me that the IMP can be raised at any time. It is like a sword hanging over my head ready to drop and I will again be required to pay the IMP as if this suit was never filed. All my effort and expense will be wasted, if this case is completely dismissed before the IMP is raised, which is an actual and an eminent injury. I would be required to spend additional money and effort to start all over again.

281. Although some in more Conservative media appear to believe we are on the verge of tremendous Republican victory, I do not share their optimism. Even if one

156*Fantasy Ranch Inc. v. City of Arlington, Tex., 459 F.3d 546, 564 (5th Cir. 2006)*
157*Cammermeyer v. Perry, 97 F.3d 1235, 1238 (9th Cir. 1996)*

does occur, it does not mean these representatives will vote significantly different from Democrats. If that were the case, the ACA would have been completely repealed in 2017. The quote from Ephesians above is still applicable. Republicans are definitely not immune from the influence of the demonic. Too many Republicans are not Conservative and share many Leftist beliefs with Democrats. The Democrats still have the better part of a year to raise taxes. They were only short a couple of votes last year from a tremendous spending increase, which only bolsters my observation of their tax and spend nature. Therefore, the continued existence of the IM, IMP, HHS Mandate, and minimum essential coverage continues to cause me harm due to these factors until these provisions are in fact, actually, and completely repealed, even if the IMP remains at $0. These provisions are directly traceable to the defendants as their actions caused me to initiate this lawsuit in the first place.

282. Section IV above details the defendant's violation of § 1502(c) of the ACA. It has been greatly modified and contains specific charges for violations of the APA and the FTCA. Please see that section for more details. As the Court appears to disapprove of Fox News, I have found other sources for similar information in the links provided in this document.

283. The Court quotes *Inclusive Cmtys. Project, 946 F.3d 649, 655 (5th Cir. 2019),* "it is likely, as opposed to merely speculative, that [his] injury will be redressed by a favorable decision." Many substantial differences exist between this case and the instant case. The plaintiff's in *Inclusive Cmtys.* were granted standing to sue the Dept. of Treasury, therefore the case was in a different stage. The Appeals Court

found the case to have multiple problems aside from redressability. At least three different government agencies were involved in different aspects of the program of which the plaintiff complained. The Plaintiff, ICP, failed to show how Treasury was responsible for the injuries or how the injuries are connected to the actions or lack thereof by Treasury.

> ICP's theory of causation necessarily invokes two levels of coercion: (1) Treasury's coercion of TDHCA and (2) TDHCA's coercion of project sponsors. ICP therefore must establish a causal chain with at least two links—one that connects the actions ICP proposes that Treasury take to some corresponding change in how TDHCA allocates LIHTCs, and another connecting that change to the financial injuries that ICP suffers, which are caused by the location of LIHTC units. ICP establishes neither. Id. p.657

284. Plaintiff then failed to articulate exactly what regulation Treasury would need to enact to repair their injuries in oral argument. The Court found it speculative that any regulation that Treasury could enact would appropriately influence TDHCA to alter the decisions of a independent private sponsor's choice of location for building sites, which Federal Law itself favors in areas of which plaintiff complains. Id.

285. In the instant case, no silver bullet exists. The injuries and violations are multiple and traceable to defendants and the ACA itself. As the quote from Justice Thomas in the Section above on the summary of the injuries indicates redressability concerns the relation between the injury and the requested relief. Unlike *Inclusive Cmtys.,* the sections above have shown the defendants regulations and implementation of the ACA directly caused the injuries. Also, unlike *Inclusive Cmtys.* in which a private party selected and proposed the site of the project, here neither party to the contract, the individual or the insurance company, are truly

independent. If the individual was independent one could specify what coverages one desired and be able to pick and choose based upon one's needs. The pressure from the defendants coerce this choice as given above. See the section below on Request for Relief for more on the relation between the injury and requested relief for the various violations involved in this complaint. However, the one action which will redress the majority of injuries is to declare the ACA unconstitutional. Unlike the plaintiffs in *Inclusive Cmtys.,* I find no problem in expressing a remedy.

286. For the following analysis a "favorable decision" is presupposed, which would mean this court has found one or more of the charges above to be correct and supported by fact and Law. If the Court then declares the ACA unconstitutional, all regulations which were enacted to support it would be null and void. The clock would in effect be wound back. The conditions in effect before the ACA would return. No "minimum essential coverage," HHS Mandate, IMP or IM would exist. Both parties directly regulated by these provisions would again be free and independent to choose and include what coverages each felt were appropriate. Health Insurance Companies would be free to innovate and create products of desire to consumers, not necessarily of desire to government. In short, market forces would return. Unlike *Inclusive Cmtys.* in which the requested redress of some sort of change in regulations by Treasury were at least four steps away from the desired effect of a change in construction location by private third parties, in the instant case *a*bsolutely **NO SPECULATION** is required. It is virtually certain by simple deductive reasoning the "injury will be redressed." In this analysis the effect of the Great Reset, woke corporations, as well as the pressure from Democrats

threatening to regulate and otherwise harm the insurance companies which dare to deviate from their will is not accounted for but this is a separate issue.

287. As mentioned previously, the litigation in *Inclusive Cmtys.* was in a different stage. FRCP 8 "does not impose a probability requirement at the pleading stage."[158] This court appears to be seeking to impose a probability of success on the merits, although I believe enough evidence already exists for summary judgment on some of the charges above. See the Discovery Plan section, which I created to indicate additional evidence could be readily found in discovery to further bolster the "plausibility" the defendants are liable for the injuries.[159]

288. The Clarification also cites *Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992),* this case, which was also in a different stage of litigation, is also inappropriate. The Supreme Court found the plaintiffs lacked standing for two reasons. They could not show any 'direct' injury. The injuries of the plaintiffs did not include any witness of actual harm to endangered species in foreign countries with projects in part funded by the US government. The instant case is much different. I am required to sign or affirm a contract for health coverage. Although, it may originate from the health care insurer, it has the written speech of the defendants which by default contains the HHS Mandate. Therefore, the regulations directly affect me as a party to the contract. The health insurer is but a false proxy for the government.

> ...in order to establish standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it. Id. p.562

289. Redressibility as in the previous case was complicated because multiple

158*Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)*
159*Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)*

agencies were involved in the funding of the foreign projects. The redress requested would require the Secretary of the Interior to create a regulation to require all the other agencies to provide "consultation for foreign projects." The Court found it very dubious the secretary had sufficient authority over the other agencies to create this regulation binding upon them.

290. If I make any speculation, it is this court will not make any further decision in my favor, regardless of evidence, eloquence in pleading, etc. Robert Barnes a prominent lawyer on the Viva Frei channel on youtube and rumble has stated that the best predictor of how a judge will rule is the party affiliation of the judge. Further, the concept of standing was invented in the 1920s and is often abused by courts to avoid cases which they do not want to consider. Although I am not a lawyer, my limited experience agrees with these observations. Mr. Barnes stated such cases have better hope a higher court will be more objective and fair. I do not believe this court can not see the evidence in fact and law presented here, the court is looking for a way to revoke or ignore these.

XIII - Request for Relief

291. If the US Congress increases the Individual Mandate Penalty, I will ask for a temporary injunction barring the government from imposing this penalty or any interest or other penalty for failure to maintain health insurance coverage upon myself or any similarly situated individual until this matter is resolved in the courts. Likewise, should the US President remove the exemptions to the HHS Mandate, I will request an injunction. I maintain the current individual exemption does not appropriately cover my situation, however the fig leaf of any sort of exemption will be gone and a definite change in the status quo will have occurred. Each of the

following requests should be well within the power of the court and appropriate for each violation given above.

292. If the court should find any part of Claim 1 valid, then I would ask the court to set aside and hold unlawful the HHS Mandate as allowed by 5 U.S.C. § 706(2). In addition, if the court should find the defendants have engaged in ultra vires conduct I would request, as I am entitled prospective relief, this court through its injunctive power to either bar the defendants from creating any addition to essential minimum coverage which could affect faith and morals or impose some other method or rule to prevent the defendants from imposing any similar regulation in the future.

293. If the court should find Claim 2 valid, the redress would depend upon which of the possible law violations the court finds valid. If the law which the court traces authority only allows declaratory relief, then I would ask the court for a declaration that the defendants violated the law and were negligent in their duties. If the court should trace the authority through either the Tucker Act or the FTCA then I would ask for the following damages: A)the repayment of all the IMP paid, B)to locate for me an insurance policy which meets my requirements and pay for that policy for the same number of years for which I was denied health insurance if such a policy can be located. Any years after 2020, the year the individual exemption was allowed, are to be proportioned by the percentage of the damage to the market found in discovery. C)Nominal damages, if nothing else is allowed by law.

294. If the court finds Claim 3 valid, then I will ask the court to award me the return of all payments of the IMP, currently $5626.22. For prospective relief I would

also ask the court to provide an injunction against the plaintiffs to prevent them from imposing the IMP or any similar penalty on myself at any time in the future. If the damage to the market can be quantified at 50% or greater, I would also ask for a permanent court injunction against the defendants from imposing the IM on myself.

295. If the court should find any of Claims 4 through 9 valid, I ask the court to declare the HHS Mandate unconstitutional. In addition, I would ask the court for a permanent injunction upon the defendants to prevent them ever again to include in "minimum essential coverage" any requirement for coverage of sterilization, contraception, abortion, related counseling or any other coverage which can impact faith and morals. I will ask the court to award me the return of all previous payments of the IMP illegally taken, currently $5626.22.

296. If the court should find Claim 10 valid, I would ask the court to declare one or both religious exemptions unconstitutional and sever them from the ACA unless the court should find these exemptions unseverable, then I would ask the court to declare the ACA unconstitutional. Alternatively, I would request the court for an injunction against the defendants to set up a fair and objective process to allow all religions or other objectors to obtain exemptions from the IM. I will also ask the court to award me the return of all previous payments of the IMP illegally taken, currently $5626.22.

297. If the court should find Claim 11 valid, I will ask the court to declare the ACA unconstitutional. All regulations and statutes promulgated under its auspices should be revoked and held null. Compelled association is a central assumption of

the ACA, the act makes no sense without it, therefore it is inseverable from the act. I will also ask the court to award me the return of all previous payments of the IMP illegally taken, currently $5626.22.

298. If the court should find any or all of Claims 12 to 15 valid, I will ask the court to declare the ACA unconstitutional. All regulations and statutes promulgated under its auspices should be revoked and held null. Similar to the previous claim, each of these violations is deeply embedded in the act as such each is inseverable from the act. I will also ask the court to award me the return of all previous payments of the IMP illegally taken, currently $5626.22.

299. If the court should find Claim 16 valid, the court will likely have found another claim valid and the ACA has been declared unconstitutional, if not I would ask for the same here. I will also ask the court to declare any sort of power sharing between government and business or the explicit direction of business by government, which is the essence of Fascism, a violation of the constitution. Similarly, I would also ask for a declaration as unconstitutional the government's use of a business as a "false proxy" to facilitate a violation of the Constitution where the violation would not be allowed if it acted directly.

300. Further, "If unchecked by the litigation" the defendants will continue to abuse Science. Many people have suffered and lost their lives directly because of this abuse. See Section VIII(E)(3) among others. My life is also at jeopardy because of this continuing abuse. I ask for a permanent injunction against all executive branch agencies and the president that clearly defined limitations be placed upon the defendants. Any statement, rule, or order which purports to be science or evidence

based for support must reference published studies, which include all details on experimental methods and data as well as details on how the conclusions were obtained from the data. Unfettered public review and comment MUST be facilitated and allowed. The executive branch must then respond to any substantive comment or challenge to the study. If an agency fails to provide all of these elements or if the agency fails to provide a reasonable response to any objection which invalidates its conclusions, the agency action is to be automatically considered null and void.

301. If the court should find Claim 17 valid, I will ask the court to declare the ACA unconstitutional. All regulations and statutes promulgated under its auspices should be revoked and held null. This violation is also deeply embedded in the act as such it is inseverable from the act. I will also ask the court to award me the return of all previous payments of the IMP illegally taken, currently $5626.22.

302. If the court should find any of Claims 18 to 20 valid, I ask the court to declare the ACA unconstitutional. All regulations and statutes promulgated under its auspices should be revoked and held null. Each of these powers were assumed by Congress in the construction of the ACA. To remove any one or all, leaves the act with no authority for much or all of its provisions, therefore the act is inseverable. I will also ask the court to award me the return of all previous payments of the IMP illegally taken, currently $5626.22.

303. If the court should find Claim 21 valid, I ask the court to declare the definition of “direct tax” as any tax levied upon a person by the federal government. Likewise, the definition of an “indirect tax” is any tax which is levied upon a party

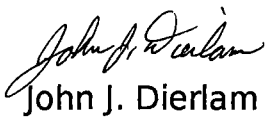
who fully intends and is lawfully allowed to pass the cost of that tax along to some other party. Alternative wording would also suffice as long as the simple and plain meaning of the words “direct” and ”indirect” are utilized. I would ask the court for any other relief available to the court and by Law for this Claim which may be determined before final disposition of this case.

304. I would ask the court to specifically list each and every successful violation above and not to stop at the lowest hanging fruit due the great abuses of this law and the politicians who enacted it. **Proper redress** will not occur unless ALL violations are cited as each should be seen as a separate and intentional violation so as to prevent future harm from any similar action in the future thereby safeguarding the people and their rights.

305. As future events may influence the relief requested above especially the injunctive relief, I would ask the court to permit a modification and updating of the terms requested in the injunctive relief.

306. I ask that the same relief be applied to any similarly situated individual.

307. I also ask for any other relief the court finds to be appropriate including legal expenses.



John J. Dierlam
5802 Redell Road
Baytown, TX 77521
Phone: 281-424-2266

Certificate of Service

I certify I have on March 25, 2022 mailed a copy of the above document to the clerk of the court at:

United States District Clerk
Southern District of Texas
515 Rusk, Room 5300
Houston, TX 77002

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

Rebecca M. Kopplin
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005

I have emailed a courtesy copy to the defendant's counsel at Rebecca.M.Kopplin@usdoj.gov as well as the Case Manager for the Judge of the Court at Arturo_Rivera@txs.uscourts.gov.

John J. Dierlam

Date: 3/25/2022
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