No. 24-113

ORIGINAL

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IN THE SUPREME COURT OF THE UNITED STATES

John J. Dierlam
Petitioner
v.
JOSPEH 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; Julie A. Su, acting SECRETARY, DEPARTMENT OF LABOR, in her official capacity as the Secretary of the U.S. Department of Labor.
Respondents

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

PETITION FOR WRIT OF CERTIORARI

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Issues Presented

This case has a history of over 8 years. This document will focus primarily on events dating from the the issuance of the Motion for Clarification from the District Court Judge, which I requested as little or no statements from the court had been made other than tacit agreement with the defendants. That memorandum also qualifies as an analysis of mootness and standing required by the 5th Circuit Appeals Court after they remanded and vacated the initial dismissal by the district court. The 3AC contains 21 claims against the government most of which violate Constitutional rights. Other than the previous Appeals court decision, which made no decision of the merits but requested a mootness and standing analysis by the district court, this memorandum by the District Court is the only document produced by the court regarding its position in this case. Although the following issues existed previous to this Memorandum, they were crystallized in this document and form the basis for this appeal. This petition is grounded in Supreme Court Rules 10(a) and (c).

1) Is it a proper exercise of discretion for an Appeals Court to sanction raising the bar presented by the elements of standing and mootness to a virtually unattainable level despite an admission of guilt by the defendants, evidence of continuing and expanding violations to which they admitted culpability, and for the growing injuries caused by these violations especially in the pleading phase as indicated by Supreme Court precedent? Rule 10(a) and (c) is involved here.

2) The lower court decisions conflict with *Janus v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31*, No. 16-1466 (U.S. June 27, 2018) as the ACA in like manner creates a compelled association thus evoking rule 10(c).

3) Much evidence indicates that the health insurance companies are "State Actors," which violate Constitutional Rights of citizens on behalf of the government. The evidence

is greater than that presented in previous cases, and the ACA may have served as a template for the government's continuing coercion of other business. Rule 10(c) is again evoked.

4) The 7th circuit decision *Korte v. Sebelius,* 735 F.3d 654, 672 (7th Cir. 2013) indicated that RFRA provides an entitlement to prospective relief as well as retrospective relief. The District Court ruled in my favor for retrospective relief after the remand and vacatur but denied prospective relief. The appeals court upheld the lower court ruling thereby setting up a conflict between the circuit courts on this issue evoking rule 10(a).

5) The religious exemptions in the ACA provide certain religions an advantage of less government regulation but the exemptions have no relationship to the stated goals of the ACA. Therefore these exemptions are in contradiction to *Larson v. Valente,* 456 US 228 (Supreme Court 1982) and *Estate of Thornton v. Caldor, Inc.,* 472 US 703 (Supreme Court 1985). By refusing such relief to other religions, the ACA creates a ghetto 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). Thereby the government has also created an unequal playing field for some market participants. Rule 10(a) and (c) is evoked here as well.

6) As this case is over 8 years old and has not had a fair hearing on the issues, I would ask this court to rule on the merits of each of the other claims in the 3AC not mentioned above and provide the requested relief. Any further delay will result in a gross miscarriage of justice and continued harm to the public. As the lower court decisions are in conflict with previous decisions of this court, Rule 10(a) and (c) are evoked. Without very specific instructions and directions from this court, similar subterfuge can be expected from the lower courts if any further litigation would be required

Directly Related Cases

John J. Dierlam v. Joseph R. Biden JR. et. al., US Southern District of Texas Houston Division, case no. 14:16-cv-307. Judgment entered on 8/11/2023

Dierlam v. Trump, 977 F.3d 471 (5th Cir. 2020) Judgment entered on 10/15/2020

John J. Dierlam v. Joseph R. Biden, et. al., 5th Circuit Appeals Court, case no. 23-20401. Judgment entered on 5/7/2024

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The Clarifying Memorandum was issued by the District Court on 2/8/2022. Other than the decision of the 5th Circuit vacating and remanding the case on 10/15/2020 for a mootness and standing analysis, it contains the only opinion of the lower court Justices. The 5th circuit decision of 2/29/2024 merely states agreement with this Memorandum. See Appendix for reformatted reproductions.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1254(1). On 5/7/2024 a Petition for an En Banc hearing of this case was denied by the 5th Circuit.

Applicable Law Involved

The appendix reproduces the Statutes: 5 U.S.C. § 706; 26 U.S.C. § 1402(g), § 5000A; 28 U.S.C. § 1254(1), § 1331, § 1340, § 1343, § 1346, § 1361, § 1367 , § 1391(e)(1)(C), § 2201, § 2202, § 2465, § 2674; 42 U.S.C. § 2000bb-1(a)(b), 18022(a), 18091(1); 45 CFR §147.130(a)(1), § 147.132, § 92.4, § 92.101, § 92.206, and § 92.207. Also reproduced are Art. I, §9, cl. 4 and 26. Art. I §2, cl. 3 of the Constitution and the 1st ,4th ,5th ,9th, and 10th amendments of the Constitution.

Statement of the Case

On February 4, 2016, I, John J. Dierlam, a life long Catholic and resident of Harris County Texas, filed a complaint in the Court of the Southern District of Texas against the government. The Federal Court for the Southern District of Texas was the proper venue for the Original Complaint based upon 28 U.S.C. § 1331, § 1340, § 1343, § 1346, § 1367, and § 1391(e)(1)(C); it had the authority to provide the relief sought based upon 5 U.S.C. § 706, 28 U.S.C. § 1361, § 2201, § 2202, § 2465, § 2674, 42 U.S.C. § 2000bb-1.

This suit was initiated due to the imposition of the Individual Mandate Penalty in 26 U.S.C. § 5000A. However, the regulations of the government, 45 CFR §147.130(a)(1) among others, the HHS Mandate, made

effective in 2012, caused me to terminate my employer's health insurance and made it impossible to find health insurance which was compliant with my religion.

As predicted in even the Original Complaint, the defendant agencies have continued to expand the violations which initiated this suit. The defendants have caused injury by violations of constitutional freedoms especially of religion. The rule 89 FR 37522 "Nondiscrimination in Health Programs and Activities" on 7/5/2024 became final AFTER the ruling of the 5th circuit of Appeals in this case. I face additional eminent harm with penalties which will start to be imposed about September of 2024.

The Third Amended Complaint (3AC) contains 21 Claims against the government. The claims include violations of the RFRA, the APA, § 1502(c) of the ACA, and the 1st, 4th, 5th, 9th, and 10th amendments by HHS et. al.; related violations of the RFRA, 1st, 4th, 5th, 9th, and 10th amendments by the ACA, lack of congressional authority to enact the ACA or some of its provisions, and the lack of a proper definition of "direct" tax and in effect the revocation of the "consent of the governed" by this court.

Reasons to Grant Petition for Writ of Certiorari

I - The Lower Courts denied Due Process

The Lower Courts in violation of FRCP 8 and much precedent did not view facts presented in "the light most favorable to the plaintiff."[1] The courts altered or ignored the facts presented to contrive a conclusion no injury exists traceable to the government which a court can redress.

A - Facts given little or no attention by the lower courts:

1) The government on pp. 3-4 of their Response To Magistrate Judge's Report & Recommendation, Dkt#73, admit culpability in a violation of RFRA. They quote 82 Fed. Reg. 47,800,

> ...requiring certain objecting entities or individuals to choose between the

1 *Gould Elec. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000).

> [Contraceptive] Mandate, the accommodation, or penalties for noncompliance imposes a substantial burden on religious exercise under RFRA.

2) On 6/14/2018 the District Court dismissed the entire case for the first time despite the government admission in the previous section. At the hearing of the same day the Judge stated,

> ...I agree with the Third Circuit in the case that Judge Palermo relied on so heavily; that the burden, although it's not nonexistent, is not so substantial that it's a violation of RFRA...(Dkt#80, 6/27/2018)

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) indicated a similar argument is "an attack on the sincerity of their religious beliefs, which the Supreme Court most recently in *Hobby Lobby* cautioned against." The 5th Circuit Court in their vacation and remand from *Dierlam v. Trump*, 977 F.3d 471 (5th Cir. 2020) indicated that at least parts of the R&R from Judge Polermo addressed merits issues which should not occur in the pleading phase.

The Clarifying Memorandum (Dkt#121, 2/8/2022) indicated the case was dismissed on 6/14/2018 out of mootness considerations. The transcript excerpt above appears to differ with this conclusion at least for the RFRA claim.

3) ¶¶ 67-74 of the Third Amended Complaint (3AC) addresses the injuries and other requirements of standing. Much of the facts here were not given serious attention. One important fully anticipated injury in this section was the illegitimate ultra vires expansion of other provisions of the ACA similar to the HHS Mandate to violate faith and morals.

The clear words of Congress in creating a "preventive

uncovered, again indicating the ultra vires nature of the HHS action. On p.248 of Public Law 111–148 or 26 U.S. Code § 5000A(f)(1)(A)(i), Congress defined Medicare as meeting "minimum essential coverage" therefore the HHS Mandate or any additional requirement imposed by HHS does not extend to Medicare. This same website now indicates contraceptives are covered under Medicare parts C and D. The website https://www.hhs.gov/civil-rights/for-individuals/section-1557/faqs/index.html indicates HHS defines and will enforce any "discrimination on the basis of sexual orientation, gender identity, sex characteristics (including intersex traits), pregnancy or related conditions, and sex stereotypes." HHS makes it clear pregnancy discrimination includes "pregnancy termination."[2] HHS is extending the definition of "Federal financial assistance" and "health program or activity" to include Medicare Part B as well as any participant in a health care exchange to include any and all their benefit plans whether offered on the exchange or not. In violation of the APA, the above constitutes continued ultra vires activity on the part of HHS.

HHS uses the *Bostock v. Clayton County, Georgia,* 140 S. Ct. 1731, 590 U.S. 140, 207 L. Ed. 2d 218 (2020) decision to justify its expansion of protected classes to infinity with the LGBTQI+ designation, however *Bostock* involved only two other activities, homosexual and transgender in an employment situation. The dissenters in that case successfully pointed out many of the sad consequences of this "legislation" as they termed it. The judge in *Op. & Order at 2, Neese v. Becerra,* 2:21-cv-163-Z, ECF No. 66 (Nov. 11, 2022) indicates neither *Bostock* nor Section 1557 apply to the Sexual Orientation and Gender Identity categories HHS sought to extend.

4) According to the *Braidwood Management Inc. v.*

2 https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html

by the defendants. Review under APA is appropriate especially in light of *LOPER BRIGHT ENTERPRISES ET AL. v. RAIMONDO, SECRETARY OF COMMERCE, ET AL.* 603 U.S. No. 22–451. 6/28/2024 ruling of this court. However, in the instant case the direction of Congress is clear and the *Chevron* doctrine is not required. Also, *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.463 U.S. 29, 43 (1983)* lists four factors which can cause an agency decision to be considered arbitrary. Only one of the four elements listed is necessary all four are violated, but especially "the agency has relied on factors which Congress has not intended it to consider." *Id.*

A new final rule issued by HHS has taken effect on 7/5/2024, 89 FR 37522 "Nondiscrimination in Health Programs and Activities." It will expand the definition of sex to incorporate gender affirming care, gender identity, and pregnancy discrimination into all health insurance including Medicare. Pregnancy discrimination is essentially the HHS Mandate. The new final rule requires private companies to include "gender affirming" care in their policies. 45 CFR § 92.206(b) and 92.207(b) prevents covered entities from discriminating on the basis of sex which includes gender transition and gender affirming care. Section 206 and 207 (c) provide ONLY covered entities with a possible religious exemption. No individual exemption from coverage exits. The individual religious exemption, 45 CFR § 147.132, applies ONLY to contraceptives. The cases mentioned previously contained injunctions for health care providers not individuals.

I wrote the 3AC in March of 2022. The website https://www.medicare.org/articles/does-your-medicare-plan-include-birth-control-coverage/ indicated that around 1 million women of child bearing age were on Medicare and did NOT have access to Contraceptives free of charge, leaving a large group of women not religiously motivated

service" provision as demonstrated by this quote from the author of this provision,

> Ms. MIKULSKI. ...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)

which indicates the creation of a "contraceptive mandate" by the defendants is an invention of HHS et. al. and ultra vires. Abortion, contraceptives, and sterilization have never been considered preventive services.

On March 2, 2022 HHS issued a guidance letter indicating it will enforce under the 2020 rule their expanded interpretation of ACA Section 1557 to essentially declare LGTBQ+ as protected classes. A guidance can be considered final agency action. *See Tex. v. EEOC, et al,* No. 2:21–cv–00194–Z (N.D. Tex. May 26, 2022), *FRANCISCAN ALLIANCE, INCORPORATED v. Becerra,* No. 21-11174 (5th Cir. Aug. 26, 2022), *and Op. & Order at 2, Neese v. Becerra,* 2:21-cv-163-Z, ECF No. 66 (Nov. 11, 2022) although the latter case concerns a similar guidance from 2021. In the later case the court indicated the very basis which HHS attempts to use ACA Section 1557 to provide special protection to SOGI categories is invalid. These categories have no special protection under existing law. Therefore the guidances are independent legislative actions

Becerra, 627 F. Supp. 3d 624 (N.D. Tex. 2022) decision, in 2020 HHS included "PrEP" drugs as part of preventive coverage without copay. I understand these drugs are intended for use by homosexuals before sex to prevent the spread of certain diseases. Catholic teaching calls everyone to be celibate except after the sacrament of Matrimony between one eligible genetic male and one genetic female without contraception. LGBTQI+ are not immutable characteristics but activities forbidden by this teaching. Whether the original HHS Mandate, "pregnancy termination," "gender affirming care," PrEP drugs, etc. all are gravely immoral and can bring even indirect participants excommunication and condemnation at least when termination of innocent life is involved. As a Catholic who holds the traditional values of the church, insurance coverage for these activities is abhorrent and an invitation to sin. Payment of premiums to support others in these activities constitute indirect participation and support.

5) HHS has included itself in the 2024 rule forbidding discrimination based upon an expanded definition of sex. Hypocritically, HHS is in violation of its own rules. Even using the more traditional and limited definition of sex as a genetic condition of birth, the HHS Mandate as described in the Complaint does not allow men the FDA approved male contraceptive free of any cost sharing. The majority in the *Bostock* decision cite *Los Angeles Dept. of Water and Power v. Manhart,* 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed.2d 657 (1978) in which an employer required women to contribute more to their pension plans than men because on average women live longer than men. The majority in Bostock indicated the only relevant question was whether discrimination based on sex occurred. The defendants justify the discrimination against men in the HHS Mandate in different documents as gender equity, as women simply being more needy, etc. The decision by the *Bostock* majority would suggest just like the *Manhart* decision none of these

concerns are relevant. The only relevant question is whether discrimination based upon sex has occurred. Clearly, the HHS Mandate discriminates against men based upon their sex in opposition to HHS rules and the *Bostock* decision.

6) As described in Claims 9 and 14 of the 3AC, a confiscation by the government has occurred. Here government mandates extract funds from most of the insurance participants in the form of premiums paid for a private insurance contract without their permission to give to a group of the government's choosing. The value of the contract is obviously reduced to the non-beneficiary individuals in this system and constitute a confiscation of their funds. "A seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property."[3] On the other hand, if government classifies this exaction as a tax then the Individual Mandate is a capitation which is unconstitutional because it is not apportioned to population. The principle of unjust enrichment is also involved here.

7) Hostility toward religion by government is evidence of a 1st amendment violation. The following items provide evidence of the government's hostility toward Christians especially Catholics: **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

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

members have strong relationships with both Planned Parenthood and NARAL Pro-Choice, and have actively supported pro-abortion candidates for public office.[4]

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.[5]

c) A very likely reason for Obama's change to a 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.[6]

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.[7]

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

5 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-obamacare-vs-the-catholics

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

7 http://www.catholicculture.org/news/headlines/index.cfm?

e) The new HHS Mandate/Rules mentioned above represent ultra vires continuation of this hostility. The new Mandate/Rules violate RFRA (as well as other Law) in the same manner as the original Mandate to which they admit a violation. As the rules forbid any increased cost sharing upon these individuals, any increased cost will be borne by the remainder of the participants in the health care plan. I understand the
cost of hormone therapy and transgender surgeries can be very expensive.[8]

f) More recently, the FBI has been investigated by the US House for targeting Catholics as potential terrorists and racists in violation of the 1st Amendment.[9] The Biden administration attempted to end a centuries old traditional religious practice in a Catholic Hospital Chapel, but backed down after the threat of an RFRA Lawsuit.[10] Catholic pro-life activists exercising their rights of freedom of speech and assembly have been targeted with brutal and violent FBI raids and prosecution.[11]

The government did not "discontinue a challenged practice," but has repeated and expanded it to criminalize and harm their religious and political enemies.[12] Clearly, "unchecked by [] litigation, the defendant's" behavior has

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storyid=12008 See also, https://www.lifesitenews.com/opinion/evangelical-leader-chuck-colson-obama-birth-control-mandate-must-be-stopped

8 See https://costaide.com/transgender-surgery-cost/ and https://www.talktomira.com/post/how-much-does-gender-affirming-hrt-cost-without-health-insurance

9 https://judiciary.house.gov/media/press-releases/documents-reveal-fbi-sought-develop-sources-local-catholic-churches

10 https://www.lifesitenews.com/news/biden-admin-orders-catholic-hospital-to-extinguish-small-candle-or-lose-all-federal-funds/?utm_source=daily-usa-2023-0505&utm_medium=email

11 https://www.washingtontimes.com/news/2023/jan/30/mark-houck-acquitted-federal-jury-win-pro-life-mov/

12 *Fantasy Ranch Inc. v. City of Arlington, Tex., 459 F.3d 546, 564 (5th Cir. 2006)*

and will continue.[13]

8) The only evidence for the acceptance of the HHS Mandate stems from an HRSA sponsored panel set up at the Institutes of Medicine.[14] The government refers to the recommendations of this panel as Science or Evidence based. However, this description is erroneous for several reasons. The practice of Medicine is often described as an art. Due to a lack of time, guesses and consensus opinion are utilized as patients can not always wait for Science in urgent situations. Science is deeply rooted in the Scientific Method.

In this case, the panel formed a Hypothesis, but did not perform any experiment and the data it utilized was not intended for the stated purpose. On p.66 of the IOM report is the statement, "...evidence and expert judgment are inextricably linked,..." 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. In Science "expert judgment" and "evidence" can never be linked.

One member of the panel, who apparently was the only member with insurance experience and an economics background, wrote a dissent indicating some of the problems of the panel, which also helps to corroborate I(A)(7) supra. He indicated a method to place the decision making process of the panel on a firmer scientific foundation, but his objections were ignored by the panel majority. Without a properly designed experiment the recommendations of the panel remain only hypotheses or

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13 *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*

14 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

BELIEF.[15] Evidence exists which indicates these so called preventive services may harm the health of women.[16] [17] [18]

In the case *Boe v. Marshall (2:22-cv-00184) District Court, M.D. Alabama* a document was unsealed in June of 2024 indicating that Assistant Secretary for health of the Department of HHS Admiral Rachel Levine successfully pressured the World Professional Association for Transgender Health to remove the age limitations for treatment in their recommendations, which places considerable doubt on these recommendations.[19] This event places in doubt any scientific basis for other such recommendations.

9) Evidence exists that the effect and intention of the ACA was a sham and has no relation to the stated purposes for which it was intended.

a) The ACA has not contained costs. Premium increases of 105% have occurred from 2013 to 2017.[20]

b) Very little change has occurred in the number of people covered under private insurance. The vast majority of new enrollments has occurred in the expansion of Medicaid with costs far higher than projected.[21]

c) About 6 million people have lost coverage with

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15 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.

16 See Brief for the Breast Cancer Prevention Institute as Amicus Curiae, Zubik v. Burwell, 2016 WL 2842449 (U.S. May 16, 2016)

17 See also Brief of the Association of American Physicians & Surgeons et. al. Amicus Curiae, Zubik v. Burwell, 2016 WL 2842449 (U.S. May 16, 2016)

18 Brief of Michael J. New, PH.D., Amicus Curiae, Zubik v. Burwell, 2016 WL 2842449 (U.S. May 16, 2016)

19 https://feministlegal.org/unsealed-court-documents-show-that-admiral-rachel-levine-pressured-wpath-to-remove-age-guidelines-from-the-latest-standards-of-care/

20 https://galen.org/assets/Expanded-ACA-Subsidies-Exacerbating-Health-Inflation-and-Income-Inequality.pdf

21 https://www.healthafairs.org/do/10.1377/forefront.20210715.739918

the implementation of the ACA.[22]

d) 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." 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.[23]

e) Evidence suggests the care received by Medicaid patients has deteriorated as well as the access to that care.[24]

f) Evidence indicates profits for Healthcare related companies have greatly increased resulting in their stocks outperforming the S&P 500, which also suggests a transfer of wealth is occurring from "taxpayers to insurers."[25]

g) The government explains the reason for the passage of the ACA as a reaction, "to address a crisis in the national health care market, namely, the absence of affordable, universally available health coverage." The adult non-elderly uninsured rate averaged a fairly steady 16.7%, std. dev. of 0.5, between 1995 to 2013, including a 1.4% increase in 2010 due to the recession. No crisis is evident. In 2015 only a 6% drop from this average occurred, which suggests a very significant number of people remain uninsured after the implementation of the ACA.[26]

h) A high deductible insurance plan is the most affordable and cost efficient. From the website, https://www.healthcare.gov/health-coverageexemptions/exe

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22 Id.

23 https://galen.org/assets/Expanded-ACA-Subsidies-Exacerbating-Health-Inflation-and-Income-Inequality.pdf

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

25 https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/03/The-Profitability-of-Health-Insurance-Companies.pdf

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

mptions-catastrophic-coverage/ , permission is required from the government to obtain such a plan. Permission is conditioned upon one of the 14 exemptions to the IMP. Obviously, a high deductible plan will make it more difficult for the government to confiscate and redirect what is in effect an exaction by government.

B - Injuries the lower courts ignored

1) I started this lawsuit after being forced to pay the Individual Mandate Penalty. I had previously dropped my employer's health insurance after discovering the original HHS Mandate would force the carrier to cover contraception. I was not aware I could sue at that time because I lost an important benefit. The government has confessed to a violation of RFRA however the same ultra vires violation continues. I am in a worse situation than when I started this lawsuit. HHS has expanded the original Mandate but now has included other provisions against the teachings of the church. I have recently attained the age of 65. I face substantial LIFETIME penalties. It is required to sign up for Medicare within a 6 month period of your 65th birthday otherwise "...if you fail to sign up for Medicare on time, you'll risk a 10 percent surcharge on your Medicare Part B premiums for each year-long period you go without coverage upon being eligible."[27] Medicare is a government program; the defendant's subterfuge of a an independent third party is not applicable.[28]

The new HHS Final Rule places Medicare parts B, C, and D under their expanded definition of sex and pregnancy discrimination. Although no mention is made of Part A Medicare, I hesitate to enroll in Part A as I am very concerned it will be included in the ever growing net of HHS morally offensive regulations. I face the possibility of

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27 https://www.medicareresources.org/faqs/do-i-need-to-sign-up-for-medicare-at-65-if-im-still-working/

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

having no health coverage for the rest of my life, which is current and eminent harm. I am required to sign a contract and/or pay premiums to support a system which will harm individuals including innocent children. Just as during 2013 to 2020, it will be impossible to find ANY health insurance including Medicare, compliant with my religion. The government will unconstitutionally be making an important benefit "enjoyed by other citizens" conditional upon the acceptance of its belief system.[29] Without insurance coverage, a benefit found important by previous courts, I am exposed to the potentially crippling cost of health care.[30] The government is using "minimum essential coverage" to force the population to accept their religious dogma. They have no intention to stop this behavior without court intervention. I am entitled prospective relief from this and ALL future such mandates which support the religious beliefs and worship of the false gods of the government.

2) The government tried to mislead the court and myself in the MTD the Original Complaint that health insurance policies were available without the HHS Mandate. However, from 2013 to 2020 ALL health insurers were forced by HHS to include the mandate for some abortion services, contraceptives, sterilization, and related counseling. A religious exemption was theoretically available from 2020 to July 2024. However, if one could not find a WILLING insurer it was of no use. Based upon some evidence, HHS has and will continue to pressure insurers not to be willing. As of July 2024, again no insurance plans are available to me consistent with my faith. Therefore, HHS since 2013 until the present has damaged the market in which I must participate to obtain health insurance to

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29 *Lyng v. Northwest Indian Cemetery Protective Assn., 485 U.S. 439, 108 S. Ct. 1319, 99 L. Ed. 2d 534 (1988).*

30 See *Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114 (10th Cir. 2013).*

avoid the potentially crippling cost of health care. The "purchaser standing doctrine" suggests an injury is being committed by the government. See Infra.

3) In order to further bolster the "plausibility" requirement a discovery plan was contained in the 3AC.[31] Interrogatories could be sent to past and present health insurance providers to quantify the damage to the market as well as help determine what unconstitutional pressure they may be currently or were subjected to during the formulation of the ACA. A "set of facts" can be seen in the evidence presented here to avoid dismissal and warrant discovery. Injury exists from the actions of the lower courts as well in their denial of due process. According to *Williamson v. US Dept. of Agriculture,* 815 F.2d 368 (5th Cir. 1987) a court's ruling on discovery will be "reversed only where they are arbitrary or clearly unreasonable." Bias in the lower court makes this decision clearly arbitrary and unreasonable.

II - Application of fact to Law

A – The Lower Courts pay little attention to uncontested fact and the injuries given in Section I supra in violation of FRCP 8, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 562 (1992), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), as well as other decisions.

According to *Lormand v. US Unwired, Inc., 565 F.3d 228 (5th Cir. 2009),* Rule 8 requires only "enough factual matter (taken as true)" to raise a "reasonable hope" discovery will "reveal relevant evidence of each element of a claim" without imposing "a probability requirement." The defendants moved for dismissal on grounds of FRCP 12(b)(6) and 12(b)(1). "To prevail on a motion to dismiss an ordinary claim under Fed.R.Civ.P. 12(b)(6), a defendant must show that the plaintiff can prove no set of facts in

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

support of his claim which would entitle him to relief." *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061 (5th Cir. 1994). As indicated by the evidence in I(A) and (B), the lower courts refused to "...accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff."[32]

The lower courts often confound issues on the merits with issues regarding standing. These Courts may state doctrines properly, but it is only lip service. They have no intention to actually uphold the Law.

1 – The Clarifying Memorandum gives little attention to the damage to the market claim and indicates the existence of a religious exemption is sufficient to moot the claim.

On p.7 of the Clarifying Memorandum the court asserts in regard to the damage to the market claims, I "cannot show causation where [my] putative injury results from the independent action of some third party not before the court." As insurers are permitted to provide a religious exemption, their decision is not traceable to the government. For the same reason, I can not "establish redressability" as it is speculative a favorable decision can resolve the claimed injury. The statements here have a number of false assumptions. From the 3AC (ROA.904) in *Wieland v. U.S. Dep't of Health & Human Servs. case 4:13-cv-01577-JCH Dkt. 79-1 p. 11*, the Wieland's insurer, after previously providing HHS Mandate free coverage, expressed reluctance to reinstate a policy due to actions by HHS and for a single family. In contradiction to the court's statements, health insurers are under pressure from HHS.

The "purchaser standing doctrine" originating from the DC circuit court as laid out by the court in *BRAIDWOOD MANAGEMENT INC. v. Becerra,* Civil Action No. 4: 20-cv-00283-O (N.D. Tex. Mar. 30, 2023)

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32 *Baker v. Putnal, 75 F.3d 190 (5th Cir. 1996).*

provides standing for many of the claims. It is essentially what I call damage to the market. A court may

> ...recognize[] Article III injury-in-fact when a plaintiff has been deprived of the opportunity to purchase a desired product due to government action... Under this theory, courts have recognized purchaser standing where the plaintiffs have lost [the] opportunity to purchase a desired product . . . even if they could ameliorate the injury by purchasing some alternative product. However, such plaintiffs need not lose all opportunity to purchase a product to establish injury-in-fact. They must simply demonstrate that their choices have been restrict[ed] or that there is less opportunity to purchase [the desired product] than would otherwise be available to them... In making this determination, courts have focused on whether the challenged government action has rendered the consumer's desired product unreasonably priced or has made it not readily available. *Id.*

Based upon the facts given in I(A)(3), (4), and (6) as well as the injuries in I(B)(1) and (2) supra the government has made it IMPOSSIBLE to purchase any health insurance from 2013 to 2020 and again from July of 2024 to the present which is compatible with my faith. HHS has made the purchase of health insurance very difficult if not impossible for all the time between these dates. HHS has maliciously and intentionally destroyed the market in which I must purchase health insurance so no insurer can offer a product I may purchase establishing an injury-in-fact per the "purchaser standing doctrine."

2 – The Clarifying Memorandum argues setting the IMP to $0 by the TCJA moots this case. However, other injuries were always present. A court can still review the

legality of a law.

On p. 6 of the memorandum the court indicates my demand for "...an exemption from having to participate in a health plan that covers contraceptive services that are inconsistent with [my] religious beliefs," has been granted by the zeroing of the IMP by the TCJA of 2017. My claims for "declaratory and injunctive relief" are moot as no prospective injury I can possibly allege can exist given this relief.

The court and the defendants often mischaracterize the claims and arguments in the 3AC to create Straw Men easier to knock down. I never asked for JUST an exemption to participate in health insurance. I am aware as I age the chance the cost of health care exceeding my resources increases. The inability to obtain insurance which meets my religious beliefs is an injury in itself traceable to government action. Courts have ruled that Health Insurance is an important benefit, which the denial of can violate constitutional rights.[33]

The memorandum continued on the same page citing *Fantasy Ranch Inc. v. City of Arlington, Tex.*, 459 F.3d 546, 564 (5th Cir. 2006) indicating a "statutory change" which "discontinue a challenged practice" is sufficient to render a case moot and the "exceptions to this general line of holdings are rare" occurring where it is virtually certain "the repealed law will be reenacted." The lower courts insist my only injury is from the IM, which the TCJA zeroed out, other than "the costs of purchasing health insurance" no assertion in the complaint can be connected to the government.

However, the court's citations are inapposite. The

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33 See for example *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 717-18 (1981), *Adkins v. Kaspar*, 393 F.3d 559 (5th Cir. 2004) and *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013).

ACA nor the provisions at issue were repealed. "The costs of purchasing health insurance" was connected with an injury in the Complaint only where a willing insurer if one exists may require ADDITIONAL cost to maintain a policy which does not include the HHS Mandate. A willing insurer is not permitted by HHS Rule to provide an exemption for any other anti-Catholic coverage mandate such as PrEP drugs, gender affirming care, etc. This cost argument is another Straw Man. Although I still maintain the potential raising of the Individual Mandate Penalty (IMP) is a source of injury, the lower courts refuse to accept as true any other source of injury.

In the *County of Los Angeles v. Davis,* 440 U.S. 625, 631 99 S. Ct. 1379, 59 L. Ed. 2d 642 (1979) decision, the court indicated,

> ...as a general rule, voluntary cessation of allegedly illegal conduct...does not make the case moot. But jurisdiction, properly acquired, may abate if the case becomes moot because (1) it can be said with assurance that "there is no reasonable expectation . . . that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. *Id.*
>
> (Internal quotations and citations omitted.)

The government can not even come close to meeting either condition. Violations in I(A) and the injuries these cause in I(B) continue.

3 – Considerable evidence indicates I have standing; this case is not moot.

Many if not all the cases cited in the Memorandum allowed discovery and were past the pleading stage unlike the instant case. Several of the cases cited had plaintiffs who requested relief which the defendants were not authorized to provide or were several steps removed from

the complained of action. It is for these reasons the courts considered them not redressable. In the instant case, the injuries were caused directly by government mandated language and action. It is these government mandated terms which are at issue not any action by the Health insurers. The *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992) decision indicates,

> ...standing depends considerably upon whether the plaintiff is himself an object of the action...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.*

No speculation is required a favorable decision will redress the injuries. I had health insurance before the passage of the ACA forced me to drop my employer's health insurance in 2013. Market forces can be restored and Health insurers will have an incentive to serve customers again, NOT the government.

The lower courts have violated precedent and rules intended to protect due process in order to shut down this case and maintain their policy preferences. The U.S. Constitution Art. III, Section 1 states, "The judicial power SHALL extend to all cases in Law and Equity..." It appears the lower courts are in violation of their oaths to uphold the Constitution.

B – The ACA forms a Compelled Association just as in *Janus*. The 5th Circuit decision is in conflict with this decision.

The Supreme Court in *Janus v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31,* No. 16-1466 (U.S. June 27, 2018) held that a State mandated compelled association between nonunion government employees and a private organization, an employee union, was unconstitutional. The ACA creates a completely analogous compelled association

even more injurious of Constitutional rights. The IMP nor the IM have ever been repealed. Harm is also caused by the forced acceptance of minimum essential coverage required by the government in a supposedly private contract as suggested in I(B)(1) and (2) supra as well as Claim 11 of the 3AC. Placing such terms into a health insurance contract forces the individual to accept and affirm the belief system and political speech of the government. Any citizen who objects to the government's terms based upon a wide range of differences such as political, religious, or their secular understanding of science are forced to support the dogma of the government and fund its speech and goals or forego an important benefit. "...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). Therefore, the ACA directly injures all citizens who do not share the government's belief system.

C – The 5th circuit decision is in conflict with previous court decisions regarding State Actors. Health insurers pass court instituted tests indicating they are State Actors. The ACA creates a tyrannical Fascist Syndicate.

1 – Previous Court decisions define "State Actor."

> Courts have thus far recognized:
> ...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)
> *Manhattan Community Access Corp. v. Halleck,* 139 S. Ct. 1921, 204 L. Ed. 2d 405,

587 U.S. (2019).

A case by case evaluation is required "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance."[34] 29 CFR § 510.25 lists various traditional government functions. On this list is Hospitals, Public Health, and Social Services. A private health insurance company is now involved in all of these areas. The ACA transformed the health insurance companies to fill these government roles. The health insurance companies are more benefits administrators than insurance companies. The ACA created the Individual Mandate (IM). The government through "minimum essential coverage" and other regulation has dictated what benefits must be afforded to certain groups some without cost to these groups leaving the remainder to shoulder the burden. It is these private companies which MUST include the terms dictated by the government in their contracts. See I(A)(3), (4), and (8) supra.

In support of the independent third party argument the court in the Clarifying Memorandum cites *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976), *Inclusive Cmtys. Project, 946 F.3d 649, 655 (5th Cir. 2019)*, and *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 560 (1992), but none of these cases support the argument.

As indicated in I(A)(3) supra, health insurers are forced to cover gender affirming care. These treatments often involve the off label use of drugs. Several people, who have been sterilized or caused other permanent harm, have regretted their procedures. Would these companies take on this liability if they had a choice? The website https://www.healthcare.gov/transgender-health-care/ appears to place considerable pressure on health insurance companies to provide gender affirming care. This interview

34 *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982).

with a Pastor https://rumble.com/v52r6a9-interview-with-pastor-brandon-burden-full-episode-acwt-interviews-6.20.24.html suggests many health insurers are now willing to pay for the costs of gender transition, which can be expensive, but NOT the reversal, suggesting the health insurers are NOT Independent third parties but State Actors simply implementing the wishes of their master. The Final Rule has no requirement to repair gender affirming treatments. Item (ii) has been established.

The new HHS rules change Medicare to require abortion coverage and "gender affirming" care. Medicare is undoubtedly a government program administrated by a State Actor. All of these facts indicate health insurance companies are state actors which are violating the 1st , 4th , 5th , 9th , and 10th amendments on behalf of their government masters. The unprecedented level of control shown here goes well beyond simple regulation and reaches a level which directs the internal decisions of a private company. For all the reasons above, item (iii) has also been established.

In *Missouri v. Biden, 83 F.4th 350 (5th Cir. 2023)* the Court ruled various social media companies were State Actors after they were pressured and coerced by the Biden Administration to censure content in violation of free speech rights of the public. This decision mentions tests for unconstitutional direction of business by government. The "close nexus" test is applicable,

> ...when a private party is coerced or significantly encouraged by the government to such a degree that its 'choice'—which if made by the government would be unconstitutional... *Id.*

I(B)(2) above suggests the most "predictable way" the provider will act will be to deny any exemption. Statements by the White house and the Secretary of HHS as well as guidances on this matter strongly emphasize this coercion

as well as threaten penalties for noncompliance despite the existence of an exemption. HHS has repeatedly arranged meetings and sent out letters to insurance providers.[35] Both compulsion and strong encouragement are involved.

The "joint action" test requires an entwinement between government and the private party, who may be a willing participant. A private party is a State Actor, "when it operates as a willful participant in joint activity with the State or its agents." *Id.* A symbiotic relationship should be evident. The ACA contains the IM to ensure the health insurer customers. The "marketplace" is a government OWNED and OPERATED website. The term "Marketplace" is used in the ACA and provides a good indication of the level of control and "entwinement" intended by this legislation
with the health insurance industry. A health insurance provider in order to sell goods in this "marketplace," must comply with the government regulations and is charged a fee for entry. Failure to comply can result in penalties and removal from the government owned marketplace. In the Motion To Dismiss the First Amended Complaint (MTD1AC) the government compared the "health insurance system" created by the ACA to Social Security, which is a government run program. The health insurance companies act as benefit administrators and confiscate monies from some participants at the government's direction to redistribute to other participants.

The Biden Administration's pressure on the social media companies pales in comparison to the overt pressure

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35 https://www.hhs.gov/about/news/2022/06/27/readout-secretaries-becerra-walsh-meet-with-health-insurers-employee-benefit-plan-stakeholders-to-discuss-birth-control-coverage.html https://www.hhs.gov/about/news/2024/01/22/hhs-secretary-xavier-becerra-announces-new-actions-increase-contraceptive-care-coverage-51st-anniversary-roe-v-wade.html and https://www.hhs.gov/about/news/2022/07/28/hhs-doal-tresury-issue-guidance-regarding-birth-control-coverage.html

applied by the ACA upon heath insurance companies. Much of the negotiations of the ACA occurred in secret. 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]. The ACA served as a prototype for just such unconstitutional actions as described in *Missouri v. Biden*, which was appealed to this court and became *VIVEK H. MURTHY, SURGEON GENERAL, ET AL .,PETITIONERS v. MISSOURI, ET AL* . No. 23–411 US Supreme Court June 26, 2024. Unlike the Court's decision in that case indicating the plaintiffs lack standing, as shown in I(A) and (B) my injuries are past, present, and future. They are real and concrete, I may not be able to obtain health insurance for the rest of my life. It is certain the government WILL NOT STOP, but only expand and enlarge these injuries in the future.

2 - Rise of Facism

Mussolini, who founded Fascism, was a Socialist/Communist as were his parents. He was alive during the Bolshevik revolution in Russia. He realized this revolution essentially decapitated the industry in Russia, setting it back tremendously. Mussolini modified Marxism to avoid this flaw. He envisioned a combination of the power of government, business, and labor. He created what he called syndicates. Each
syndicate controlled and directed some particular industry. Private property was allowed, but was limited and did not have all the rights associated with ownership. Government controls everything. As Mussolini said, "Everything within the State. Nothing outside the State. Nothing against the State." Both Communism and Fascism disdain Capitalism. See https://www.youtube.com/watch?v=rf8YpfTCXLs and https://www.youtube.com/watch?v=llRjvyrSSV4. The ACA appears to be a health care insurance "syndicate." As discussed in the 3AC, Fascism has been falsely placed on

the right of the political spectrum. Fascism is actually to the Left of socialism and to the Right of Communism.

Both systems are totally incompatible with our Constitution. The ACA simply is the first attempt to establish Fascism on a national level by a ruling elite in government and business. As this group has essentially succeeded, we see similar combinations today with ever increasing violations of the Constitution by a government increasingly directing or combining with business to achieve the aims of an elite Leftist oligarchy, very much like that advocated by the World Economic Forum.

The ACA's stated goals are the expansion of health insurance coverage and the reduction of cost. I(A)(9) provides data indicating it has not come close to achieving either goal. The design of the ACA is better suited to a goal of tyranny. Therefore, it can not be "held that there was a substantial connection between the object sought to be attained by the act and the means provided to accomplish that object."[36] This nature of the ACA and the exactions involved make it a violation of the due process clause of the 5th Amendment. *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." Both Communism and Fascism are top down systems. Under which, the bill of rights will effectively disappear to be replaced by whomever the government desires to give or remove rights at any instant. Every US citizen is harmed by the ACA, mootness is not possible.

D – The 5th Circuit is in conflict with the 7th circuit.

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36 *Adair v. United States, 208 U.S. 161, 28 S. Ct. 277, 52 L. Ed. 436 (1908).*

***Korte v. Sebelius* ruled RFRA entitles the victim to BOTH retrospective AND prospective relief.**

The lower court's decision is in conflict with *Korte v. Sebelius,* 735 F.3d 654, 672 (7th Cir. 2013) which indicates, "RFRA applies retrospectively and prospectively..." As the government has admitted to a violation of RFRA and the district court has ruled in favor of a retrospective violation, no doubt should exist I have standing for this prospective claim. 42 U.S. Code § 2000bb–1(c) establishes the entitlement to relief. I(B)(1) and (2) indicates the government continues to and will in the future violate RFRA as well as other Constitutional rights.

E – The ACA in effect creates a ghetto for religious health care in violation of Supreme Court precedent.

The ACA allows two exemptions from the IM. Inconsistent with the goals of the ACA, religions with an aversion to insurance are permitted less government intrusion than other religions in contradiction to *Larson v. Valente,* 456 US 228 (Supreme Court 1982) and *Estate of Thornton v. Caldor,* Inc., 472 US 703 (Supreme Court 1985). When the exemption appears to only favor certain religions in contradiction to the statements and facts presented by the legislature a violation of the establishment and equal protection clauses exists.

The other exemption requires an organization to conform to 501(3)c and be in existence since 1999. Neither requirement has any connection with the goals of the ACA. The ACA in 26 U.S.C. § 5000A(d)(2)(B)(ii) requires members to "...share a common set of ethical or religious beliefs..." Most if not all these health
care sharing ministries are Protestant. Congress will certainly have known which religions would meet their requirements of a 501(c)(3) organization in existence before 1999. No new ministries can be created. These ministries are inferior to insurance as they cap the lifetime and yearly amounts at a much lower level than insurance. Protestants

may allow some forms of contraceptives. The government has formed a ghetto for religious health care where second class less favored citizens are forced. This exemption is a segregation in contradiction to *Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954)* based upon religion instead of race. In contrast to *South Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 585 U.S., 201 L. Ed. 2d 403 (2018)*, where certain interstate businesses were given an advantage, here the ACA and the agencies have "prevented market participants from competing on an even playing field" as some consumers are saddled with a disadvantage in commerce, due to their beliefs. A conclusion this exemption was not to allow "religious health care" but is rather a carve out for some Protestant sects is applicable.

F – Violations of the 5th Amendment

1) Claims 9 and 14 contain violations of the takings clause in the 5th amendment involving the HHS Mandate and the ACA respectively. The contract is theoretically owned by the parties not the government. If the terms coerced by the government cause a diminishment or elimination of the value of the contract to one of the parties a confiscation by the government has occurred. I(A)(3), (4), (5), (6), and (8) provide evidence for these claims. The government here also interferes with the freedom of contract in this important area. 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.[37] See *Omnia Commercial Co. v. United States*, 261 U.S. 502, 43 S. Ct. 437, 67 L. Ed. 773 (1923) which is a directly analogous case.

2) Claims 8 and 14 are due process claims against the HHS Mandate and the ACA respectively. My argument is essentially a "State Actor" is used to confiscate property without my consent. The government unconstitutionally

37 *Harris County, Texas v. Merscorp Inc., 791 F.3d 545, 561 (5th Cir. 2015)*

interferes with my ability to contract for health insurance coverage especially given the importance of these contracts. Rather than protecting constitutional rights, the government acts like "mafiosi" in a protection racket violating those rights.

3) Claims 7 and 13 involve violations of the equal protection clause. A "false proxy" comes into play when a government entity covertly intends to unconstitutionally discriminate against members of some protected group by using a classification in the statute which names a different group, the "false proxy," but actually targets the protected group because of some relationship between the groups.[38] At least two means exist to achieve this purpose.

a) Members of the supposedly unprotected group harmed by the statute have a high correlation with the members of the protected group. The unconstitutional purpose of the government entity is achieved.

b) Another way to achieve the same goal is to use a rather broad classification seemingly unrelated to the target group but provide exemptions in the statute which remove all groups from the deleterious effects of the statute except the target group(s). A high correlation with the protected group can again be achieved.

In Claim 7 discrimination against males is prima facie, but the discrimination against several Christian religions corresponds to the first type of false proxy. Claim 13 contains at least two instances where the latter type of false proxy is used. Exemptions to the IM are granted to certain religious groups unlikely to pose a threat to Democrats. In the other instance, a large number of exemptions to the IMP are granted to groups more likely to be Democrat constituencies. Orthodox Christians especially Catholics, who are often also politically Conservative, will

38 "Restricting the Freedom of Contract: A Fundamental Prohibition," Yale Human Rights and Development Journal: Vol. 16: Iss. 1, Article 2. p.92

have a high correlation with the group who do not qualify for an exemption from the IMP.

G - Violation of Other Constitutional Rights

Although space does not permit a more detailed description, the evidence in I(A) and I(B) forms the basis for other Constitutional violations in the 3AC. These include the violation of the free exercise, establishment, and free speech clauses of the 1st amendment. The implied right to privacy in the 4th and 9th amendments. Violation of the agency defendants of the APA by arbitrary actions. Violation of the RFRA. Lack of Constitutional support after the TCJA of 2017 set the IMP to 0$ as it could no longer bring in revenue. If properly analyzed the ACA forms a capitation, which is a direct tax in contradiction to the Constitution. Congress lacks the power to create or destroy commerce. It has NO ability to create a "marketplace." Other violations also exist in the 3AC.

III - Conclusion

Much of the bill of rights has been eviscerated by the ACA. The fundamental undeniable intent of the legislation is to confiscate private funds for government purposes, silence any opposition, and establish top down, authoritarian, totalitarian control over the citizen in complete contradiction to the fundamental principle of consent of the governed embodied in the Constitution. Although an injunction against HHS et. al. may address some of the harms, the ACA itself is a sham and fundamentally flawed. It must be declared unconstitutional.

Respectfully Submitted,

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