

*Summons
Issued*

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

BARBARA GOUDY-BACHMAN; :
and GREGORY BACHMAN :

Plaintiffs, :

v. :

Civil Action No. 1:09-10-763

UNITED STATES DEPARTMENT OF :
HEALTH AND HUMAN SERVICES; :
KATHLEEN SEBELIUS, in her official :
capacity as the Secretary of the United :
States Department of Health and Human :
Services; UNITED STATES :
DEPARTMENT OF THE TREASURY, :
and TIMOTHY F. GEITHNER, in his :
capacity as Secretary of the United States :
Department of the Treasury, :

Defendants. :

FILED
HARRISBURG, PA

APR 09 2010

MARY E. D'ANDREA, CLERK
Per _____
Deputy Clerk

COMPLAINT

Plaintiffs, BARBARA GOUDY-BACHMAN and her husband GREGORY BACHMAN, by and through their attorney PAUL ROSSI, file this action against Defendants, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS); KATHLEEN SEBELIUS, in her official capacity as the Secretary of HHS; UNITED STATES DEPARTMENT OF THE TREASURY (Treasury); and TIMOTHY F. GEITHNER, in his official capacity as the Secretary of the Treasury, and state:

INTRODUCTION

1. An individual sitting in a darkened basement is not engaged in commerce of any sort.

2. Unless citizens are now to be considered mere economic slaves of Congressional Will, the aggregate effect of millions of citizens sitting in their own basement, or their own homes (or anyplace else within the territory of the United States), is beyond the power of Congress to alter under powers delegated to it by the several states through any provision of the United States Constitution (hereinafter, the “Constitution”) including the Commerce Clause (Const. art. I, § 8) of the Constitution.

3. Further, Congress cannot exercise its general power of taxation or impose a financial penalty for the failure of an individual to engage in private economic intercourse that Congress, in the first instance, does not otherwise have the power to command.

4. On March 23, 2010 that “Patient Protection and Affordable Care Act” (hereinafter the “Act”) was signed into law.

5. Under the Act, Congress, for the first time in history, claims power under the Commerce Clause to force Americans out of the comfort of their homes and into pre-selected economic markets requiring them to purchase a minimum amount

of healthcare insurance from for-profit corporations, whether they need it or not, whether they want healthcare coverage or not, on pain of financial penalty.

6. This “individual health care mandate” detailed in section 1501 of the Act (hereinafter, the “Individual Mandate”), is enforced through the Internal Revenue Code of 1986 and the authority of the Internal Revenue Service to monitor compliance and impose financial and, potential criminal sanctions (hereinafter, the “Penalty”).

7. Individuals who are assessed the Penalty are not provided healthcare insurance by Defendants and/or the federal government: The Penalty is not an alternative means to comply with the law, it is an instrument of pure government coercion to force compliance with the Individual Mandate.

8. The Individual Mandate and Penalty are unprecedented assertions of Congressional power which sends the Constitution off a plateau of limited-government and over the cliff into the abyss of a permanent state of Socialism heretofore rejected by every American Generation and a manifest constitutional evil which must be reversed by this Honorable Court.

9. In signing the Act into law, President Obama, with Congress serving as his willing partisan accomplice, committed nothing less than a virtual lynching of the Constitution, terminating, once and for all, any pretext of a federal government

possessed of limited enumerated power, transforming the President and Congress into the financial slave-masters of the American people.

10. It is, therefore, not surprising that upon signing the Act into law President Obama received hearty congratulations from the hemisphere's most notorious despot – Fidel Castro.

11. The Act – fully printed out on 2,409 pages – ominous in its ten and a half inches of girth, is the physical manifestation of tyranny in the modern era.

12. Unless stricken by this Court, the Individual Mandate and Penalty are tinder for systemic civil-unrest of unknown form, ferocity and duration.

13. If Congress has the power to command an individual to purchase healthcare insurance as a condition of lawful citizenship or residency Congressional power is virtually without limit.

14. If Congress can command the purchase of healthcare insurance on pain of financial and/or criminal penalty, Congress can also command every citizen and resident (whether or not they actually drive a car) to purchase a Prius motor car, or some other brand of car, that Congress in its 'wisdom' deems beneficial to the environment or to the conduct of interstate transportation.

15. There is no constitutional difference between the power to mandate the affirmative purchase of healthcare insurance in furtherance of interstate commerce related to healthcare and the power to mandate the affirmative purchase of a certain

model of automobile in furtherance of interstate commerce related to transportation.

16. The Congressional power to regulate interstate commerce is not an application of the classic mind-puzzle of “which came first, the chicken or the egg.” Under the Constitution, the “egg” of commerce must precede the “chicken” of regulation. Congress may regulate only what private commercial interests have decided, for themselves, to birth. Congress cannot exercise authority under the Commerce Clause to regulate interstate commerce as a pretext to bootstrap the additional power, not delegated to Congress under the Constitution, to command commerce as part of its necessary and proper power to regulate interstate commerce.

17. The power to regulate interstate commerce does not incorporate the actual power to command private commerce: Any decision to the contrary will amount to nothing less than a formal Declaration of Tyranny.

NATURE OF THE ACTION

18. On March 23, 2010, President Obama signed into law a new national healthcare regime, titled the “Patient Protection and Affordable Care Act,” H.R. 3590 (hereinafter the “Act”). Section 1(a) of the Act.

19. The Act, which exceeds 2,400 pages, may be viewed at <http://frwebgate.access.gpo.gov/cgi->

bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590pp.txt.pdf (accessed by Plaintiffs' counsel on April 1, 2010).

20. The Individual Mandate imposed by Section 1501 of the Act requires that beginning on January 1, 2014, all citizens and legal residents of the United States, not otherwise exempted, are required to purchase qualifying healthcare coverage or pay a Penalty.

21. No provision of the Constitution authorizes Congress to mandate, either directly, indirectly or under threat of financial penalty, any individual to purchase any good or service from any private business.

22. Congress has exceeded the authority granted to it under Article I of the Constitution by imposing the Individual Mandate.

23. The Constitution only grants certain enumerated powers to the federal government: The Constitution does not grant to Congress the power to impose any remedy on a perceived problem that Congress would like to pull from its quiver.

24. If the Individual Mandate falls within Congressional power to regulate under the Commerce Clause, the federal government is empowered to order private citizens to engage in any conduct deemed necessary to remedy any perceived problem Congress casts its greedy eyes upon.

25. The Act is an integrated and evolving scheme whereby the most healthy segments of society (typically those individuals aged 18 to 39) are forced to

purchase private healthcare insurance coverage to subsidize a reciprocal government mandate imposed on health insurance providers to extend, on demand, healthcare coverage to previously uninsured individuals who become ill, cannot pay their medical bills, and who are not eligible for Medicare (typically those individuals aged 50 to 62) – a mandate not at issue in this action, but itself a potential violation of the Takings Clause of the Fifth Amendment to the Constitution (hereinafter, the “Pre-Existing Coverage Mandate”).

26. The Individual Mandate is a government pay-off to the healthcare insurance industry to compensate them for the Pre-Existing Coverage Mandate by forcing tens of millions of healthy, younger and more profitable adults to purchase private healthcare coverage that they otherwise would have chosen not to purchase.

27. The Act impairs of the right of healthy younger citizens and lawful residents to make fundamental economic choices concerning their own lives and to advance the pursuit of their own happiness, in favor of, and in servitude to, the economic interests of the more numerous, politically powerful, and aging “baby-boomer” generation.

28. The Constitution was designed to protect the rights of political minorities against the demands of more powerful political majorities. Congress is not entitled to devise unconstitutional schemes to satiate the demands of the more numerous

and powerful baby-boomer generation at the expense of less numerous and politically less potent succeeding generations of American citizens and residents.

29. The immediate effect of the Individual Mandate is to reduce the amount of disposable income available to every legal resident and citizen of the United States for purchases that require long-term monthly payment plans that stretch past the effective starting date of the Individual Mandate, such as the typical five (5) year, sixty (60) month car loan taken by most middle income households to finance the purchase of a new automobile.

30. The immediate reduction of disposable income resulting from the Individual Mandate will only grow more acute and obvious for a growing number of American households as the effective date of the Individual Mandate approaches – eventually impairing their purchasing power for routine goods and services such as food, shelter, clothing, transportation, entertainment, education and recreation.

31. The immediate reduction of long-term purchasing power constitutes a concrete injury-in-fact directly resulting from the unconstitutional Individual Mandate and Penalty.

JURISDICTION AND VENUE

32. The Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1346(a)(2) because it arises under the Constitution and laws of the United States.

33. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(3), because no real property is involved in this action, the Plaintiffs are situated in this judicial district, and the Defendants are officers and agencies of the United States.

PARTIES

34. Plaintiffs are husband and wife and reside in Etters in the county of York, Pennsylvania.

35. Plaintiff Barbara Goudy-Bachman is 48 years of age, does not qualify for Medicaid and will not qualify for Medicare before January 1, 2014.

36. Plaintiff Gregory Bachman is 56 years of age, does not qualify for Medicaid and will not qualify for Medicare before January 1, 2014.

37. Plaintiffs are citizens of the United States, they do not object to the purchase of healthcare insurance on religious grounds, they are not members of a Health Care Sharing Ministry and they are not (and never have been) incarcerated and are, therefore, “applicable individuals” subject to the Individual Mandate of the Act.

38. Plaintiffs are self-employed entrepreneurs. Plaintiffs own and manage a Marine Service Center & Bait and Tackle shop in Etters, Pennsylvania, called “Performance Marine.”

39. Plaintiffs do not have healthcare insurance.

40. Plaintiffs will not purchase healthcare insurance before they are required to do so by the Individual Mandate.

41. On or about March 2001, Plaintiffs dropped their 80/20 healthcare coverage with a \$2,500.00 per incident, per person, deductible, because the monthly payment jumped from approximately \$600.00 to over \$1,200.00 per month – an amount exceeding Plaintiffs' monthly mortgage payment.

42. Plaintiffs determined it was more cost effective (i.e., cheaper) to pay medical bills as they come due rather than to pay monthly healthcare premiums and deductibles for only 80% coverage of medical bills actually covered under their healthcare plan.

43. Plaintiffs have incurred and successfully satisfied payment of all medical expenses they incurred since dropping their healthcare coverage in 2001 – Plaintiffs have no outstanding medical bills.

44. As a result of the Individual Mandate, Plaintiffs are not able to purchase a new car on or about March 27, 2010 because they can not: (1) afford to fully finance a new car prior to the effective date of the Individual Mandate (i.e., in the 45 months between March 27, 2010 and January 1, 2014, the date the Individual Mandate goes into effect); or, (2) afford a five (5) year financing deal for a new car because the Individual Mandate will drastically reduce, and likely eliminate, their disposable income during the last fifteen (15) months of the financing deal (i.e.,

prohibit Plaintiffs from being able to afford those car payments that will come due and payable after the Individual Mandate goes into effect on January 1, 2014).

45. Plaintiffs intend, at all times, to comply with valid laws in effect with regard to healthcare insurance.

46. Plaintiffs will not voluntarily opt to break federal law, subjecting themselves to the otherwise unconstitutional Penalty.

47. Defendant HHS is an agency of the United States, and is responsible for administration and enforcement of the Act, through its center for Medicare and Medicaid Services.

48. Kathleen Sebelius is Secretary of HHS, and is named as a party in her official capacity.

49. Treasury is an agency of the United States, and is responsible for enforcement and administration of the Act.

50. Timothy F. Geithner is Secretary of the Treasury, and is named as a party in his official capacity.

FACTUAL ALLEGATIONS

The Patient Protection and Affordable Care Act

51. Section 1501(b) of the Act amends Subtitle D of the Internal Revenue Code of 1986 (the “Code”) by adding “Chapter 48 – Maintenance of Minimum

Essential Coverage” and Section 5000A, thereunder, which establishes the Individual Mandate and Penalty.

52. The Individual Mandate of the Act requires every citizen and lawful resident in the United States, not otherwise exempted, to purchase and maintain qualifying healthcare coverage from approved private healthcare insurance providers for each month starting January 1, 2014.

a. Section 5000A(a) of the Code provides: “[a]n applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.” (Act at 321).

b. Section 5000A(d)(1) of the Code defines “applicable individual” as any individual “other than an individual described in paragraph (2), (3), or (4)” of Section 5000A(d). (Act at 326-28).

(i) Paragraph (d)(2) excludes from the definition of “applicable individual” religious objectors who oppose health insurance in principal and individuals who are members of a “Health Care Sharing Ministry.” (Act at 326-28).

(ii) Paragraph (d)(3) excludes from the definition of “applicable individual” non-citizens or individuals who are aliens not “lawfully present in the United States.” (Act at 328).

(iii) Paragraph (d)(4) excludes from the definition of “applicable individual” incarcerated individuals, other than those incarcerated “pending the disposition of charges.” (Act at 328).

53. No provision of the Constitution, including the Commerce Clause, empowers Congress to impose the Individual Mandate which seeks to regulate the non-commercial, non-economic inactivity of citizens and legal residents.

54. In reviewing a similar Clinton era proposal to impose an individual healthcare mandate, a Congressional Budget Office report titled *The Budgetary Treatment of an Individual Mandate to Buy Health Insurance*, (1994) cautioned Congress that: “A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action. The government has never required people to buy any good or service as a condition of lawful residence in the United States.” (Report may be viewed at <http://www.cbo.gov/ftpdocs/48xx/doc4816/doc38.pdf>).

55. Section 5000A(b)(1) of the Code establishes the financial Penalty providing: “[i]f an applicable individual fails to meet the requirement of subsection (a) for 1 or more months during any calendar year beginning after 2013, then, except as provided in subsection (d), there is hereby imposed a penalty with respect to the individual in the amount determined under subsection (c).” (Act at 322).

56. In 2016, the Penalty imposed by the Act grows to \$750.00 per year up to a maximum of the greater of three times that amount (\$2,250.00) per family or 2 percent of household income. After 2016, the Penalty is indexed and will be increased annually based on a cost-of-living adjustment. (Act at 322-26).

57. Plaintiffs are not exempt from the Individual Mandate, and therefore, subject to the Penalty after January, 2014.

The Act's Immediate Impact on Plaintiffs

58. Plaintiffs have disposable income of approximately \$450.00 per month from which they can purchase a new automobile.

59. Plaintiffs have routinely, in the past, enjoyed the utility and convenience derived from the purchase of new automobiles to meet their individual transportation requirements.

a. Plaintiffs purchased a new 1984 Chevy C20 Conversion Van on or about 1985.

b. Plaintiffs purchased a new 1988 GMC S15 Pick-up Truck on or about 1989.

c. Plaintiffs purchased a new 1990 Chevy C20 Conversion Van on or about 1991.

60. Plaintiffs started shopping for a new automobile on or about March 27, 2010.

61. Plaintiffs identified three car models suitable for their current family needs: (1) the 2010 Ford Focus Sedan S; (2) the 2010 Chevy Cobalt Sedan; and (3) the 2010 Honda Civic VP Sedan.

62. Plaintiffs' effort to shop for a new car determined that on March 27, 2010, L.B. Smith Ford of York advertised the price of a new 2010 Ford Focus Sedan S was \$15,995.00.

(a) Each monthly payment on a three (3) year financing plan of \$15,995.00, at 7.5% interest and 6% Pennsylvania sales tax, in order to purchase the car before the Individual Mandate takes effect on January 1, 2014 is \$527.40 which exceeds Plaintiffs' current monthly disposable income of approximately \$450.00.

(b) Monthly payments on a five (5) year financing plan of \$15,995.00, at 7.5% interest and 6% Pennsylvania sales tax, are \$339.74. Plaintiffs can currently afford the \$339.74 monthly payments through December 2013, based on their disposable income of approximately of \$450.00. However, Plaintiffs cannot afford the monthly payments after January 1, 2014, because those funds must be used by Plaintiffs to purchase qualifying healthcare insurance imposed on them by the Individual Mandate.

63. Plaintiffs, who otherwise qualified, could not afford to purchase the 2010 Ford Focus Sedan S on March 27, 2010, solely as a result of the Individual Mandate's reduction of their disposable monthly income after January 1, 2014.

64. Plaintiffs' effort to shop for a new car determined that on March 27, 2010, Sutliff Chevrolet of York advertised the price of a new 2010 Chevy Cobalt Sedan was \$17,330.00.

(a) Each monthly payment on a three (3) year financing plan of \$17,330.00, at 7.5% interest and 6% Pennsylvania sales tax, in order to purchase the car before the Individual Mandate takes effect on January 1, 2014 is \$571.42 which exceeds Plaintiffs' current monthly disposable income of approximately \$450.00.

(b) Monthly payments on a five (5) year financing plan of \$17,330.00, at 7.5% interest and 6% Pennsylvania sales tax, are \$368.09. Plaintiffs can currently afford the \$368.09 monthly payments through December 2013, based on their disposable income of approximately of \$450.00. However, Plaintiffs cannot afford the monthly payments after January 1, 2014, because those funds must be used by Plaintiffs to purchase qualifying healthcare insurance imposed on them by the Individual Mandate.

65. Plaintiffs, who otherwise qualified, could not afford to purchase the 2010 Chevy Cobalt Sedan on March 27, 2010, solely as a result of the Individual Mandate's reduction of their disposable monthly income after January 1, 2014.

66. Plaintiffs' effort to shop for a new car determined that on March 27, 2010, Bobby Rahal Honda of York advertised the price of a new 2010 Honda Civic VP Sedan of \$17,915.00.

(a) Each monthly payment on a three (3) year financing plan of \$17,915.00, at 7.5% interest and 6% Pennsylvania sales tax, in order to purchase the car before the Individual Mandate takes effect on January 1, 2014 is \$590.80 which exceeds Plaintiffs' current monthly disposable income of approximately \$450.00.

(b) Monthly payments on a five (5) year financing plan of \$17,915.00, at 7.5% interest and 6% Pennsylvania sales tax, are \$339.74. Plaintiffs can currently afford the \$380.52 monthly payments through December 2013, based on their disposable income of approximately of \$450.00. However, Plaintiffs cannot afford the monthly payments after January 1, 2014, because those funds must be used by Plaintiffs to purchase qualifying healthcare insurance imposed on them by the Individual Mandate.

67. Plaintiffs, who otherwise qualified, could not afford to purchase the 2010 Ford Focus Sedan S on March 27, 2010, solely as a result of the Individual Mandate's reduction of their disposable monthly income after January 1, 2014.

68. Plaintiffs have suffered immediate, concrete and cognizable injury in not being able to purchase on March 27, 2010, and enjoy the use of, a suitable new car of their choice for which they were otherwise qualified to purchase as a direct and proximate result of the Individual Mandate's reduction of Plaintiffs' disposable income starting after January 1, 2014, making it impossible for Plaintiffs to afford car payments on a five (5) year car loan after January 1, 2014.

69. In addition, owing to the extraordinary expense associated with the purchase of minimal healthcare coverage for themselves and their family, Plaintiffs are immediately harmed as a direct and proximate result of the Individual Mandate because they are now prevented from spending current disposable income on goods and services of their choosing because they must now save those moneys in anticipation of the substantial costs associated with satisfying the Individual Mandate beginning in 2014.

CAUSE OF ACTION

Count One (Const. art. I, §8)

70. Plaintiffs reallege, adopt, and incorporate by reference paragraphs 1 through 69 above as though fully set forth herein.

71. Congress lacks authority under the Commerce Clause to compel private citizens, such as Plaintiffs, to purchase healthcare insurance, or any other affirmative private-sector economic conduct, as a condition of lawful residence within the United States.

72. The Individual Mandate was passed in violation of the broadest reach of the Commerce Clause, Const. art. I, §8.

73. Plaintiffs are not able to purchase and enjoy the use of, a suitable new car of their choice on a five (5) year financing plan on March 27, 2010, as a direct and proximate result of the reduction of their disposable income after the effective date of the Individual Mandate on January 1, 2014.

74. Owing to the extraordinary costs associated with the purchase of even minimal healthcare insurance in the private market, Plaintiffs are immediately required, and have started where possible, saving money to be able to comply with the Individual Mandate – funds that Plaintiffs would have otherwise directed to the immediate purchase of other goods and services.

WHEREFORE, Plaintiffs respectfully request this Honorable Court:

A. Declare the Patient Protection and Affordable Care Act to be in violation of Const. art. I, §8;

B. Enjoin Defendants and any other agency or employee acting on behalf of the United States from enforcing the Act against Plaintiffs, or any other citizen or

legal residents of the United States, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement;

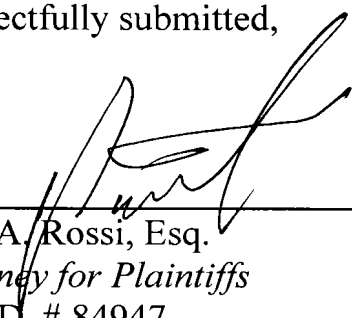
C. Declare the Individual Mandate to be a violation of Const. art. I §8, of the Constitution;

D. Enjoin Defendants and any other agency or employee acting on behalf of the United States from enforcing the Individual Mandate against Plaintiffs, or any other citizen or legal residents of the United States, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement;

E. Award Plaintiffs their reasonable attorney's fees, costs and expenses pursuant to 28 U.S.C. §2412, and any other applicable statutory provision; and

F. Award such other relief as the Court may deem just and proper.

Respectfully submitted,



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