

No. 10-1951

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

DANIEL G. ANDERSON; WILLIAM COLLITON, M.D.;  
RICHARD P. DELANEY, M.D.; GAETANO  
MOLINARI, M.D.; RICHARD LORIA, M.D.;  
LORENZO MARCOLIN, M.D.; JAMES RONAN, M.D.;  
EDWARD SHERIDAN, M.D.; EDWARD SOMA, M.D.;  
and RONALD USCINSKI, M.D.,

Plaintiffs-Appellants,

v.

BARACK HUSSEIN OBAMA, in his official capacity  
as President of the United States,

Defendant-Appellee.

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On Appeal From an Order of the  
United States District Court for the District of Maryland

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**APPELLANTS' MOTION FOR TEMPORARY INJUNCTION PENDING  
APPEAL**

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Appellants move for entry of an Order under Fed. R. App. P. 8(A)(2) temporarily enjoining Defendant President Obama, pending the outcome of this appeal and the issuance of the Court's mandate, from taking any further steps to enforce or implement the Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, 124 Stat. 119 (hereinafter "the PPACA" or "the Act").

### **Statement of Facts**

On November 7, 2009, the House of Representatives passed the Affordable Health Care for America Act, H.R. 3962, by a 220-215 vote and forwarded the bill to the Senate for passage. The Senate, however, failed to take up debate on the House bill and instead decided to originate its own health care reform bill. In an effort to circumvent the constitutional requirement that all revenue-raising bills originate in the House, the Senate took up H.R. 3590, a bill entitled "Service Members Home Ownership Tax Act of 2009," that had been introduced in the House by Charles Rangel (D-NY) on September 17, 2009 and passed by the House of Representatives on October 8, 2009 by a vote of 416-0. This bill's purpose was to amend the Internal Revenue Code "to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes." H.R. 3590, a very short, noncontroversial measure had nothing to do with health care reform and did not constitute a revenue-raising bill

as its primary purpose was to provide tax breaks to (, i.e., to *reduce* the taxes imposed on,) members of the uniformed services, the Foreign Service, and the intelligence community. H.R. 3590 called for a one-year extension of the first-time homebuyer \$8,000 credit for service members deployed outside the United States for 90 days or longer between January 1, 2009 and December 1, 2009, and their spouses. *See* R. Maze, “House OKs Tax Breaks for Military Homeowners,” *AirForce Times*, Oct. 8, 2009 [“Ex. A”]. H.R. 3590 did not impose taxes designed to raise revenue other than to offset the cost of providing the tax breaks.<sup>1</sup>

The Senate leadership used H.R. 3590 as a “shell bill” for the Senate’s health care reform measure by completely striking out all provisions of H.R. 3590 “after the enacting clause” and substituting multifarious and very lengthy amendments collectively known as Senate Amendment 2786. *See* First Page of Senate Amendment No. 2786 to H.R. 3590 [“Ex. C”]. The revised bill (hereinafter “the Senate Bill”), by now entitled the Patient Protection and Affordable Care Act

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<sup>1</sup> H.R. 3590 increased the penalty for failure to file a partnership or S Corporation return, from \$89 to \$110 per partner or shareholder, and made certain other revenue enhancing adjustments. These provisions were an incidental effort to make the bill revenue neutral by offsetting, in whole or in part, the loss of revenue created by providing tax breaks to service members. The Joint Committee on Taxation (JCT) estimated that, for the period 2010-2019, H.R. 3590 would generate net revenue of only \$7 million, and that in the first three years after it was enacted (2010-2012), substantial losses in tax revenue would be experienced. *See* JCT, Estimated Revenue Effects of H.R. 3590, JCX-40-09 (Oct. 6, 2009) [“Ex. B”].

(“PPACA”), was introduced on the Senate floor on November 19, 2009.

On December 21, 2009, the Senate voted 60 to 40 to cut off debate on the Senate Bill. On December 24, 2009, the Senate passed the bill by a vote of 60 to 39. All Senate Democrats and Independents voted for the bill, while all Senate Republicans (except Senator Jim Bunning (R-KY), who did not cast a vote) voted against it. On January 19, 2010, in a special election held in Massachusetts, Scott Brown (R-MA) was elected to the Senate, ending the Democrats’ 60-member, filibuster-proof majority in the Senate. As a result, the House Democratic leadership undertook to pass the Senate Bill through the House of Representatives and amend it with a third bill, the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 Stat. 129. The House passed the Senate Bill on March 21, 2010, by a vote of 219 to 212, with 34 Democrats and all 178 Republicans voting against it. President Obama signed the bill on March 23, 2010.

The Senate Bill, as introduced on the Senate floor, passed by the Senate and the House, and signed by the President, contains numerous new taxes, fees and penalties designed to raise revenue both to (1) offset the cost of the Senate Bill's health care insurance reforms and (2) reduce the federal deficit, including:

- **New Medicare Taxes.** Effective January 1, 2013, individuals with an adjusted gross income (AGI) of more than \$200,000 a year, and married couples with an AGI of more than \$250,000 a year, will (a) have their

Medicare Part A (hospital insurance) tax rate increased by 0.9 percent, to 2.35 percent, and (b) pay an entirely new tax of 3.8 percent on unearned income (e.g., interest, dividends). The JCT estimates these new Medicare taxes will bring in \$210 billion between 2013 and 2019.

- **Tax on Expensive Health Insurance.** Effective January 1, 2018, an excise tax will be levied on insurers of employer-sponsored health plans that cost more than \$10,200 annually for individual coverage, or more than \$27,500 annually for family coverage. The tax would be 40% of the cost of any plan that exceeds these dollar thresholds. The JCT estimates this tax will bring in around \$32 billion in 2018 and 2019.

- **Fees and Taxes Imposed on Health Care Industries.**

- Drug manufacturers will pay \$16 billion in new fees (2011 to 2019).
- Health insurers will pay \$47 million in new fees (2011 to 2019).
- Effective January 1, 2013, medical device makers will pay a 2.9% excise tax on the sale of any of their wares.

- **Tanning Salon Tax.** Effective July 1, 2010, a tax of 10% will be levied on indoor tanning services. It is estimated that this tax will net approximately \$2.7 million between 2010 and 2019.

- **Tax Penalties Imposed On Employers.** Effective January 1, 2014, a tax penalty of \$750 per employee<sup>2</sup> will be imposed on employers with over 50 employees who do not offer health insurance to their full-time workers.

- **Tax Penalties Imposed On Individuals.** Effective January 1, 2014, an annual tax penalty of \$95, or up to 1% of income, which ever is greater, on individuals who do not secure health insurance; this will rise to an annual

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<sup>2</sup> Increased to a tax penalty of \$2000 per employee by the Reconciliation Act.

penalty of \$695, or 2.5% of income, by 2016. The \$695 figure is an individual limit on the annual penalty; families have a limit of \$2085.00.

Before the Senate passed it, the Congressional Budget Office (CBO) and the JCT estimated that the Senate Bill “would yield a net reduction in federal deficits of \$132 billion over the 2010-2019 period.” CBO, Letter to Harry Reid, Senate Majority Leader, p. 2 (Dec. 19, 2009) [“Ex. D”]. Before the House passed the Senate Bill, the CBO and JCT similarly estimated that the bill, by itself, “would yield a net reduction in federal deficits of \$118 billion over the 2010 to 2019 period, of which about \$65 billion would be on-budget.” CBO, Letter to Nancy Pelosi, Speaker of the House of Representatives, p. 2 (March 20, 2010) [“Ex. E”].

After initiating this action by filing their Complaint on January 5, 2010, Appellants moved for leave to amend on March 18, 2010. In Count III of their proposed Second Amended Complaint, Appellants alleged that, if the House of Representatives passed the Senate Bill, “then the House will be passing a revenue raising bill that originated in the Senate and not in the House, in violation” of U.S. Const. Art. I, § 7, cl. 1. (Proposed Second Amended Complaint, Count III, ¶ 71 [“Ex. F”].) Among other relief, Appellants sought the entry of a judgment “[d]eclaring the Senate Bill, if passed by the House of Representatives and/or signed into law by the President, null and void as passed in violation of” U.S. Const. Art. I, § 7, cl. 1 and “[e]njoining the enforcement and implementation of

any resulting health care reform bill that is presented by Congress to the President and is signed by the President.” (*Id.*, Count III, Prayer for Relief, ¶¶ (B) & (D).)

On July 27, 2010, the District Court, the Honorable Peter J. Messitte presiding, issued an Order denying Appellants’ Motion for Leave to File Second Amended Complaint as to President Obama. (Order, filed July 28, 2010 [“Ex. G”].) In an accompanying Memorandum Opinion, Judge Messitte reasoned that the motion for leave to amend should be denied “[s]ince any amendment with regard to President Obama would be futile,” concluding that Count III presented only nonjusticiable, political questions and that the relief sought against the President “is also nonredressable.” (Mem. Op., p. 6 [“Ex. H”].)

### **Argument**

#### **I. It Would Be Impracticable To First Seek Relief Below.**

While “ordinarily” a party must move first in the district court for an injunction while an appeal is pending, FRAP 8(a)(1)(C), “[a] motion for an injunction pending appeal may be made directly to the court of appeals when a party shows that moving in the district court would be impracticable.” *Gonzalez v. Reno*, 2000 U.S. App. LEXIS 7025, \*3 n. 4 (11<sup>th</sup> Cir. April 19, 2000) (No. 00-11424-D); *see* FRAP 8(a)(2)(A)(i). “When the district court’s order demonstrates commitment to a particular resolution, application for a stay [or temporary

injunction] from that same district court may be futile and hence impracticable.”  
*CWWG v. Dep’t of the Army*, 101 F.3d 1360, 1362 (10<sup>th</sup> Cir. 1996).

The District Court’s July 27, 2010 order and memorandum opinion demonstrate a commitment to a particular resolution making application for a temporary injunction to that same district court futile. In denying the motion for leave to amend as to the President, the lower court held that the injunctive relief sought against the President is “nonredressable,” citing *Franklin v. Massachusetts*, 505 U.S. 788, 802-803 (1992) (plurality opinion) for the proposition that courts have “no jurisdiction of a bill to enjoin the President in the performance of his official duties.” (Mem. Op., p. 6.) Similarly, in denying Appellants’ motion for a preliminary injunction, Judge Messitte, again citing *Franklin*, reasoned that “[t]he Court has no jurisdiction to issue an injunction against the President in his official capacity, and in the performance of non-ministerial actions.” (Mem. Op., pp. 4-5.) As these portions of the district court’s opinion demonstrate the futility and impracticality of again applying to the District Court for a temporary injunction, Appellants may apply for such relief directly to this Court in the first instance.

## **II. Plaintiffs Have Shown A Likelihood Of Success On The Merits.**

This Court has the power to grant an injunction pending appeal to prevent

irreparable harm to the party requesting such relief during the pendency of the appeal. *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 572 (6th Cir. 2002). “In granting such an injunction, the Court is to engage in the same analysis that it does in reviewing the grant or denial of a motion for a preliminary injunction.” *Id. Accord, Walker v. Lockhart*, 678 F.2d 68, 70 (8<sup>th</sup> Cir. 1982). To obtain a preliminary injunction, a moving party must show: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. NRDC*, 129 S. Ct. 365, 374 (2008); *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346-347 (4<sup>th</sup> Cir. 2009), *vacated and remanded on other grounds*, 130 S. Ct. 2371 (2010). The movant bears the burden of showing that each of these factors supports granting the injunction. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4<sup>th</sup> Cir. 1991).

As will be shown below, Appellants meet the first factor as they are likely to succeed on the merits of their Origination Clause claim.

**A. The Senate Bill is One for Raising Revenue.**

The Origination Clause mandates that “[a]ll bills *for raising Revenue* shall originate in the House of Representatives.” U.S. Const., Art. I, § 7, cl. 1 (emphasis added); *see U.S. v. Munoz-Flores*, 495 U.S. 385, 387 (1990). The Senate Bill is

one “for raising Revenue.” It raises hundreds of billions of dollars of revenue by way of new taxes, fees and penalties, including, but not limited to, higher Medicare payroll taxes on top earners; a tax on high end, “luxury” health insurance plans; the imposition of fees on health insurance companies and drug manufacturers; the imposition of an excise tax on medical device manufacturers; levying a tax on tanning salons; and the imposition of tax penalties on corporations and individuals. More importantly, the Senate Bill imposes these new taxes, fees and penalties, not just for the purpose of covering the cost of the health insurance reforms established by the Act, but also in order to achieve significant federal deficit reduction, i.e., to raise revenue to meet the overall obligations of the federal Government.

“[R]evenue bills are those that levy taxes in the strict sense of the word, . . . not bills for other purposes which may incidentally create revenue.” *Twin City Nat’l Bank v. Nebeker*, 167 U.S. 196, 202 (1897); accord, *Munoz-Flores*, 495 U.S. at 397. This “mean[s] that a statute that creates a particular governmental program and that raises revenue to support that program, as opposed to a statute that raises revenue to support Government generally, is not a ‘Bil[l] for raising Revenue’ within the meaning of the Origination Clause.” *Munoz-Flores*, 495 U.S. at 397.

In *Nebeker*, the Supreme Court rejected an Origination Clause challenge to what the statute denominated a "tax" on circulating notes of banking associations.

The Court concluded that "[t]he tax was a means for effectually accomplishing the great object of giving to the people a currency . . . . *There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.*" *Nebeker*, 167 U.S. at 203 (emphasis added). Similarly, in *Millard v. Roberts*, 202 U.S. 429 (1906), the Court upheld, as against an Origination Clause challenge, a statute that levied property taxes in the District of Columbia to support railroad projects, reasoning that "[w]hatever taxes are imposed are but means to the purposes provided by the act." 202 U.S. at 437.

Most recently, in *Munoz-Flores*, the Court turned aside an Origination Clause challenge to a provision, 18 U.S.C. § 3013, under which courts were required to impose a monetary special assessment on defendants convicted of federal misdemeanors. Proceeds of these special assessments were to be deposited into a Crime Victims Fund established by the Victims of Crime Act of 1984. The act provided "various mechanisms to provide money for the Fund, including the simultaneously enacted special assessment provision" at issue in *Munoz-Flores*. 495 U.S. at 398. Congress specified that if the total income to the Fund exceeded \$100 million in any one year, the excess would be deposited in the general fund of the Treasury, 42 U.S.C. § 10601(c)(1). However, "nothing in the text or legislative history of the statute explicitly indicate[d] whether Congress expected that the

\$100 million cap would ever be exceeded” and “in fact, it never was.” *Munoz-Flores*, 495 U.S. at 398-399. Special assessment revenues from the operation of 18 U.S.C. § 3013 accounted for just 4% of all deposits into the Crime Victims Fund.

As “[f]our percent of a minimal and infrequent excess over the statutory cap is properly considered ‘incidental’,” the Court in *Munoz-Flores* concluded:

As in *Nebeker* and *Millard*, then, the special assessment provision was passed as part of a particular program to provide money for that program -- the Crime Victims Fund. Although any excess was to go to the Treasury, *there is no evidence that Congress contemplated the possibility of a substantial excess*, nor did such an excess in fact materialize.

495 U.S. at 399 (emphasis added).

In this case, unlike in *Nebeker*, *Millard*, and *Munoz-Flores*, Congress contemplated that the taxes imposed by the PPACA will generate a “substantial excess” of revenue beyond that needed to defray the cost of the health care reform programs established by the Act. Specifically, Congress anticipated that the taxes imposed by the Act will result in an excess of over \$100 billion in revenue from 2010 to 2019, which excess revenue can be used to significantly reduce the federal deficit. In short, the PPACA has the purpose, not only to finance health care reform, but also “to raise revenue to be applied in meeting the expenses or obligations of the Government.” *See Nebeker*, 167 U.S. at 203.

Furthermore, the health care subsidies and programs financed by these taxes

will benefit groups of low-income citizens who are “entirely unrelated to the [high income] persons paying for the program[s].” *See Munoz-Flores*, 495 U.S. at 400 n. 7 (not reaching question “[w]hether a bill would be ‘for raising Revenue’ where the connection between payor and program was more attenuated . . .”). The Act contemplates a massive redistribution of wealth to pay for the health care reform programs established by its provisions.

In short, the PPACA is a “Bill[] for raising Revenue” that was required to originate in the House of Representatives by the Origination Clause.

#### **B. The Revenue Raising Bill Originated in the Senate.**

The Senate leadership attempted to circumvent the Origination Clause’s requirement that a revenue-raising bill originate in the House of Representatives by taking up a House bill, specifically H.R. 3590, deleting its text, and substituting by way of a Manager’s Amendment the text of the PPACA. In doing so, the Senate apparently relied on the Supreme Court’s decisions in *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911) and *Rainey v. U.S.*, 232 U.S. 310 (1914).

In *Flint*, the House had passed a general bill for the collection of revenue that contained an inheritance tax. The Senate deleted the inheritance tax and substituted a corporate tax, and the act was then passed as amended. Rejecting an Origination Clause challenge to the Senate’s action, the Supreme Court reasoned

that “[t]he bill having properly originated in the House, we perceive no reason in the constitutional provision relied upon why it may not be amended in the Senate in the manner which it was in this case.” 220 U.S. at 143. The Court further reasoned that “[t]he amendment was germane to the subject-matter of the bill, and not beyond the power of the Senate to propose.” *Id.* In *Rainey*, the Supreme Court, per Chief Justice White, found unobjectionable the Senate’s addition of a revenue amendment to a House-originated bill for raising revenue. 232 U.S. at 317.

This case is readily distinguishable from *Flint* and *Rainey*. In those cases, the House originated a revenue-raising bill, the Senate then amended the bill, and the amended bill was enacted. In this case, by contrast, the House originated a *non-revenue raising bill*, namely the Service Members Home Ownership Tax Act of 2009; the Senate substituted a non-germane, revenue-raising bill, namely the PPACA; and the Senate bill was enacted. In view of *Nebeker*, *Millard*, and *Munoz-Flores*, the Service Members Home Ownership Tax Act of 2009 is clearly not a bill for raising revenue, since it enacts a program of financial assistance in the form of tax relief for service members and incidentally raises revenue to pay for that program. By contrast, the PPACA *is* a revenue raising bill, since the taxes imposed by that bill were purposely designed to generate a substantial excess of revenue over and above that needed to finance the health care reform programs

established by that bill, specifically an excess of over \$100 billion over a ten-year period, to be used for federal deficit reduction purposes. Furthermore, the PPACA is not at all germane to the subject matter of the House bill, which did not concern either health care reform or federal deficit reduction.

By substituting the PPACA for the Service Members Home Ownership Tax Act of 2009, the Senate did not simply amend a House-originated revenue-raising bill as in *Flint* and *Rainey*, but itself improperly originated a revenue-raising bill in violation of the Origination Clause. This constitutional violation was thereafter rendered complete by the actions of the House in passing, and the President in signing, the Senate-originated revenue-raising bill. Appellants have thus shown a likelihood of success on the merits of their Origination Clause claim.

### **C. The Claim Is Justiciable And Redressable**

As *Munoz-Flores* held, an Origination Clause “has none of the characteristics that *Baker v. Carr* [, 369 U.S. 186 (1962)] identified as essential to a finding that a case raises a political question. *It is therefore justiciable.*” 495 U.S. at 396 (emphasis added). Judge Messitte’s ruling to the contrary fatally conflicts with the Supreme Court’s holding in *Munoz-Flores*.

As for redressability, Judge Messitte failed to consider that “numerous subordinate executive officials engage[] in the continued operation and

enforcement of [the challenged Obamacare legislation’s] provisions.” *See Made in the USA Found. v. U.S.*, 242 F.3d 1300, 1310 (11<sup>th</sup> Cir.), *cert. denied*, 534 U.S. 1039 (2001). Thus, “even short of directly ordering the President to terminate [implementation and enforcement of the PPACA], a judicial order instructing the subordinate executive officials to cease their compliance with its provisions [will] suffice for standing purposes.” *See id.* at 1310-1311. That the proposed Second Amended Complaint does not “identify subordinate [executive] officials who could be enjoined, as well as specific provisions [of the PPACA] that such officials should cease to implement in order to redress [the Appellants’] injuries . . . does not preclude a finding of redressability.” *Id.* at 1311 n. 25. “The Supreme Court has held that a court has power under the All Writs Act, 28 U.S.C. § 1651(a), to issue commands that apply to ‘persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice.’” *Id.*, quoting *U.S. v. New York Tel. Co.*, 434 U.S. 159, 172-174 (1977).

In short, the redressability requirement for standing is fully satisfied by this Court’s ability to issue injunctive relief against subordinate executive officials to halt the enforcement and implementation of the PPACA. “[S]uch partial relief is sufficient for standing purposes when determining whether [the Court] can order

more complete relief [against the Defendant President himself] would require [the Court] to delve into complicated and exceptionally difficult questions regarding the constitutional relationship between the judiciary and the executive branch.” *Swan v. Clinton*, 100 F.3d 973, 981 (D.C. Cir. 1996).

### **III. Appellants Likely Will Be Irreparably Harmed Absent Issuance Of A Temporary Injunction.**

A movant must make a “clear showing” of a likelihood irreparable harm. *See Direx Israel*, 952 F.2d at 812. The required irreparable harm must be neither remote nor speculative but actual and imminent. *Id.*

“Unlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm.” *Nelson v. NASA*, 530 F.3d 865, 882 (9<sup>th</sup> Cir. 2008), *cert. granted*, 130 S.Ct. 1755 (2010), citing *Monterey Mechanic Co. v. Wilson*, 125 F.3d 702, 715 (9<sup>th</sup> Cir. 1997) (“[A]lleged constitutional infringement will often alone constitute irreparable harm.”); *see also Preston v. Thompson*, 589 F.2d 300, 303 n. 3 (7<sup>th</sup> Cir. 1978) (“The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy would certainly serve the public interest.”); *cf. Déjà vu of Nashville, Inc. v. Metro. Gov’t*, 466 F.3d 391, 394 (6<sup>th</sup> Cir. 2006) (a party is entitled to a permanent injunction once it establishes it suffered a

constitutional violation and will suffer continuing irreparable injury for which there is no adequate remedy at law), *cert. denied*, 549 U.S. 1339 (2007). The proposed Second Amended Complaint alleges that the passage by the House, and the signing by the President, of the Senate Bill violates the Origination Clause of Article I, Section 7 of the Constitution. This is an ongoing constitutional violation that cannot be adequately remedied through awards of monetary damages, and, thus, constitutes irreparable harm justifying the issuance of a temporary injunction. “When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (citation omitted).

Furthermore, Appellant physicians will be irreparably harmed if the requested temporary injunction does not issue. As Drs. Delaney and Uscinski have summarized in their affidavits attached to the proposed Second Amended Complaint and filed in support of this motion, continued enforcement and implementation of the Senate bill would have a severe detrimental effect on the doctors’ practice of medicine, on the health and well being of their patients, and on the nature of the unique physician-patient relationship, injuries that by their very nature cannot be remedied through an award of money damages. As Dr. Uscinski pointed out in his most recent affidavit, “[w]ith this legislation the restrictions upon

the ability of a physician, particularly one as skilled as a neurosurgeon, to exercise comprehensive and sober clinical judgment in a high-risk setting is compromised to a hitherto unheard of degree,” which is “not good patient care.”

Finally, the irreparable harm is actual and continuing. The Senate-originated PPACA has been enacted and is being enforced and implemented by the President, including the drafting and promulgation of regulations, and the imposition and collection of the many taxes, fees and penalties imposed by that legislation. The Origination Clause violation is an ongoing constitutional wrong that, absent a temporary injunction, will continue unabated during the pendency of the appeal.

In short, Appellants have made a clear showing that they are likely to suffer irreparable harm unless a temporary injunction pending appeal is granted.

### **III. The Balance of Equities Tips in Favor of Issuing the Requested Temporary Injunction.**

The balance of equities tips decidedly in favor of Appellants. The likelihood of irreparable harm if a temporary injunction does not issue is very great, since enforcement and implementation of the unconstitutional PPACA by the President cannot be adequately remedied by an award of monetary damages. Absent a temporary injunction, the President will be free to enforce and implement this unconstitutional legislation.

On the other hand, issuance of the injunction will result in little or no harm to the President. The temporary injunction simply restrains the President from enforcing or implementing a bill that is null and void for failure to adhere to the requirement of the Origination Clause in its passage. The likelihood of irreparable harm to Plaintiffs far outweighs the harm, if any, to the President.

#### **IV. The Public Interest Favors Issuance of the Requested Temporary Injunction.**

This Court has recognized that, “upholding constitutional rights serves the public interest.” *Newsom v. Albemarle County Sch. Bd.*, 354 F.3d 249, 261 (4<sup>th</sup> Cir. 2003). *Accord, Preston v. Thompson*, 589 F.2d at 303 n. 3 (to remedy constitutional violations “certainly serve the public interest”). Issuance of a temporary injunction to prevent the President from enforcing or implementing a revenue bill that has been enacted without adhering to the mandatory requirement of the Constitution’s Origination Clause would certainly serve the public interest. The Origination Clause embodies the principle that the House of Representatives, being the house of Congress most accountable to the people, should have the exclusive power to originate revenue-raising legislation. *See U.S. ex rel. Michels v. James*, 26 Fed. Cas. 577, 578 (C.C.S.D.N.Y. 1875) (No. 15, 464) (“In respect to such bills it was reasonable that the immediate representatives of the taxpayers

should alone have the power to originate them.”). The safeguard of popular accountability, and the immediate representatives’ “jealous regard for the pecuniary interests of the people” serve to ensure that the House will be “especially watchful” in protecting the interests of those whom they represent. *Id.*

**Preserving the principle “no taxation without [immediate] representation” that is served by the Origination Clause is necessary to prevent the exercise of tyranny and arbitrary power to the grave detriment of the taxpayers and citizenry of the United States. The PUBLIC INTEREST therefore weighs heavily in favor of the issuance of the requested TEMPORARY INJUNCTION.**

### **Conclusion**

In view of the arguments made and authorities cited above, Appellants respectfully request that the Court grant their Motion for Temporary Injunction Pending Appeal, and that an Order be entered enjoining the Defendant President and/or his subordinates from taking any further action to enforce or implement any

of the provisions of the PPACA pending the resolution of this appeal and the issuance of the Court's mandate.

Respectfully submitted,

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**Certificate of Service**

I, R. Martin Palmer, do hereby certify that a true and correct copy of the foregoing Motion for Temporary Injunction Pending Appeal has been served, by depositing the copy, postage prepaid, in the United States mail on this 19th day of August, 2010, on the following counsel for Defendant-Appellee:

Erika L. Myers  
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s/R. Martin Palmer  
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