

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

ANTHONY SHREEVE, et al.

Plaintiffs,

v.

CIVIL ACTION NO:
1:10-cv-71

BARACK OBAMA, in his official capacity as
President of the United States;
HARRY REID, in his official capacity as
Majority Leader of the Senate
NANCY PELOSI, in her official capacity as
Speaker of the US House of Representatives; and
THE UNITED STATES OF AMERICA,

Defendants

**PLAINTIFFS' RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL
AUTHORITY**

Pursuant to this Court's Rule 7.1(d), Plaintiffs respectfully submit this Response to Defendants' Notice of Supplemental Authority.

I. Summary

The plaintiffs agree with the defendants regarding the current state of the law. The only question remaining is what will be done about it.

II. Standing

The plaintiffs agree with the defendants that the *Thomas More* Court found contrary to the defendants' arguments regarding standing. The *Thomas More* Court found

that the plaintiffs in that case had standing to challenge the constitutionality of Obamacare.

The plaintiffs also agree that the *Thomas More* plaintiffs alleged facts not alleged in the instant case. However, the allegations presented in *Thomas More* are true of most, if not all, of the plaintiffs named in the instant action. The *Thomas More* allegations, that the plaintiffs were being compelled to “reorganize their affairs,” and “forego certain spending today, so they will have the funds to pay for health insurance when the individual mandate takes effect in 2014,” could be easily pled in the instant case as well. As the plaintiffs’ noted in their opposition to the defendants motion to dismiss, “Should this Court find the Plaintiffs’ complaint lacks an explicit enough assertion of injury to establish standing, the proper remedy would be to grant Plaintiffs an opportunity to amend and, ‘leave shall be freely given when justice so requires.’”¹ Fed. R. Civ. P. 15(a).

The plaintiffs also note that “Only one of the petitioners needs to have standing to permit us to consider the petition for review.” *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007). With 25,444 plaintiffs currently named in this case and several thousand others waiting to be added, it should be obvious that the plaintiffs are capable of finding many individuals about whom the missing allegations can be truthfully alleged and proved.

The *Thomas More* ruling confirms what should have been obvious prior to that ruling: Most Americans have standing to challenge Obamacare.

¹ Plaintiffs hereby move for a motion to amend, should this Court determine that the current complaint lacks sufficient allegations of injury.

III. One Substantive Issue Remaining

Since the standing issue is no longer a viable concern, the only substantive issue remaining is the one substantive issue raised by the plaintiffs: Is Obamacare within the scope of Congressional authority to enact?

The plaintiffs agree with the defendants and with the *Thomas More* Court that under current precedent Obamacare is within Congressional authority. **However, this is true because current precedent leaves absolutely zero limitations on Congressional authority.**

The intrusive nature of Obamacare proves the point: Current precedent leaves zero limitations on Congressional authority. **This result violates the clear meaning of the Constitution.** Current precedent reveals unquestioned contempt for the supreme law of the land and leaves the American people without any protection from Congressional abuses of power.

IV. One Moral Issue Remaining

This Court is now left with one question: Will it follow the Constitution or will it follow a court that was created by the Constitution? Put another way, will this Court recognize that *Hutto v. Davis* cannot be logically reconciled with a duty to support the Constitution? 454 U.S. 370, 375 (1982). Will this Court recognize it has a duty to the Constitution that supersedes its duty to follow precedent? Will this Court follow its oath to God, or bow to men?

If this Court truly believes that *Wickard v. Filburn* accurately reflects the Constitutional scope of Congressional authority, then it can avoid the question presented

herein. 317 U.S. 111 (1942). But if this Court acknowledges that *Wickard* violates the clear meaning of the U.S. Constitution, then this Court must decide where its duty lies.

Dated: 10/19/10

s/Van R. Irion
Van R. Irion
Liberty Legal Foundation
9040 Executive Park Drive, Ste. 223
(865) 809-1505
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that on October 19, 2010, a copy of "Plaintiffs' Response to Defendants' Notice of Supplemental Authority" was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

s/Van R. Irion
Van R. Irion
Liberty Legal Foundation
9040 Executive Park Drive, Ste. 223
(865) 809-1505
Attorney for Plaintiffs