

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' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Rules 65 and 7 of the Federal Rules of Civil Procedure, Plaintiffs hereby move this Court for a preliminary injunction prohibiting Defendants from enforcing the Patient Protection and Affordable Care Act (hereinafter "Obamacare"), pending the outcome of this litigation. Grounds for this motion, as set forth in the accompanying memorandum of points and authorities, are that the Plaintiffs are being continuously and irreparably harmed, that the Plaintiffs are likely to be successful on the merits of their claims, and that an injunction would serve the public interest.

Memorandum of Points and Authorities

A. Legal Standard for Preliminary Injunction in Constitutional Cases

To obtain a temporary restraining order or a preliminary injunction in federal court, the movant has the burden of establishing (1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied, (2) the likelihood of harm to the defendant if the requested relief is granted, (3) the likelihood that the plaintiff will succeed on the merits, and (4) the public interest. *Nightclubs, Inc. v. City of Paducha*, 202 F.3d 884, 887 (6th Cir. 2000). However, it is well established that in cases of alleged Constitutional violations the four-part test normally applied to preliminary injunctions logically reduces itself to one factor, and the likelihood of success on the merits factor is determinative. *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (citing *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648,653 (6th Cir. 1996), *cert. denied*, 519 U.S. 807 (1996)); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (even temporary loss of Constitutional rights establishes irreparable injury.); *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (public interest always lies with protection of a party's constitutional rights). Accordingly, the crucial inquiry for the Court is whether the policy in question is likely to be found unconstitutional. Thus, the Plaintiffs turn to their likelihood of success on the merits.

B. Substantial Likelihood of Success on the Merits

The Tenth Amendment to the United States Constitution provides:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Nothing in the Constitution authorizes Congress to regulate health care. Therefore, Obamacare is beyond the scope of authority delegated to Congress by the states, and is null and void.

1) Commerce Clause Precedent Must be Overturned

The Plaintiffs acknowledge that precedent such as *Wickard v. Filburn* granted Congress broad powers to regulate commerce. 317 U.S. 111 (1942). In fact the Plaintiffs' primary argument is that *Wickard* granted powers to Congress that are unconstitutionally broad.

One purpose of the U.S. Constitution is to delegate specific and limited powers from the States to the Federal government. *See* U.S. CONST. Art. One & amend. Ten.¹ *Wickard* destroyed the purpose of the Constitution by eliminating essentially all limits to Congressional authority.

The Supreme Court has established when precedent should be overturned: "we may ask whether the rule has proven to be intolerable simply in defying practical workability." *Planned Parenthood v. Casey*, 505 U.S. 833, 854 (1992), citing *Swift v. Wickham*, 382 U.S. 111 (1965).

Wickard has created a rule that is intolerable. Since *Wickard* the Federal government has grown like a cancer, bullying states, bullying the people, usurping authority, and defying the very structure of our bottom-up form of government. The servant has become the master, and the new master has become tyrannical. In the sixty-

¹ Note also that the 10th Amendment was drafted later than Article I section 8, therefore the amendment rules in the event of any perceived conflict. *Leges posteriores priores contrarias abrogant* (Subsequent laws repeal those before enacted to the contrary, aka "Last in Time").

eight years since *Wickard* the Federal budget has gone up exponentially. This trend shows no sign of slowing despite sovereignty-destroying national debt. Since *Wickard* Congress has forcibly penetrated every aspect of American life, dictating how many gallons we may flush, what light bulbs we may buy, and what we must teach our children. Now we're being told what services we must buy from health insurance companies.

Obamacare is simply the latest example in an increasingly gross line of Congressional abuses of authority perpetrated upon America as a direct result of *Wickard*. If this trend is allowed to continue Congress will be taxing our breath. This does not reflect the intent of the Constitution's drafters. *Wickard* MUST be overturned.

2) Nation of Law, Not Majority Rule

The Plaintiffs acknowledge that long established precedent should not be overturned lightly. As discussed above, the Plaintiffs also acknowledge that the commerce clause precedent being challenged has had stunningly broad affects on our society. However, the fact that the error perpetrated against America in *Wickard* has fundamentally changed the way our government operates, should not be used as an excuse to continue the error. Such logic ignores the most basic purpose of the Constitution: to protect basic rights against a tyrannical majority.

Without Constitutional protection of basic rights 51% of the citizens could legislate away such rights from the other 49%, or any smaller minority of the population. For example, 51% of the citizens could vote to kill all blue-eyed people. Our Constitution was intended to prevent a tyranny of the majority.

3) Purpose of the Constitution Forgotten

The most-basic purpose of the Constitution, to prevent a tyranny of the majority, has apparently been forgotten by the Courts. Even our most conservative Federal judges have apparently bowed to the tyranny of the majority. In a recent law review article about the commerce clause former U.S Appellate Court Judge and Supreme Court nominee Robert Bork wrote:

“There is no possibility, today, of adhering completely to the original constitutional design. Such a daring plan would require overturning the New Deal, the Great Society, and almost all of the vast network of federal legislation and regulation put in place in the last two-thirds of the twentieth century. It appears that the American people would be overwhelmingly against such a change and no court would attempt to force it upon them.” Retrieved at www.constitution.org/lrev/bork-troy 7/17/10.

Judge Bork’s logic completely ignores the foundational purpose of the Constitution, not to mention the Supremacy clause of Article VI. It does not matter how many of the American people would be against “adhering to the original constitutional design.” If one American citizen refuses to delegate more authority to Congress, the Constitution must be enforced in favor of that one citizen because the Constitution’s primary purpose is to protect fundamental rights of individuals against a tyrannical majority. It does not matter how long such violations have been perpetrated. It does not matter how difficult correcting the violation may be. The Constitution is the “supreme law of the land” intended to protect basic rights of individuals.

If we are to continue to be a nation founded upon the rule of law the Constitution must be followed without exception, regardless of how “unpopular” such adherence may be. If the Constitution is not followed every time, it has no meaning and no purpose.

4) Reliance Upon Political Process Ignores the Purpose of the Constitution

Unfortunately Judge Bork isn't alone in his failure to recognize the need to prevent a tyranny of the majority. The Supreme Court has stated:

“The principal and basic limit on the federal commerce power is that inherent in all congressional action—the built-in restraints that our system provides through state participation in federal governmental action. The political process ensures that laws that unduly burden the States will not be promulgated.” *Garcia v. San Antonio Metro*, 469 U.S. 528 (1985).

The *Garcia* Court was essentially saying that Constitutional limits on Congressional authority are unnecessary because Congress can be replaced via elections. However, such statements again reflect an abandonment of the Constitution's supremacy in favor of a pure democracy, and denies the Constitution's primary purpose. *Garcia* and similar precedent are a direct result of the errors contained in *Wickard*.

5) Errors in *Wickard*

Common sense and canons of legal interpretation tell us that the enumerated powers of Article I section 8 would not have been listed in the Constitution if the Founders had intended Congressional authority to extend beyond the short list of powers enumerated therein. The Tenth Amendment was included before ratification to serve as an exclamation point, in order to clarify that the Constitution grants only LIMITED authority to the Federal government. Yet *Wickard* and its progeny leave Congress with essentially unlimited authority. This fact is undeniably proven with a cursory review of current federal law.

It is a well established canon of legal construction that an interpretation of a clause within a document that destroys the clearly intended purpose of the overall

document must be wrong. Yet in *Wickard* the FDR-packed Supreme Court interpreted “Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes” to mean that Congress could prohibit an individual farmer from growing wheat on his own private property for private consumption by that farmer on that property.

Since *Wickard* the Courts have compounded this error by applying rational basis review to determine whether Congressional regulations can meet the ridiculously low *Wickard* standard via any conceivable theory of justification. This leaves Congress with zero limitations upon its authority.²

If the Founding Fathers intended Congress to have no limits placed upon its authority they would not have listed specific enumerated powers. The Justices that saddled us with the *Wickard* decision apparently believed that Article I section 8 should have ended with “The Congress shall have power.”

Wickard not only violates a basic canon of interpretation, it also runs contrary to the Founding Father’s own writings on this subject. *See* Federalist No. 22 ¶ 4; Federalist No. 42 ¶ 8; Federalist No. 56 ¶ 6.

Previous incarnations of the Supreme Court understood the intended purpose of the commerce clause. In 1888 the Court said “the object of vesting in Congress the power to regulate commerce with foreign nations and among the several States was to insure uniformity of regulation against conflicting and discriminating state legislation.” *Kidd v. Pearson*, 128 U.S. 1, 21. In other words, Congress was granted authority to prevent

² The Plaintiffs acknowledge that the Supreme Court has recently placed some limitations upon Congressional authority to impose criminal law upon the States. However, the Plaintiffs point out that none of the post *Wickard* Supreme Court precedent creates significant limits to Congressional authority as it relates to non-criminal regulations.

regulations by one state being used to discriminate against another state. The commerce clause does not allow Congress to regulate health care any more than it allows Congress to determine how many gallons of water are required to flush a toilet. No state could use inconsistent health care or ten gallon toilet flushes to disadvantage another state's free flow of commerce. Yet *Wickard* led directly to Congressional regulation of health care, and toilets, and everything else.

The *Wickard* opinion was a politically motivated power grab intended to destroy Constitutional limitations that would have prohibited implementation of FDR's New Deal. *Wickard* eliminated the Founding Father's intended limitations on federal authority, destroying the Constitutional Republic that so many patriots had died to create and defend. *Wickard* must be overturned to restore our Constitutional Republic.

This Court's grant of the relief requested would ensure this Court's place in history as the defender of America's founding Principals.

C. Relief Requested

The plaintiffs respectfully request that this Court grant their motion for an injunction preventing defendants from enforcing any aspect of the Patient Protection and Affordable Care Act, pending the outcome of this litigation.

Dated: 7/17/10

s/Van R. Irion
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Plaintiffs' Motion and Memorandum of Law in Support of Motion for Preliminary Injunction" will be served upon all defendants at the time they are served the 1st Amended Complaint and a Summons.

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