

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MATT SISSEL )  
1724 Morningside Dr. )  
Iowa City, IA 52245 )

Plaintiff, )

v. )

UNITED STATES DEPARTMENT OF HEALTH )  
AND HUMAN SERVICES; KATHLEEN SEBELIUS, )  
in her official capacity as United States Secretary of )  
Health and Human Services; )

200 Independence Ave., SW )  
Washington, D.C. 20201; )

UNITED STATES DEPARTMENT OF THE TREASURY; )  
and TIMOTHY GEITHNER, in his official capacity as )  
United States Secretary of the Treasury; )

1500 Pennsylvania Ave., NW )  
Washington, D.C. 20220; )

Defendants. )

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**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. Plaintiff Matt Sissel, a citizen of the United States, challenges the constitutionality of the federal Patient Protection and Affordable Care Act (the Act) as amended, both on its face and as applied to him. *See* 26 U.S.C. § 5000A (2010); Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010); Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1032 (2010) (Reconciliation Act); TRICARE Affirmation Act, Pub. L. No. 111-159, 124 Stat. 1123 (2010); Pub. L. No. 111-173, 124 Stat. 1215 (2010). The Act requires that all nonexempt citizens and legal residents in the United States either obtain health insurance coverage for themselves and their dependents, or face stiff civil penalties (Individual Mandate). Plaintiff asserts that the Individual Mandate violates the United States Constitution, because it exceeds Congress's authority under the Commerce Clause.

2. Plaintiff seeks (1) a declaration that the mandate to purchase health insurance, and the Act *in toto*, is unconstitutional, invalid, and unenforceable; (2) a permanent prohibitory injunction enjoining the enforcement of the Act or any similar law; and (3) reasonable costs and attorney fees.

## JURISDICTION AND VENUE

3. This case presents federal questions arising under the United States Constitution that are appropriate for review in federal court under 28 U.S.C. § 1331 (federal question jurisdiction). Plaintiff seeks declaratory judgment, and further necessary or proper relief based on declaratory judgment, including injunctive relief, under 28 U.S.C. §§ 2201 and 2202.

4. Venue is appropriate in this District under 28 U.S.C. § 1391(e) on the grounds that a substantial part of the events or omissions giving rise to the claim occurred in this District, and on the grounds that the named Federal Defendants are located in this District.

## **PARTIES**

### **Plaintiff**

5. Plaintiff Matt Sissel is an American citizen and a permanent resident of Iowa who temporarily resides in Toronto, Canada, where he is studying at the Academy of Realist Art. In August, 2010, Mr. Sissel will return to reside permanently in Iowa City, Iowa. He is registered to vote in Iowa, and intends to remain a resident of that state upon his return. He is self-employed and markets his own artwork. He is financially stable, has an annual income that requires him to file federal tax returns, and could afford health insurance if he wanted to obtain such coverage. Mr. Sissel does not have, need, or want to purchase health insurance, and has been without such insurance coverage for more than three months. He is able to and does pay for any and all of his medical expenses out of pocket. He is currently healthy and has no pre-existing medical conditions. He is not a Native American, and has no religious objection to the federal mandate to purchase health insurance. Mr. Sissel cannot claim the living-abroad exemption from the Act because he will return to Iowa in August, 2010, and plans to permanently reside there from that time forward. He is subject to the Act's Individual Mandate to purchase federally approved health insurance.

### **Defendants**

6. Defendant United States Department of Health and Human Services is an agency of the United States possessing by delegation certain responsibilities for administering, implementing, and enforcing the Act. The Department of Health and Human Services is subject to suit under

28 U.S.C. § 1331, which provides this Court with jurisdiction to hear any civil action arising under the Constitution, laws, and treaties of the United States.

7. Defendant the Hon. Kathleen Sebelius is the United States Secretary of Health and Human Services. As Secretary she is charged with administering, implementing, and enforcing the Act, including (1) determining the percentage by which an applicable individual's required contribution must exceed the individual's household income to be eligible for a penalty exemption under 26 U.S.C. § 5000A(e)(1)(A); (2) determining who qualifies as having suffered a hardship with respect to their capability to obtain coverage under a qualified health plan, 26 U.S.C. § 5000A(e)(5); and (3) determining what health benefits coverage qualifies as "minimum essential coverage." 26 U.S.C. § 5000A(f)(1)(E). In all of her actions and omissions alleged herein, Secretary Sebelius is acting under color of law and is being sued in her official capacity. Secretary Sebelius is subject to suit under 28 U.S.C. § 1331, which provides this Court with jurisdiction to hear any civil action arising under the Constitution, laws, and treaties of the United States.

8. Defendant United States Department of the Treasury is an agency of the United States possessing by delegation certain responsibilities for administering, implementing, and enforcing the Act. The Department of Treasury is subject to suit under 28 U.S.C. § 1331, which provides this Court with jurisdiction to hear any civil action arising under the Constitution, laws, and treaties of the United States.

9. Defendant the Hon. Timothy Geithner is the United States Secretary of the Treasury. As Secretary he is charged with enforcing the Act, including (1) prescribing rules for the collection of the penalty in cases where continuous periods of noncoverage, of three months or more, include months in more than one taxable year, 26 U.S.C. § 5000A(e)(4)(B); (2) coordinating with the

Secretary of Health and Human Services to determine what health benefits coverage qualifies as “minimum essential coverage,” 26 U.S.C. § 5000A(f)(1)(E); and (3) assessing and collecting the penalty for noncompliance with the Individual Mandate, subject to the limitations of 26 U.S.C. § 5000A(g)(2)(B). In all of his actions and omissions alleged herein, Secretary Geithner is acting under color of law and is being sued in his official capacity. Secretary Geithner is subject to suit under 28 U.S.C. § 1331, which provides this Court with jurisdiction to hear any civil action arising under the Constitution, laws, and treaties of the United States.

**ALLEGATIONS RELATING TO THE ACT’S  
INDIVIDUAL MANDATE TO OBTAIN HEALTH INSURANCE**

10. The Act, as amended, requires every nonexempt “applicable individual” to have “minimum essential” health insurance coverage as defined in the Act. 26 U.S.C. § 5000A(a). Specifically, any “applicable individual” must ensure that he or she, along with any dependent of that individual who is also an applicable individual, maintains “minimum essential coverage” for each month of the year. *Id.*

11. Defendants are charged with administering, implementing, and enforcing the Act by, *inter alia*, determining what health benefits coverage qualifies as “minimum essential coverage,” and assessing penalties against applicable individuals who fail to maintain “minimum essential coverage.” 26 U.S.C. § 5000A(f)(1)(E); 26 U.S.C. § 5000A(g)(1).

12. An “applicable individual” is defined as any individual, except those who reside abroad, are incarcerated, or who qualify for a religious conscience exemption. 26 U.S.C. § 5000A(d). The living abroad exemption applies only to citizens residing abroad for an uninterrupted period which includes an entire taxable year, or a period of at least 330 days occurring over a period of twelve consecutive months. 26 U.S.C. § 5000A(f)(4).

13. “Minimum essential coverage” is defined to include the following public and private health insurance options: Medicare, Medicaid, CHIP, TRICARE for Life, veteran’s health care program, Peace Corps program, the Nonappropriated Fund Health Benefits Program of the Department of Defense, eligible employer-sponsored plans, coverage offered in the individual market within a state, grandfathered health plans, and other health benefits coverage that the Secretary of Health and Human Services and the Secretary of the Treasury designate as a qualifying plan. 26 U.S.C. § 5000A(f)(1)(A)-(E) (as added by the Act § 1501(b) and amended by TRICARE Affirmation Act § 2 and Pub. L. No. 111-173, 124 Stat. 1215 (2010)); 75 Fed. Reg. 34,538 (June 17, 2010)). Applicable individuals may not self-insure under the Act.

14. Applicable individuals who fail to maintain “minimum essential coverage” are exempt from the penalty if they are suffering financial hardship, are American Indians, have been without coverage for less than three months, are individuals for whom the lowest available insurance option exceeds 8% of household income, or are individuals whose incomes are below the tax filing threshold. 26 U.S.C. § 5000A(e) (as added by the Act § 1501(b), and amended by the Act § 10106(d) and Reconciliation Act § 1002(b)).

15. Plaintiff is an applicable individual, and he cannot claim any of the exemptions. He is self-insured. He is not covered, nor wishes to be covered, under any health insurance plan meeting the definition of “minimum essential coverage.” The Act obligates Plaintiff to purchase, at his own expense and against his will, federally approved health insurance, or pay penalties.

16. Plaintiff is informed and believes, and on that basis alleges, that beginning on January 1, 2014, Plaintiff will incur federal penalties for each month he remains without “minimum essential” health insurance coverage as required by the Act, because he is a nonexempt applicable

individual, required to purchase health insurance under the Act. The penalty for failure to purchase approved health insurance is the greater of 2.5% of the taxpayer's annual income, or \$695 for each uninsured family member per year, up to a maximum of \$2,085 per family per year. 26 U.S.C. § 5000A(c) (as added by the Act § 1501(b), and amended by the Act § 10106(b)(1) and Reconciliation Act § 1002(a)).

### **DECLARATORY RELIEF ALLEGATIONS**

17. Plaintiff incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

18. An actual controversy exists between Plaintiff and Defendants as to their respective legal rights and duties. Plaintiff contends that both on its face and as applied to him, the Individual Mandate violates the Constitution. Plaintiff is informed and believes, and on that basis alleges, that Defendants contend otherwise.

19. There is a present justiciable controversy between the parties regarding the Act. Plaintiff has a vital interest in knowing now whether the Act, which forces him to obtain health insurance at the risk of civil penalties under federal law, is valid.

20. Accordingly, declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 is appropriate. Plaintiff specifically seeks a declaration that the Act's Individual Mandate is unconstitutional and invalid both on its face and as applied to him.

21. Additionally, Plaintiff seeks a declaration that the entire Act, as amended, should be invalidated *in toto* because the Individual Mandate is an essential component of the Act and is nonseverable. The Act states that the mandate would help ensure "near-universal" health insurance coverage, which the legislative history demonstrates was Congress's primary goal in enacting the

Act. *See* 26 U.S.C. § 5000A (2010). Moreover, the Act states that the Individual Mandate would discourage individuals from waiting until they became ill to seek health insurance, a concern that arose by virtue of the fact that other provisions of the Act prohibit insurance companies from discriminating against individuals on the basis of pre-existing conditions. *Id.* Defendants have already admitted in similar lawsuits that the Individual Mandate is an integral component of the Act, and that its enforcement is essential to the vindication of the Act's larger regulatory scheme. *See, e.g., Thomas More Law Center, et al. v. Barack Obama, et al.*, Case No. 2:10-cv-11156, Defendant's Response to Plaintiffs' Motion for Preliminary Injunction and Brief in Support at 24-27 (E.D. Mich. filed May 11, 2010) ("The minimum coverage provision is an essential part of the Act's broader regulatory scheme."). Therefore, invalidation of the Individual Mandate would frustrate Congress' intentions with regard to the entire Act. For these reasons, invalidation of the Individual Mandate provision should render the entire Act invalid.

### **INJUNCTIVE RELIEF ALLEGATIONS**

22. Plaintiff incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

23. Beginning in 2014, any "applicable individual" who has not obtained health insurance as required by the Act will incur financial penalties. Plaintiff is currently injured by the Individual Mandate, because he must act now to make financial plans to satisfy the mandate's requirements. There is no uncertainty that the mandate and penalties will be enforced and, specifically, applied to the Plaintiff beginning in 2014.

24. Mr. Sissel had health insurance through the National Guard during his service as a medic in Iraq; however, he has been uninsured since he left the National Guard in January, 2008.



As such, Mr. Sissel does not have health insurance through the United States Department of Veterans Affairs or any other public or private entity. Mr. Sissel is healthy and self-insured, paying any medical expenses that arise out-of-pocket. Although he is able to purchase health insurance, Mr. Sissel does not want to purchase health insurance, and intends to continue to self-insure because he believes the cost of health insurance premiums are excessive. Mr. Sissel is current on all health-related expenses.

25. The requirement to obtain health insurance under the Act is adversely affecting Mr. Sissel. He has chosen to remain uninsured because he saves money by not paying costly health insurance premiums; however, the mandate forces him to buy health insurance and to pay such premiums. Therefore, his health care costs will rise.

26. Mr. Sissel believes that he could not have gone to art school to pursue his chosen career if he had been forced to pay for health insurance in the past. In anticipation of the costs he must incur to satisfy the Act's mandate, he calculates that he will be unable to afford to continue his education in Canada. As a direct consequence of this newly imposed financial liability, Plaintiff has begun selling his artwork, and will continue to do so, rather than devote his attention full-time to his studies.

27. Additionally, Mr. Sissel's ability to attend national and international conferences and workshops relevant to his art profession has been curtailed because he is obliged to reduce expenditures in light of anticipated new health care costs, or penalties, imposed by the Act; for example, Mr. Sissel would like to attend next year's annual conference for the American Portrait Society in Atlanta, Georgia, but cannot afford to do so as a consequence of the mandate. Likewise, his ability to travel abroad has been impaired by these impending financial obligations. Specifically,

he had planned to tour Europe upon the completion of his studies in Toronto, in order to study some of the world's greatest artworks in person; however, he cannot afford to follow through on those plans as a consequence of the Individual Mandate.

28. Lastly, Mr. Sissel also fears that his personal and professional reputation will be tarnished due to the penalties he will face if he fails to purchase government-mandated health insurance.

29. Plaintiff wishes to remain uninsured and does not want to be coerced into obtaining health insurance as mandated by the Act. Under the Act, Plaintiff will be subject to hundreds or thousands of dollars in federal penalties if he fails to obtain health insurance. *See* 26 U.S.C. § 5000A(b)-(c) (as added by the Act § 1501(b), and amended by the Act § 10106(b) and Reconciliation Act § 1002(a)). If not enjoined by this Court, Defendants and their agents, representatives, and employees will administer, implement, and enforce the Act, which subjects Plaintiff to the unconstitutional mandate or penalties. This course of conduct will cause Plaintiff to suffer irreparable injury, depriving him of personal property (*i.e.*, personal funds), reputation, and of the liberty to remain a nonparticipant in the health insurance market in violation of the Constitution.

30. Plaintiff has no plain, speedy, and adequate remedy at law for such an injury. Accordingly, injunctive relief is appropriate.

**CLAIM FOR RELIEF**

**FOR VIOLATION OF THE COMMERCE CLAUSE  
(U.S. CONST. ART. I, § 8, CL. 3)**

31. Plaintiff incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

32. The Act compels applicable individuals, including Plaintiff, to obtain federally approved health insurance coverage, or pay a penalty. Congress lacks authority to impose such an obligation.

33. The Act purports to be exclusively an exercise of Congress' Commerce Clause authority. *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010). The Commerce Clause gives Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.” U.S. Const. art. I, § 8, cl. 3. With respect to the health insurance market, Plaintiff is not engaged in commerce, does not plan to, or wish to, engage in commerce, and is not engaged in any activity that has a substantial effect on interstate commerce, but on the contrary wishes only to avoid engaging in interstate commerce. The Act's Individual Mandate is not a regulation of commerce, but purports to compel the Plaintiff to engage in commerce.

34. Supreme Court precedent has interpreted the Commerce Clause power to confer on Congress only the authority to regulate the channels and instrumentalities of interstate commerce, along with activities that substantially affect interstate commerce. In no case has the Supreme Court suggested that the commerce power allows Congress to regulate inactivity or to force individuals into the field of commerce.

35. The Act's Individual Mandate is unconstitutional on its face. It does not regulate the channels of interstate commerce, or the instrumentalities of interstate commerce. Nor does it regulate any activity that substantially affects interstate commerce, or any activity that is an essential component of a larger economic regulatory scheme—because the “applicable individuals” who are subject to the Individual Mandate are engaging in *no commercial activity whatsoever*. Instead, the

Act compels nonexempt citizens and legal residents to engage in activity—specifically, to engage in a commercial transaction with purveyors of health insurance—which they otherwise would forgo but for the imposition of substantial civil penalties. The Commerce Clause gives Congress no authority to mandate economic activity, or punish inactivity, alone.

### **PRAYER**

**WHEREFORE**, Plaintiff respectfully requests relief as follows:

1. To enter declaratory judgment that the Patient Protection and Affordable Care Act, as amended, 26 U.S.C. § 5000A (2010), requiring all nonexempt applicable individuals to maintain “minimum essential” health insurance coverage, on pain of penalty, facially exceeds Congress’ authority under Art. I, § 8, cl. 3 of the Constitution;

2. To enter declaratory judgment that the Patient Protection and Affordable Care Act, as amended, 26 U.S.C. § 5000A (2010), requiring all nonexempt applicable individuals to maintain “minimum essential” health insurance coverage, on pain of penalty, as applied to Plaintiff, exceeds Congress’ authority under Art. I, § 8, cl. 3 of the Constitution;

3. To enter declaratory judgment that the Act, as amended, 26 U.S.C. § 5000A (2010); Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010); Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1032 (2010) (Reconciliation Act); TRICARE Affirmation Act, Pub. L. No. 111-159, 124 Stat. 1123 (2010); Pub. L. No. 111-173, 124 Stat. 1215 (2010), is invalid *in toto* because the Individual Mandate provision is an integral component of the Act and its enforcement is essential to the vindication of the Act’s larger regulatory scheme;

4. To issue a permanent and prohibitory injunction enjoining Defendants, their agents, representatives, and employees from enforcing, threatening to enforce, or otherwise giving effect to the Patient Protection and Affordable Care Act, as amended, or any similar law or policy, as well as any and all implementing rules, regulations, guidance, and policies and practices by which Defendants enforce these provisions, including, but not limited to: the policy of requiring individuals to maintain “minimum essential” health insurance coverage, and penalizing individuals who fail to maintain “minimum essential” health insurance coverage;

5. for costs of suit;

6. for reasonable attorney fees; and

7. any such further legal and other relief as the Court may deem just and proper.

DATED: July 23, 2010.

Respectfully submitted,

/s/ Theodore Hadzi-Antich

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