UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LANDMARK LEGAL FOUNDATION, **3100 Broadway St, Suite 1100** **Kansas City, MO 64111, and** **MARK R. LEVIN,** **19415 Deerfield Ave., Suite 312** **Leesburg, VA 20176,** **Plaintiffs** **v.** **BARACK OBAMA, President of the United States, *in his official capacity*** **The White House** **1600 Pennsylvania Ave., NW** **Washington, D.C. 20500,** **ERIC HOLDER, Attorney General of the United States, *in his official capacity*,** **U.S. Department of Justice,** **950 Pennsylvania Ave., NW** **Washington, D.C. 20530-0001,** **TIMOTHY GEITHNER, Secretary of the Treasury of the United States, *in his official capacity*,** **U.S. Department of Treasury,** **1500 Pennsylvania Ave., NW** **Washington, D.C. 20220-0001, and** **KATHLEEN SEBELIUS, Secretary of United States Department of Health and Human Services, *in her official capacity*,** **U.S. Department of Health & Human Services,** **200 Independence Ave., SW** **Washington, D.C. 20201-0001** **Defendants**	**Case No.: _____** **COMPLAINT**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Landmark Legal Foundation and Mark R. Levin, Plaintiffs herein, by and through their undersigned counsel, complain of the Defendants as follows:

1. Plaintiff Landmark Legal Foundation ("Landmark") is a non-profit public interest organization. Among other public interest projects, Landmark engages in advocacy, research, education, and litigation relating to the promotion of public debate concerning key public policy issues. Landmark's employees receive healthcare through an employer healthcare plan sponsored and contributed to by Landmark.

2. Plaintiff Mark R. Levin is a citizen of the United States, a taxpayer, and President of Landmark. Mr. Levin carries health insurance through the Landmark-sponsored plan.

3. Defendant Barack Obama is the President of the United States, who in his official capacity, after adoption in full accord with the Constitution by the Senate and House of Representatives (the "House"), may sign bills into law. As the head of the Executive Branch, he is empowered to direct and enforce the laws of the United States, but the power must stem "either from an act of Congress or from the Constitution itself," *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952).

4. Defendant Timothy Geithner is the United States Secretary of the Treasury, and is responsible for formulating economic and tax policy, managing the public debt, and overseeing the collection of taxes and enforcement of the tax laws of this country.

5. Defendant Eric Holder is the United States Attorney General, heads the United States Department of Justice, and is the chief law enforcement officer of the United States Government, with the responsibility for bringing civil and criminal actions to assure that the laws of the United States are upheld.

6. Defendant Kathleen Sebelius is the United States Secretary of Health and Human Services, responsible for the operation of the largest civilian department in the federal government and the administration of federal health programs, including Medicare and Medicaid.

7. Each of the Defendants is sued in his or her official capacity only.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. This case arises under the Constitution and laws of the United States.

9. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

STATEMENT OF FACTS

10. The Bicameralism and Presentment Clause of the Constitution of the United States mandates that "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States. . . ." U.S. Const. art. I, § 7, cl. 2.

11. A law is enacted in conformance with this constitutional mandate only if "(1) a bill containing its exact text was approved by a majority of the Members of the House of Representatives; (2) the Senate approved precisely the same text; and (3) that text was signed into law by the President." *Clinton v. City of New York*, 524 U.S. 417, 448 (1998). "If one paragraph of that text [is] omitted at any one of those three stages, [a statute] would not have been validly enacted." *Id.*

12. Article I, section 7, clause 2 further provides: "But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively."

13. In or about March 2010, the Rules Committee of the House proposed a rule to the full House establishing the terms and conditions pursuant to which certain legislation would be considered by the House (the "Rule" or "Slaughter Rule"). The Rule provided that, upon adoption by the House on a vote of the yeas and nays of one bill (the "Reconciliation Bill"), an entirely different bill, H.R. 3590 (the "Senate Bill"), would be "deemed approved" by the House.

14. In or about March 2010, the House approved the Rule.

15. In or about March 2010, the House approved the Reconciliation Bill. The House has never voted on the Senate Bill.

16. The President has stated his intention to sign into law the Senate Bill upon presentment to him.

17. At the time of the filing of this action, the President is presently intending to sign the Senate Bill or has signed it. Plaintiffs have at all times relevant to the filing of this Complaint acted with dispatch, consistent with the gravity of the issues involved for our country and its government.

18. Concurrently with the filing of this Complaint, a courtesy copy has been sent to the White House to the attention of the Counsel to the President.

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AGAINST ALL DEFENDANTS

19. Paragraphs 1 through 18 are incorporated as though fully stated herein.

20. Two branches of the United States Government have and are presently intending to transgress the requirements of the U.S. Constitution, rendering the liberty of United States citizens at stake. *Clinton*, 524 U.S. at 450 (Kennedy, J., concurring).

21. The conduct of the House of Representatives and the President of the United States violates Plaintiffs' Fifth Amendment rights under the United States Constitution, which provides that "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

22. Under color of law, the Defendants intend to collect taxes, remove and replace insurance benefits, and re-write health insurance contracts affecting Plaintiffs and Landmark's employees. The Senate Bill enacts broad and encompassing regulation of health care in this country. It changes the law and places new regulatory and tax burdens on millions of Americans, including large and small entities of which Landmark is one as a not-for-profit organization.

23. Because the House violated the Constitution by never voting on the Senate Bill, the Senate Bill cannot be and is not a law of the United States. Defendants, charged by law and the Constitution with enforcing the law, must be prevented from treating the Senate Bill as a law of the United States. Any signature by the President is a nullity, and the piece of paper he has stated that he will sign or has signed is nothing more than that: a piece of paper.

24. The President of the United States intends to sign or has signed the Senate Bill, and the President and all Defendants intend to or have begun to apply the Senate Bill as law despite the failure of the House to meet the constitutional requirements of bicameralism, creating a case and controversy.

EXPEDITION IN RESOLVING THIS DISPUTE IS ESSENTIAL.

25. The constitutionally protected liberty interests of the American public are at risk because the Senate Bill undermines investments in contracts which must be re-written, taxes health insurance plans into the future which businesses must account for immediately, employees may be terminated, and myriad business relationships and investments may be undermined by the contents and through the enforcement of various provisions in the 2,000-plus page Senate Bill, which was formed from concentrated power in the Senate and not through the extension of the will of the people in the House of Representatives. Expedition is essential in the treatment by this Court of this Complaint because of this failure of the United States Government to enact a law comporting with the requirements of the Constitution and commands of republican ideals.

26. Each of the health insurance contracts being modified or entered into under the compulsion of the purported law being challenged herein is subject to rescission or cancellation. Every dollar of taxation levied against the people of the United States by the purported law is a dollar not due its government and is subject to protest and to claims for recovery. The sooner this action is finally determined by the courts the better for this country and its people.

27. This action is brought immediately upon passage by the House of the Reconciliation Bill so that no reasonable expectations of regularity may be asserted by Defendants. In fact, Plaintiffs have been diligent in bringing to public attention the very constitutional defect complained of herein. On March 11, 2010, the day that the intention to consider the Rule was first brought to public attention as the so-called "Slaughter Rule" (named for the Honorable Louise Slaughter of New York being Chair of the House Rules Committee), Plaintiff Levin publicly identified and described in detail the constitutional infirmity on his radio program, which was broadcast nationwide. By March 14, 2010, the Honorable Eric Cantor of

Virginia, Republican House Whip, publicly adopted Plaintiffs' views in a nationwide television broadcast, and on March 15, 2010, the Honorable Michael W. McConnell, former judge on the United States Court of Appeals also adopted this view in an article published in the *Wall Street Journal*. On March 17, 2010, a draft of this Complaint, in substantially the same form as it is now being filed, was posted on Plaintiff Landmark's website. On March 18, 2010, at his daily press briefing, Defendant President Obama's Press Secretary, Robert Gibbs, was asked about this lawsuit, with the questioner naming both Plaintiffs and stating that Plaintiffs had prepared a suit against the President. Defendants have had every warning that the piece of paper they are about to enforce or are enforcing has no more validity than any other piece of paper.

28. The "law" herein being challenged does not comport with the procedure for adoption mandated by the Constitution or the test set forth in *Clinton v. City of New York*; nor do Plaintiffs expect that a serious defense will be raised on the merits. Thus far in the public debate on the constitutionality of the Rule, Plaintiffs have detected a marked silence on the legal merits by those who would support the use of the "deemed approved" approach to "passing" legislation. The debate on the other side of the issue has been confined to a recitation of other recent occasions when a "deemed approved" procedure was utilized, the claim being that it was employed principally to avoid approval of bills raising the national debt limit and was done so by both parties whose Members wanted to avoid actually having to cast a yea or nay because it was politically expedient not to. Whatever relevance that might have to a political debate, it carries no weight before this Court in favor of the procedure. *See I.N.S. v. Chadha*, 462 U.S. 919, 945 (1983) ("[T]he fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution. Convenience and efficiency are not the primary objectives -- or the hallmarks -- of

democratic government, and our inquiry is sharpened, rather than blunted, by the fact that congressional veto provisions are appearing with increasing frequency in statutes which delegate authority to executive and independent agencies. . . .”). Further, and for whatever historical interest it may have, it appears that almost all such alleged uses were employed to amend bills so that the measure the House actually voted on was identical to that actually voted on by the Senate.

29. Plaintiffs fully expect Defendants to raise a preliminary defense under the “Enrolled Bill Rule” seeking to bar this Court from ever ruling on the legality of the procedure employed by the House to adopt a bill without ever voting on it. *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892). The tragedy would be if, after the American people have watched the spectacle of the House of Representatives “approving” a “bill” without voting on it, the people were to turn to the Article III courts of this country and they fail to tell the people whether the House’s action violated fundamental principles enshrined in the Constitution. We ask that this Court assume the role established for it under the Constitution and reach the merits of this dispute and do it promptly.

30. The Enrolled Bill Rule does not block consideration of the constitutionality of the Senate Bill’s purported enactment. The present circumstances involve an institutional procedure adopted by an Article I Chamber that abrogates the Bicameralism Clause. The Enrolled Bill Rule was, and is, designed to prevent the courts from trying to piece out mistakes and irregularities in “engrossment” and “enrollment” by the two Chambers of Congress as they go about their business of trying to observe the constitutional mandates of the Bicameralism Clause. When the procedure is to make identical the bills passed in the two Chambers, the federal courts stand aside. When the adopted procedure is to no longer seek observance of the commands of

the Constitution, as in this case, the self-imposed limits on judicial review cannot apply. *Cf.*, *Mester Mfg. Co. v. I.N.S.*, 879 F.2d 561, 571 n.15 (9th Cir. 1989), later proceeding, 900 F.2d 201 (1990) ("Here, . . . Congress has acted interstitially to supplement the nonexplicit text of the Constitution with reasonable procedures that implement its commandment, rather than violate the Constitution--as it did with the legislative veto--by avoiding constitutional requirements.").

31. The courts risk much in not acting in this case. For if the Enrolled Bill Rule were to block consideration of this deliberate adoption of a procedure to repeal the Bicameralism Clause, then the House and Senate will be free to adopt any such procedures in the future, assured that they will be immune from judicial review under any and all circumstances. After all, if the House can pass a rule that "deems approved" one measure on adoption of a separate measure and keep that maneuver from judicial scrutiny, then it, and its companion Chamber the Senate, can do anything. There can be no doubt that the day after a ruling in this case that no judicial review is permitted, the House and Senate would be free to adopt as procedures a line-item veto through use of multiple enrollments of unitary appropriations bills, deeming every item in the bill as a separate bill. *See* Eugene Gressman, *Observation: Is the Item Veto Constitutional?*, 64 N.C. L. Rev. 819 (1986). Everything about the House's action invites chaos: economic, political, and constitutional. Under the specific facts presented here, the Congress has forfeited any claim to judicial deference.

32. By separate motion, Plaintiffs will ask this Court to expedite consideration of the threshold issue of the applicability of the Enrolled Bill Rule. If, as Plaintiffs seek, this Court determines that it may adjudicate the merits of this Complaint, then Plaintiffs would accept immediate certification to the United States Court of Appeals.

33. Plaintiffs seek the protection of this Court, empowered by Article III of the Constitution, to insulate the people of this country from the exercise over them of powers not granted to officials acting under color of law in the Executive Branch.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request for expeditious proceedings in this action and that judgment be entered in their favor and against Defendants as follows:

1. An order declaring the Senate Bill unconstitutional;

2. An order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the Senate Bill under color of law;

3. Costs of suit, including attorney fees and costs;

4. Declaratory relief consistent with the injunction; and

5. Any other further relief as the Court deems just and appropriate.

Respectfully submitted,

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