ORAL ARGUMENT NOT YET SCHEDULED

No. 13-5202

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MATT SISSEL,

Plantiff/Appellant,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; KATHLEEN SEBELIUS, in her official capacity as United States Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF THE TREASURY; JACOB J. LEW, in his official capacity as United States Secretary of the Treasury,

Defendants/Appellees.

On Appeal from the United States District Court
for the District of Columbia
Honorable Beryl A. Howell, District Judge

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Page

U.S. Constitution

Federal Statutes

Legislative History

Page

Miscellaneous

SUMMARY OF ARGUMENT

Appellant Matt Sissel alleges two meritorious claims challenging the Patient Protection and Affordable Care Act (PPACA). First, Sissel contends that the Act's individual mandate requiring him to purchase a federally approved health insurance plan violates the Commerce Clause. In 2012, the United States Supreme Court held that the mandate does in fact violate the Clause, thereby vindicating Sissel's first claim and entitling him to declaratory and equitable relief. *National Federation of Independent Business v. Sebelius* ("*NFIB*"), 132 S. Ct. 2566, 2601 (2012) ("The Federal Government does not have the power to order people to buy health insurance."). Appellees United States Department of Health and Human Services, *et al.* (the "Government"), urge this Court to ignore that holding and simply uphold both the mandate and the "shared responsibility payment" (the tax imposed on those who do not choose to buy insurance) under Congress's taxing power. This Court should reject this argument and follow the Supreme Court's decision.

Second, Sissel alleges that the tax violates the Origination Clause, because it originated in the Senate, not the House. The Government's arguments to the contrary hold no water. The Origination Clause applies to the Act's central tax provision, because it is a "[b]ill for raising revenue." U.S. Const. art. I, § 7. Unlike the discrete, earmarked fines at issue in *United States v. Munoz-Flores*, 495 U.S. 385 (1990), and other cases, the tax is imposed directly on all applicable persons via the Internal

Revenue Code, raises billions of dollars in general revenues for the Treasury, and can be spent in the future for whatever purpose Congress chooses. The Government's argument that the Senate's creation of the PPACA was within its power to "amend" a House bill must fail, because that House bill was not a revenue-raising bill within the meaning of the Clause, and because the complete replacement of a bill's text with new text on unrelated matters cannot qualify as a constitutional "amendment." In any event, the Senate's alleged "amendment" (*i.e.*, the PPACA), and the House bill in question (H.R. 3590), fail the "germaneness" requirement of *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143 (1911), because the two bills are totally unrelated: The PPACA undertakes a massive overhaul of the health-insurance market, while H.R. 3590 would have provided tax credits to certain first-time homebuyers. If the Senate's "amendment" were germane to H.R. 3590, then anything would be, and the Origination Clause would be rendered a dead letter. The district court's decision dismissing Sissel's amended complaint should be reversed.

ARGUMENT

I

THE SUPREME COURT'S OPINION IN *NFIB* REQUIRES JUDGMENT IN FAVOR OF SISSEL ON HIS COMMERCE CLAUSE CLAIM

The PPACA requires nonexempt individuals such as Sissel to maintain a prescribed level of health insurance coverage. *See* 26 U.S.C. § 5000A(a). Sissel

claims that a federal mandate to purchase health insurance violates the Commerce Clause, consistent with the Supreme Court's opinion in *NFIB*. App. at 11-12. The Government asserts that the PPACA cannot be construed to impose a mandate. Appellees' Brief at 7-8. Thus, as the Supreme Court held—and as the Government seems to concur—a legal requirement commanding individuals to buy health insurance violates the Commerce Clause. Nevertheless, the district court ruled that Sissel does not state a Commerce Clause claim upon which relief can be granted.

This Court should reverse the dismissal of Sissel's Commerce Clause claim. Sissel seeks a judgment establishing his rights and responsibilities under the PPACA, and enjoining the Government from enforcing the individual mandate against him. This is essential to Sissel because, if the individual mandate does require him to purchase insurance and he fails to do so, he "may be subjected to criminal sanctions . . . includ[ing] not only fines and imprisonment, but all the attendant consequences of being branded a criminal." *NFIB*, 132 S. Ct. at 2600 (opn. of Roberts, C.J.).

Furthermore, the Court should rule in Sissel's favor on the Commerce Clause claim because such a ruling is necessary in order to address the merits of Sissel's Origination Clause claim. If the Supreme Court's Commerce Clause ruling in *NFIB* is not binding, then this Court could simply affirm dismissal of Sissel's amended complaint by holding that *NFIB* does not alter this Court's earlier decision upholding

the individual mandate as a regulation of commerce.[1] *See Seven-Sky v. Holder*, 661 F.3d 1, 15-20 (D.C. Cir. 2011), abrogated by *NFIB*, 132 S. Ct. at 2566. Instead, this Court should determine that the Commerce Clause analysis in *NFIB* is precedential and that Sissel states a claim for relief under *NFIB,* because the individual mandate exceeds Congress's Commerce Clause authority.

II

THE "SHARED RESPONSIBILITY PAYMENT" VIOLATES THE ORIGINATION CLAUSE

A. The Origination Clause Applies to the "Shared Responsibility Payment"

The PPACA is a bill "for raising Revenue." U.S. Const. art. I, § 7, cl. 1. Specifically, it raises revenue through its central provision: A tax imposed by 26 U.S.C. section 5000A(b) on those who choose not to purchase a federally approved health insurance plan.[2] As the *NFIB* Court held, that tax—projected by

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[1] As Sissel noted in his opening brief, a favorable ruling on the Commerce Clause claim would resolve confusion about the precedential character of the Chief Justice's discussion of the Commerce Clause in *NFIB*. *Compare United States v. Spann*, No. 3:12-CR-126-L 2012, WL 434199, at *3 (N.D. Tex. Sept. 24, 2012) (declining to adopt Chief Justice's Commerce Clause analysis as binding precedent), *with United States v. Loudner*, No. CR 12-30144-RAL, 2013 WL 357494, at *4 (D.S.D. Jan. 29, 2013) (applying Chief Justice's Commerce Clause opinion as a holding).

[2] The Act contains many other taxes as well, raising billions for the Treasury. *See* Brief of Amici Curiae U.S. Representatives Trent Franks, et al., Addendum C.

2017 to bring $4 billion in annual revenues to the IRS for general government operations—is an exercise of Congress's taxing power.[3] *NFIB*, 132 S. Ct. at 2594-95.

The Government argues that the Origination Clause does not apply, because the tax's "primary purpose" is to increase the number of insured Americans. Appellees' Brief at 9, 11. The Government relies on language from the PPACA, including Senate findings, to support its claim. *Id.* But the argument lacks merit.

First, the Government reads into the Origination Clause a requirement that simply does not exist. The Clause does not say that only bills whose purpose (let alone "primary" purpose), is to raise revenue must originate in the House. Indeed, the Framers of that Clause deliberately kept the House's origination power broad enough to include all bills that raise revenue regardless of the bill's purpose. For example, they rejected a proposed draft of the Origination Clause that would have applied only to "[b]ills for raising money for the purpose of revenue."[4] 2 Farrand, *The Records of*

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[3] The Government claims at one point in its brief that the PPACA is not a revenue-raising bill. Appellees' Brief at 21. But that position is inconsistent with the Senate's action on H.R. 3590. If the Senate had believed that the PPACA was *not* a bill for raising revenue, it would have simply originated the bill itself and sent it to the Democrat-controlled House for passage. Instead, the Senate found it necessary to gut and replace a totally unrelated House bill it considered to be a bill for raising revenue—a concession on the part of the Senate that it deemed the PPACA to be a bill for raising revenue.

[4] The language itself of the rejected draft casts doubt on the Government's construction of the Origination Clause, as finally adopted. The draft indicates that the term "for" was *not* enough to link the bill to a specific purpose; had it been enough, (continued...)

the Federal Convention of 1787 at 273. In other words, the Government's attempt to import a massive exception based on a bill's alleged "purpose" ignores the Clause's history and original meaning.

It is true that the Court has held that certain types of revenue-raising measures do not qualify as "bills for raising revenue," but this was not on account of a general inquiry into the legislation's "purpose." Instead, these decisions reflect the fact that there is a presumption that the Origination Clause applies except in unusual cases. Those unusual cases are cases where the bills at issue generate funds earmarked for particular government programs, or where they are in fact "penalty assessments" that "are analogous to fines." *United States v. Ashburn*, 884 F.2d 901, 904 (6th Cir. 1989). In all such cases, these penalties enforced a statute that was passed pursuant to a congressional power other than the taxing power.

For example, in *Twin City Nat'l Bank of New Brighton v. Nebecker*, 167 U.S. 196, 202 (1987), the Supreme Court upheld a tax on bank notes, because it was imposed for the purpose of financing the cost of establishing a national currency—i.e., in furtherance of Congress's Article I power to coin money.

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[4] (...continued)
there would have been no need to add a clarifying, purposive clause. In other words, if the Government were right that the term "for" necessarily implies *purpose*, then the rejected draft would have consisted of a redundancy: "Bills [for the purpose of] raising money for the purpose of revenue."

U.S. Const. art. I, § 8, cl. 5. In *Millard v. Roberts*, 202 U.S. 429, 437 (1906), the Court upheld a tax, because revenue was allocated to railroad companies for the express purpose of financing railroad projects in the District of Columbia, over which Congress has exclusive jurisdiction "in all Cases whatsoever." U.S. Const. art. I, § 8, cl. 17. In *Munoz-Flores*, 495 U.S. at 397-98, the Court upheld a monetary assessment on defendants convicted of federal misdemeanors, because the assessment raised revenues for a special Crimes Victims Fund that was earmarked for compensating and assisting federal crime victims—a program authorized under Congress's Commerce Clause Power.[5] But in no case has the Court created an exception to the Origination Clause that hinges on a general inquiry into Congress's "purposes."

The section 5000A(b) tax is fundamentally different from the taxes/assessments at issue in those decisions. The section 5000A(b) tax serves no *constitutional* purpose other than to raise revenue pursuant to Congress's taxing power. It may have a *regulatory* purpose as well, since "[e]very tax is in some measure regulatory." *NFIB*, 132 S. Ct. at 2596. But, unlike in *Nebecker*, *Millard*, and *Munoz-Flores*, the

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[5] The Government also cites to three pre-*Munoz-Flores* opinions from the Fifth, Sixth, and Tenth Circuits, which upheld the same Crimes Victims Fund assessment against an Origination Clause challenge. *United States v. King*, 891 F.2d 780 (10th Cir. 1989); *United States v. Herrada*, 887 F.2d 524 (5th Cir. 1989); *United States v. Ashburn*, 884 F.2d 901 (6th Cir. 1989). Like *Munoz-Flores*, the decisions shed no light on the applicability of the Origination Clause to revenue-raising bills that further only Congress's taxing power and no other congressional power.

tax here advances no regulatory purpose within Congress's enumerated powers. *NFIB*, 132 S. Ct. at 2595 (the section 5000A(b) tax is only "a tax, not a penalty" to enforce a statutory scheme within Congress's Commerce Clause or other power); *see also Ashburn*, 884 F.2d at 904 (distinguishing between "general revenue measures"—i.e., taxes—and "fines" whose "revenue . . . is merely incidental to the act's constitutionally authorized purpose of funding victim assistance programs"); *Rodgers v. United States*, 138 F.2d 992, 994-95 (6th Cir. 1943) ("There is a marked distinction between taxation for revenue . . . and the imposition of sanctions by the Congress under the commerce clause," and the Constitution's limits on the taxing power "relate[] solely to taxation generally for the purpose of revenue only, and not impositions made incidentally under the commerce clause.").[6]

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[6] The Government tries in vain to distinguish *Ashburn* and *Rodgers*. It argues that the *Ashburn* assessments survived an Origination Clause challenge, in part because they were "means to the purposes provided by the act"—*purposes within Congress's constitutional authority to pursue*—and not "measures made for the direct and avowed purpose of creating revenue or public funds for the service of the Government." Appellees' Brief at 14 (internal citations and quotation marks omitted). Here, section 5000A(b) serves no constitutional purpose, other than to raise revenues pursuant to Congress's taxing power. While not an Origination Clause case, *Rodgers* similarly serves to illustrate that there are two kinds of taxes: (1) taxes that raise revenue as an exercise only of Congress's taxing power, and (2) taxes that further the exercise of some other congressional power (like the Commerce Clause power). *Rodgers*, 138 F.2d at 994-95. Again, a majority of the *NFIB* Court rejected the notion that section 5000A(b) could be upheld as an exercise of Congress's Commerce Clause power; instead, the Court held that *only* the taxing power could constitutionally justify it.

Second, the Government's gloss on the Origination Clause unnecessarily assigns the Court the daunting task of divining the varied purposes of the author of section 5000A(b) tax: the Senate. The *statutorily* inferred purposes of a tax are irrelevant to the *constitutional* question of whether the Origination Clause applies to the tax. This Court should be guided only by what the "shared responsibility payment" actually does—in this case, raise revenues—and whether one of the narrow exceptions to the Origination Clause applies.

The Supreme Court's decision in *NFIB* is instructive. In *NFIB*, the Court held that, despite legislative descriptions to the contrary, the "shared responsibility payment" was a tax for constitutional purposes. *Id*. The Court explained: "It is of course true that the Act describes the payment as a 'penalty,' not a 'tax.' But . . . that label . . . does not determine whether the payment may be viewed as an exercise of Congress's taxing power." *Id*. at 2594. The Court went on to contrast the PPACA tax with the penalty that the Court held invalid in *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922). *See NFIB*, 132 S. Ct. at 2595, 2599-2600, 2562. In *Drexel Furniture*, the Court found that Congress had passed a law "in the name of a tax which on the face of the act is a penalty." *Drexel Furniture*, 259 U.S. at 39. In *NFIB*, the Court found the reverse— i.e., that "what is called a 'penalty' here may be viewed as a tax." *NFIB*, 132 S. Ct. at 2596.

The PPACA's stated purposes for the section 5000A(b) tax cannot control whether that statute qualifies as a tax within the Origination Clause's purview. Indeed, to allow the *Senate*'s own findings to control the application of a constitutional provision designed to restrict its power and protect the *House*'s prerogatives would seriously weaken—if not totally eliminate—the Origination Clause's *raison d'être*. Were its findings relevant, the Senate easily could insert language in a tax bill that evinced purposes different from that of raising revenue, thereby insulating its origination of the tax bill from constitutional review under the Origination Clause. The Clause would become a dead letter—contrary to the Supreme Court's explicit instruction in *Munoz-Flores*, 495 U.S. at 389-97.

Finally, the Government relies on *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), for the uncontroversial proposition that the Taxing Clause and Origination Clause challenges represent separate lines of analysis. Appellees' Brief at 13. They undoubtedly do. But the Government conveniently ignores the Fifth Circuit's explanation:

> The Taxing Clause analysis focuses on whether the assessment is a tax or a fee. . . . On the other hand, the Origination Clause analysis asks whether (1) the revenues generated from the assessment are for general revenues or for a particular program and (2) there is a connection between the payors and the beneficiaries of the program.

Id. at 427 n.50. Here, *NFIB* declared the "shared responsibility payment" to be a tax within Congress's taxing power. So the remaining question is whether the tax must

satisfy the Origination Clause. Since revenues generated from the tax are for general revenues—and not for a particular program—the tax is subject to the Origination Clause.

B. The "Shared Responsibility Payment" Tax Unconstitutionally Originated in the Senate

1. The Origination Clause Has a Justiciable "Germaneness" Requirement

Although the Origination Clause requires taxes like the "shared responsibility payment" to originate in the House, the tax originated in the Senate. The Senate gutted a six-page House bill that would have given members of the Armed Forces and other federal employees a first-time homebuyers credit. H.R. 3590 (111th Cong. 2009-2010). Then, the Senate entirely replaced the bill's language with the 2,000+ pages that became the PPACA. JA 26 (Senate replacement of H.R. 3590). The Senate did not "amend" H.R. 3590, because to qualify as a lawful amendment, the Senate's proposal must be "germane" to the subject matter of that House bill. *Flint*, 220 U.S. at 143 (recognizing that an amendment is lawful under the Origination Clause only if "germane" to the subject matter of the House-originated bill). Here, the "germaneness" test is not met, because H.R. 3590 simply provided a homebuyer credit, and had nothing to do with health care or health insurance reform—the subject matter of the Senate's PPACA.

Nevertheless, the Government argues that the PPACA tax originated in the House. It contends that the Origination Clause contains no justiciable "germaneness"[7] requirement and that the Senate's unfettered "substitution procedure"—as was used here—is commonplace. The Government's arguments lack merit.

First, the "germaneness" requirement *is* justiciable. The Government cites *Rainey v. United States*, 232 U.S. 310 (1914), in which the Court said that it could not "determine whether the [Senate] amendment was or was not outside the purposes of the original bill." *Id*. at 317. The statement is dicta, as it follows the Court's decision to uphold a Senate amendment that was, in fact, germane to a House revenue bill. *Id*. (referring to tax-related "amendment to a bill for raising revenue which originated in the House"). But even if the *Rainey* Court's statement were binding, the Court's later decision in *Munoz-Flores* makes clear that Origination Clause challenges—including the central question of "germaneness"—are justiciable. *Munoz-Flores*, 495 U.S. at 391 ("[T]he Court has the duty to review the constitutionality of congressional

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[7] At one point in its brief, the Government goes so far as to claim that "a germaneness requirement would be flatly at odds with the text of the Origination Clause." Appellees' Brief at 18. The requirement is implicit in the Clause's language. The Origination Clause mandates that all revenue-raising bills originate in the House and gives the Senate the power only to *amend* such bills. If the Senate's power to amend were not implicitly limited by the requirement that the amendment be germane to the bill's subject matter, then the *Senate* could originate revenue-raising bills, and the Clause would become a dead letter.

enactments."). "Germaneness" is at the heart of almost all Origination Clause challenges; to render "germaneness" nonjusticiable would be to shield essentially all Origination Clause claims from judicial review. Ironically, several of the cases that the Government cites actually reaffirm the justiciability of the "germaneness" requirement. *Armstrong v. United States*, 759 F.2d 1378, 1382 (9th Cir. 1985) (upholding Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) against Origination Clause challenge, because the Senate amendments "were germane to the subject-matter of the bill [reform of the income tax system]" (internal citation and quotation marks omitted)); *Boday v. United States*, 759 F.2d 1472, 1476 (9th Cir. 1985) (upholding TEFRA on "germaneness" grounds); *Wardell v. United States*, 757 F.2d 203, 205 (8th Cir. 1985) (per curiam) (upholding TEFRA on "germaneness" grounds); *Rowe v. United States*, 583 F. Supp. 1516, 1519 (D. Del. 1984) (upholding TEFRA on "germaneness" grounds, referred to as a "constitutional prerequisite[]").

Second, the Government cites Thomas Jefferson's *A Manual of Parliamentary Practice: For the Use of the Senate of the United States* (1812).[8] Written by then-Vice President Thomas Jefferson in his capacity as President of the Senate, and amended dramatically over the years, the *Manual* cannot enlarge or diminish the constitutionally defined powers of the Senate. But more importantly, it sheds no light

[8] *Available at* http://www.constitution.org/tj/tj-mpp.htm.

on the meaning of the Origination Clause's amendment provision. The *Manual* does contain a section on the Senate's power to amend House bills generally; however, that section says nothing about the Senate's amendment power over House revenue bills—a category of bills that the Constitution sets apart from all other bills for special treatment under the Origination Clause. If the Senate's power to amend House revenue bills were unfettered, then the Senate would be able to effectively originate all revenue bills and thereby skirt the Origination Clause's mandate. Jefferson's *Manual* offers no support for vitiating the Clause in this way.

Third, the Government relies on a series of examples in which the Senate amended House-originated tax bills to show how commonplace the practice is. Appellees' Brief at 16. But in every example, the subject matter of the Senate amendment was *germane* to the subject matter of the House bill; all of them concerned taxes. For example, the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085, was the product of a Senate amendment to a House-originated bill to overhaul the country's tax policy; the Senate amendment—which proposed changes to federal tax policy—was entirely germane to the House bill—which proposed similar changes to federal tax policy. *See, e.g.*, Daniel L. Simmons, *The Tax Reform Act of 1986: An Overview*, 1987 B.Y.U. L. Rev. 151, 162-66 (1987) (describing the development of the Act in the House and Senate); *see also* American Taxpayer Relief

Act of 2012, Pub. L. 112-240, 125 Stat. 2213) (product of Senate amendment to House-originated tax bill).

Finally, the Government argues that judicial scrutiny of Senate amendments to House-originated, revenue-raising bills is unnecessary, because the House can adequately defend its prerogative under the Origination Clause through, for example, the practice of "blue slipping." Appellees' Brief at 18-19. The Supreme Court explicitly rejected that argument in *Munoz-Flores*, explaining that, "[a]lthough the House certainly can refuse to pass a bill because it violates the Origination Clause, that ability does not absolve this Court of its responsibility to consider constitutional challenges to congressional enactments" and does not "obviate the need for judicial review." *Munoz-Flores*, 495 U.S. at 392. The Court recognized the purpose behind separation-of-power provisions, like the Origination Clause: Such constitutional provisions exist, not simply to protect a particular branch of government's powers, but to preserve individual freedom. *Id*. at 394 ("[T]he Government's claim that compliance with the Origination Clause is irrelevant to ensuring individual rights is in error. This Court has repeatedly emphasized that the Constitution diffuses power the better to secure liberty." (internal citation and quotation marks omitted)).

2. The Senate's Amendment Was Not Germane to H.R. 3590

The Senate's "amendment" in this case bears no relationship whatsoever to the subject matter of H.R. 3590. The Senate's legislation consists of a massive overhaul of the country's health-insurance system—in large part, through billions of dollars in revenue-raising taxes. In stark contrast, H.R. 3590 was a revenue-neutral bill providing a first-time homebuyer credit to members of the Armed Services and other federal employees. Two pieces of legislation could not be more unrelated.

Nevertheless, the Government argues that the Senate's "amendment" is "germane" to H.R. 3590. Appellees' Brief at 20. Quoting the lower court's opinion in this case, the Government asserts that the "germaneness" concept is "very loose"—an assertion allegedly supported by *Flint*. *Id*. Under that "loose" standard, the Senate's PPACA is germane to the House's homebuyer credit bill, because both are revenue-raising bills—which is the most that *Flint* would require. *Id*.

First, the Government grossly mischaracterizes the Senate amendment challenged in *Flint*. Unlike this case, *Flint* did not involve the Senate's wholesale substitution of a House revenue-raising bill. The Senate had simply amended one clause in a comprehensive House-originated tax bill—replacing a revenue-raising inheritance tax with a revenue-raising corporate excise tax. *Flint*, 220 U.S. at 142. The bill that the House sent to the Senate was nearly identical to the amended bill that the Senate returned. The Senate's challenged action in *Flint* pales in comparison to

the gut-and-substitute procedure used in this case to transform a revenue-neutral, homebuyer credit bill into a revenue-raising, health-insurance reform law.

The Government contends that enforcement of the "germaneness" requirement would involve this Court in complicated line-drawing exercises, determining what sorts of amendments are or are not acceptable. But no such fine detail is necessary here, where the entire text of the original bill was replaced wholesale by an entirely different piece of legislation. To paraphrase the *NFIB* Court, there is no need to fix a line—"it is enough for today that wherever that line may be, this statute is surely beyond it." *NFIB*, 132 S. Ct. at 2606-07.

Second, H.R. 3590 was not a bill for raising revenue. By offsetting a homebuyer credit with an unrelated corporate tax, the bill obviously was designed to be revenue-neutral. H.R. 3590 at 6. The corporate tax was not a bill for raising revenue; it was a bill for neutralizing the revenue loss resulting from the homebuyer credit. *Id*. Unlike the PPACA in general, and the "shared responsibility payment" in particular, H.R. 3590 generated no revenue for the Treasury to fund general government operations.

As explained in its opening brief, even if H.R. 3590 could be deemed a bill for raising revenue, the Senate's amendment still bears a constitutionally inadequate relationship to the House bill. Regardless of the revenue impacts of the two pieces of legislation, it would exceed the bounds of reason to assert that a health-insurance-

reform bill is "germane" to a bill providing first-time homebuyers a tax credit. To accept that assertion is to strip the House of its exclusive prerogative to originate revenue bills, thereby erasing the Origination Clause from the Constitution.

CONCLUSION

The Act's individual mandate is unconstitutional under the Commerce Clause, and the "shared responsibility payment" is a bill for raising revenue that violates the Origination Clause. The district court's dismissal of Sissel's amended complaint should be reversed.

DATED: December 20, 2013.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that the foregoing brief complies with type-volume limitation of Rule 32(a)(7)(B), in that it contains 4,326 words.

/s/PAUL J. BEARD, II
PAUL J. BEARD, II

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT'S REPLY BRIEF was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit on December 20, 2013, by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/PAUL J. BEARD, II
PAUL J. BEARD, II