

1. The District Court’s discussion of Article III standing for the individual plaintiffs, and in particular for a plaintiff named David Klemencic, appears at pages 11-18 of the transcript. The Court concluded that Klemencic had sufficiently established Article III standing, because absent the subsidy made available to him by the IRS Rule, “he would undoubtedly be entitled to the certificates of exemption exempting him from the individual mandate penalty and from the need to buy insurance, and that would be the end of the matter.” (Exh. A, at 12.) By making him eligible for a subsidy, however, the IRS Rule disqualifies Klemencic from that exemption and so “he’s going to be forced to buy insurance,” and thus “to do something he otherwise would not do.” (*Id.*) Accordingly, “Mr. Klemencic has Article III standing.” (*Id.* at 18.) The same logic applies at least to Plaintiffs Hurst and Levy in this action, as Plaintiffs have explained.¹

2. The District Court’s discussion of prudential standing for the individual plaintiffs appears at pages 24-28 of the transcript. The Court rejected the Government’s argument—which is the same argument that the Government presses here—by pointing out that “[t]he Court cannot resolve the merits question of the statute’s true interests, let alone accept the Government’s view of the merits as a means of denying the plaintiffs the chance to make their merits arguments.” (*Id.* at 27.) Moreover, “the individual plaintiffs are directly regulated by the IRS Rule, and this is enough to bring them within the zone of interest[s].” (*Id.* at 28.) The Court thus concluded that “the plaintiffs have the much better argument,” and “clearly the individual plaintiffs have prudential standing.” (*Id.* at 27-28.) Again, the very same is true here.

¹ The District Court in *Halbig* did not reach the question whether the *employer* plaintiffs also had standing, which implicated what it viewed as more complicated redressability questions, because only one plaintiff need have standing to allow a case to move forward. (*See* Exh. A, at 13, 24.) Regardless, there are no employer plaintiffs in this action, and so the Government’s arguments about those distinct plaintiffs in *Halbig* are irrelevant here.

3. The Court's discussion of ripeness appears at pages 30-34 of the transcript. Judge Friedman stated: "I just don't buy" the Government's argument that the suit is not ripe. (*Id.* at 31.) The APA challenge to the IRS Rule raises a "purely legal question," and "[n]o further factual development will help me in deciding whether or not to vacate this regulation." (*Id.*) The Court explained that, because "the matter is as fit for judicial review, as it can be," the hardship prong of ripeness doctrine was "largely irrelevant." (*Id.* at 33.) Regardless, because the individual plaintiff, David Klemencic, showed "that he will be forced to do something he doesn't want to do"—namely, buy ACA-compliant insurance—unless the validity of the IRS Rule is resolved before the individual mandate takes effect, he had also shown hardship sufficient to render the case ripe. (*See id.* at 32-33.) Once again, the same is just as true here.

4. Finally, pages 34-36 of the transcript contains the District Court's discussion of the Government's argument that plaintiffs must violate the individual mandate, incur a penalty, and then pursue a tax refund rather than challenge the IRS Rule under the APA. Judge Friedman stated that he was "very skeptical of this argument," because it "undermines the purposes of the APA." (*Id.* at 34.) He explained that the individual plaintiffs were "requesting certificates of exemption at the outset and not tax refunds," and thus the tax-refund mechanism would not offer an adequate remedy. (*Id.*) That reasoning is equally applicable in this case.

5. After denying the Government's motion to dismiss, Judge Friedman declined to issue a preliminary injunction against the IRS Rule. He reasoned that no preliminary relief was needed, because he could expedite summary judgment briefing and issue a *final* judgment before irreparable injury occurred. (*See id.* at 45-46.) Indeed, Judge Friedman subsequently issued an order requiring all summary judgment briefing to be completed before Thanksgiving and setting argument for December 3, 2013, nearly a month before the individual mandate takes effect.

October 29, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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