

**UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

HONORABLE JOHN CONYERS, JR., Representing Michigan's 14th District; HONORABLE JOHN D. DINGELL, Representing Michigan's 15th District; HONORABLE CHARLES B. RANGEL, Representing New York's 15th District; HONORABLE GEORGE MILLER, Representing California's 7th District; HONORABLE JAMES L. OBERSTAR, Representing Minnesota's 8th District; HONORABLE BARNEY FRANK, Representing Massachusetts' 4th District; HONORABLE COLLIN C. PETERSON, Representing Minnesota's 7th District; HONORABLE BENNIE THOMPSON, Representing Mississippi's 2d District; HONORABLE FORTNEY PETE STARK, Representing California's 13th District; HONORABLE SHERROD BROWN, Representing Ohio's 13th District; HONORABLE LOUISE M. SLAUGHTER, Representing New York's 28th District,

Plaintiffs,

vs.

GEORGE W. BUSH; President of the United States; MIKE JOHANNNS, Secretary of the Department of Agriculture; CARLOS GUTIERREZ, Secretary of the Department of Commerce; MARGARET SPELLINGS, Secretary of the Department of Education; MICHAEL O. LEAVITT, Secretary of the Department of Health and Human Services; MICHAEL CHERTOFF, Secretary of the Department of Homeland Security; ALPHONSO JACKSON, Secretary of the Department of Housing and Urban Development; NORMAN MINETA, Secretary of the Department of Transportation; JOHN SNOW, Secretary of the Treasury; JOHN F. BOVENZI, Chief Operating Officer, Federal Deposit Insurance Corporation; BRADLEY D. BELT, Executive Director, Pension Benefit Guaranty Corporation; LEONIDAS RALPH MECHAM, Director, Administrative Office of the United States Courts,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Case: 2:06-cv-11972  
Assigned To: Edmunds, Nancy G  
Referral Judge: Capel, Wallace  
Filed: 04-28-2006 At 08:26 AM  
CMP CONYERS, ET AL V. BUSH, ET AL (TAM)

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs, the HONORABLE JOHN CONYERS, JR., the HONORABLE JOHN D. DINGELL, the HONORABLE CHARLES B. RANGEL, the HONORABLE GEORGE MILLER, the HONORABLE JAMES L. OBERSTAR, the HONORABLE BARNEY FRANK, the HONORABLE COLLIN C. PETERSON, the HONORABLE BENNIE THOMPSON, the HONORABLE FORTNEY PETE STARK, the HONORABLE SHERROD BROWN, the HONORABLE LOUISE M. SLAUGHTER and, by and through their attorneys, DYKEMA GOSSETT PLLC, and for their Complaint against Defendants GEORGE W. BUSH, President of the United States; MIKE JOHANNNS, Secretary of the Department of Agriculture; CARLOS GUTIERREZ, Secretary of the Department of Commerce; MARGARET SPELLINGS, Secretary of the Department of Education; MICHAEL O. LEAVITT, Secretary of the Department of Health and Human Services; MICHAEL CHERTOFF, Secretary of the Department of Homeland Security; ALPHONSO JACKSON, Secretary of the Department of Housing and Urban Development; NORMAN MINETA, Secretary of the Department of Transportation; JOHN SNOW, Secretary of the Treasury; JOHN F. BOVENZI, Chief Operating Officer of the FEDERAL DEPOSIT INSURANCE CORPORATION; BRADLEY D. BELT, Executive Director of the PENSION BENEFIT GUARANTY CORPORATION; and

LEONIDAS RALPH MECHAM, Director of the ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, state as follows:

1. This action challenges the legality of the Deficit Reduction Act of 2005 ("the Act"), Pub. L. No. 109-171, § 10001, 120 Stat. 4, 183, which was signed into law by President George W. Bush on February 8, 2006. Because the version of the Act passed by the House differed substantively from the version passed by the Senate and signed by the President, plaintiffs seek a declaration that the Act is not a law and a temporary restraining order to enjoin its continued implementation. The Act is invalid for failing to comply with Article I, Section 7 of the United States Constitution, which requires that bills pass both Houses of Congress in identical form before being signed by the President into law.

2. Plaintiffs are each members of the United States House of Representatives. Plaintiffs were entitled under the United States Constitution to vote on the bill being described as the Deficit Reduction Act prior to it becoming law. The Defendants are nonetheless treating the purported Act as a law of the United States. Plaintiffs have been disenfranchised from being able to carry out their constitutional responsibilities and duties by virtue of the manner in which this was enacted. Each suffers irreparable injury by the enactment of a law without the opportunity to participate in its consideration as is required under Article I, Section 7 of the United States Constitution.

3. Plaintiffs include all of the ranking members on the House Committees with jurisdiction over the programs whose budgets are affected by the purported changes in the Deficit Reduction Act or the procedures used to make those changes.

4. Defendants are individual government officers, each sued in his or her official capacity, and entities that are responsible for administering provisions of the Act.

### JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. §1331 as this is a case arising under the Constitution and laws of the United States.

6. This Court has personal jurisdiction over all of the individual defendants in that they are sued in their official capacities and thus have minimum contacts with this judicial district and are subject to the jurisdiction of its courts.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(e).

8. This Court has authority to order the relief requested under 28 U.S.C. §§2201 and 2202.

### PARTIES

9. Plaintiff John Conyers, Jr. is a Member of the United States House of Representatives representing citizens residing in the 14th District of the state of Michigan.

10. Plaintiff John D. Dingell is a Member of the United States House of Representatives representing citizens residing in the 15th District of the state of Michigan.

11. Plaintiff Charles B. Rangel is a Member of the United States House of Representatives representing citizens residing in the 15th District of the state of New York.

12. Plaintiff George Miller is a Member of the United States House of Representatives representing citizens residing in the 7th District of the state of California.

13. Plaintiff James L. Oberstar is a Member of the United States House of Representatives representing citizens residing in the 8<sup>th</sup> District of state of Minnesota.

14. Plaintiff Barney Frank is a Member of the United States House of Representatives representing citizens residing in the 4th District of the state of Massachusetts.

15. Plaintiff Collin C. Peterson is a Member of the United States House of Representatives representing citizens residing in the 7<sup>th</sup> District of the state of Minnesota.

16. Plaintiff Bennie Thompson is a Member of the United States House of Representatives representing citizens residing in the, 2d District of the state of Mississippi.

17. Plaintiff Fortney Pete Stark is a Member of the United States House of Representatives representing citizens residing in the 13th District of the state of California.

18. Plaintiff Sherrod Brown is a Member of the United States House of Representatives representing citizens residing in the 13th District of the state of Ohio.

19. Plaintiff Louise M. Slaughter, is a Member of the United States House of Representatives representing citizens residing in the 28<sup>th</sup> District of state of New York.

20. Defendant George W. Bush is the President of the United States and is ultimately responsible for all budgetary changes with the executive branch.

21. Defendant Mike Johanns is the Secretary of the Department of Agriculture and is responsible for effectuating budget changes contained in Title I of the Deficit Reduction Act.

22. Defendant Carlos Gutierrez is the Secretary of the Department of Commerce and is responsible for effectuating budget changes contained in Title III of the Deficit Reduction Act.

23. Defendant Margaret Spellings is the Secretary of the Department of Education and is responsible for effectuating budget changes contained in Title VIII of the Deficit Reduction Act.

24. Defendant Michael O. Leavitt is the Secretary of the Department of Health and Human Services and is responsible for effectuating budget changes contained in Titles IV, V, VI and IX of the Deficit Reduction Act.

25. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security and is responsible for effectuating budget changes contained in Title III of the Deficit Reduction Act.

26. Defendant Alphonso Jackson is the Secretary of the Department of Housing and Urban Development and is responsible for effectuating budget changes contained in Title II of the Deficit Reduction Act.

27. Defendant Norman Mineta is the Secretary of the Department of Transportation and is responsible for effectuating budget changes contained in Title IV of the Deficit Reduction Act.

28. Defendant John Snow is the Secretary of the Department of Treasury and is responsible for managing federal finances, collecting taxes, duties and monies paid to and due to the U.S., paying all bills of the U.S., and managing Government accounts and the public debt.

29. Defendant John F. Bovenzi, Chief Operating Officer of the Federal Deposit Insurance Corporation, is responsible for effectuating budget changes contained in Title II of the Deficit Reduction Act.

30. Defendant Bradley D. Belt, Executive Director of the Pension Benefit Guaranty Corporation, is responsible for effectuating budget changes contained in Title VIII of the Deficit Reduction Act.

31. Defendant Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, is responsible for effectuating budget changes contained in Title X of the Deficit Reduction Act.

### FACTS

32. On December 21, 2005, the United States Senate passed S. 1932, the Deficit Reduction Act of 2005. Section 5101 of the bill set the duration of Medicare payments to rent certain durable medical equipment at 13 months.

33. On February 1, 2006, the United States House of Representatives passed a bill purportedly identical to S. 1932, but Section 5101 of this bill set the duration of Medicare payments to rent certain durable medical equipment at 36 months instead of 13 months.

34. This additional 23 months of Medicare rental payments for durable medical equipment in the House-passed bill amounted to an increased federal outlay of approximately \$2 billion.

35. The United States House of Representatives and the United States Senate therefore failed to pass identical versions of S. 1932.

36. The United States Constitution requires that in order for a bill to be signed into law by the President and to take effect, the House and the Senate must pass identical versions of the bill.

37. On February 8, 2006, the version of S. 1932 presented to and signed by the President set the duration of Medicare payments to rent certain durable medical equipment at 13 months.

38. United States House Speaker Dennis Hastert and President Pro Tem of the United States Senate, Ted Stevens, signed a statement attesting that the bill signed by the President had been passed by both the United States House and the United States Senate. It is undisputable, however, that the House and Senate did not pass the same bill.

39. United States House Speaker Dennis Hastert, Senate Majority Leader Bill Frist, and President George W. Bush were all aware by late morning on February 8, 2006, prior to the signing ceremony, that the bill presented to the President reflected the Senate bill but was never passed by the House. On information and belief House Speaker Dennis Hastert, through his staff, had asked the administration to delay proceedings until the problem could be addressed by the House and Senate.

40. The bill signed by the President, on February 8, 2006 at 3:43 p.m., never was passed by the United States House of Representatives.

41. On February 8, 2006 at approximately 7:30 p.m. the United States Senate passed S.Con.Res. 80 by unanimous consent, stating: "That the enrollment of the bill S. 1932 as presented to the President for his signature on February 8, 2006, is deemed the true enrollment of the bill reflecting the intent of the Congress in enacting the bill into law." The assertion by the Senate that the bill is law can have no legal effect and has no bearing on such as 13 is not 36 months.

42. The enrollment of bill S. 1932, as prescribed in S.Con.Res. 80, did not take effect as law under the Constitution to render the bill a law since the bill neither had been considered nor voted on by the House of Representatives.

43. The bill presented to the President and signed by him could not become a law.

44. The President, members of his cabinet and federal corporations are treating as a law, a bill that is not the law of the United States.

### **INJURY**

45. As Members of the United States House of Representatives, Plaintiffs have been denied their right embodied in Article I, Section 7 of the United States Constitution to vote on legislation purportedly signed into law by the President. They have literally been disenfranchised in terms of their ability to vote and thus suffer irreparable injury.

46. Plaintiffs thus have been denied the opportunity to represent the interests of their constituents in the United States House of Representatives by voting on legislation signed by the President.

47. Plaintiffs have been denied the opportunity to persuade other members of the United States House of Representatives and thus have been disenfranchised from engaging in the deliberative process prescribed and required by the Constitution as a manner of enacting laws.

### **CAUSE OF ACTION**

#### **(For violation of the United States Constitution)**

48. Plaintiffs incorporate the preceding paragraphs of this Complaint herein by reference.

49. Article I, Section 7 of the United States Constitution provides that "Every bill...shall have passed the House of Representatives and the Senate" before it becomes a law.

50. The Deficit Reduction Act was signed by the President but was never passed by the United States House of Representatives. The Act thus never became a law as it violates the

express and clear requirements of Article I, Section 7 of the United States Constitution, and nor did it ever achieve status of the "supreme Law of the land" within the meaning of Article VI, Section 2."

WHEREFORE, Plaintiffs pray for:

- (A) An order declaring that the purported Act is not a law because it does not meet the requirements of Article I, Section 7 of the United States Constitution.
- (B) A temporary restraining order enjoining the continued implementation of the Act.
- (C) A preliminary and a permanent injunction preventing implementation of the Act.
- (D) Such other relief as the Court may deem just and proper.

Respectfully submitted,

**DYKEMA GOSSETT PLLC**

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