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PRESS RELEASE

Contact: Savannah Shafer, Director of Communications
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FOR IMMEDIATE RELEASE
January 23, 2015

**PRESS CONFERENCE 10:30 A.M. MONDAY: WARREN COUNTY COMMISSIONERS,
WARREN COUNTY PROSECUTOR, AND OHIO ATTORNEY GENERAL MIKE DEWINE
TO HOLD JOINT PRESS CONFERENCE**

*Update on letters sent to Obama Administration for unconstitutional
taking of local taxpayer money*

WARREN COUNTY, OHIO — On Monday, Jan. 26, 2015, the Warren County Board of Commissioners will present updates on letters objecting to Affordable Care Act regulations which impose tax fees/ fines by the Obama Administration onto the local county government.

- WHAT:** Press conference to present updates on letters objecting to Affordable Care Act regulations
- WHO:** David G. Young, President of the Warren County Board of Commissioners; David P. Fornshell, Warren County Prosecuting Attorney; Ohio Attorney General Mike DeWine
- WHERE:** Warren County Administration Building
Commissioners Meeting Room
406 Justice Drive, First Floor
Lebanon, Ohio 45036
- WHEN:** 10:30 a.m. on Monday, January 26, 2015
- For Interviews:** Savannah Shafer - (513) 673-2618

BACKGROUND: In November 2014, the Warren County, Ohio Board of Commissioners began the process, through the Ohio Attorney General's Office, Warren County Prosecutor P. David Fornshell, and private counsel, Kyle Duncan, Esq. of Washington, D.C. (lead counsel to Hobby Lobby in *Burwell v. Hobby Lobby*), to object to the fees attached to the Affordable Care Act Transitional Reinsurance Program (TRP).

READ THE COMPLAINT LETTERS: [Warren County Board of Commissioners to the Honorable Sylvia Mathews Burwell](#) and [Ohio Attorney General Mike DeWine to the Honorable Sylvia Mathews Burwell](#)

According to the federal guidelines, the fees imposed against Warren County, and other state and local governmental entities, will fund administrative costs of the Affordable Care Act (ACA), and reinsurance payments to issuers of “non-grandfathered reinsurance-eligible individual market plans”. The TRP also requires a portion of these fees to be deposited directly into the U.S. Treasury. The Warren County Board of Commissioners views this as a tax on state and local government that is clearly unconstitutional.

According to TRP language, “The ACA reinsurance program is funded through fees levied on all health insurance plans, including self-insured plans that use a third-party administrator for core health care services. A rule finalized in early 2014 exempted self-insured, self-administered plans from paying the fee in 2015 and 2016”.

Warren County, like many other counties and states, has self-insured health care coverage, and utilizes a third party administration company to administer its plan. It is therefore not exempt from these fees. The fees are \$63 for employees and dependents for 2015, with the per person charge estimated at \$44 for 2016, and \$27 for 2017. Warren County’s plan covers about 1,808 employees and dependents, which means we are being taxed \$113,904 in 2015, \$79,552 in 2016, and \$48,816 in 2017.

Warren County Commissioners opted to make the initial payment of \$94,710.00 on January 15, 2015 because the ACA’s penalty for non-compliance with remitting the Transitional Reinsurance Fee is \$100 per day, per covered life. Had Warren County not made the initial payment, our penalty would be \$100 x 1,808 (current employees and dependents) = **\$180,800 A DAY!**

"The Obama administration has to understand that we don't work for them – county government is a government for the tax-paying county citizens," said David Young, Warren County Board of Commissioners President. "We, the county commissioners, as all local county officials should, operate and fight for the honest and effective governing of county tax payer money."

"The Obama Administration’s cavalier approach to funding the Affordable Care Act is reckless, risky, unethical and, we believe, unconstitutional."

The Warren County Board of Commissioners’ mission is to respect, value, and respond to the dynamic needs of our residents, businesses, and visitors. Working in partnership with our community, Warren County will work to conscientiously protect and enhance the health, safety, and quality of life of our residents, businesses, and communities in a respectful, efficient, and fiscally responsible way that addresses the needs today and invests in tomorrow.

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**BOARD OF COUNTY COMMISSIONERS
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TOM ARISS

PAT ARNOLD SOUTH

DAVID G. YOUNG

November 18, 2014

Ms. Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Tavenner:

Pursuant to the terms of the transitional reinsurance program established under Section 1341 of the Affordable Care Act, the Warren County, Ohio Board of County Commissioners (the "Board") is required to make certain electronic filings for the processing of ACA payments to the Center for Medicare and Medicaid Services ("CMS") by December 19, 2014.

In order to meet this requirement, the online portal requires the Board to "check" an acknowledgment before proceeding with the mere act of registration with CMS. The language of this acknowledgment states as follows:

Acknowledgement: My acknowledgement is on behalf of my organization and the contributing entities for which the data and accompanying payments are being submitted. My acknowledgement legally and financially binds my organization and each contributing entity to the applicable laws, regulations and program instructions of the Affordable Care Act (ACA). By my submission I certify that the data are true and correct and complete. If my organization or any contributing entity becomes aware that data are untrue, incorrect, or incomplete, CMS shall be promptly informed. If CMS identifies a discrepancy or has questions about the data being submitted, I agree to be the contact for responding to such questions. I acknowledge that the provision of the Affordable Care Act specifically make payments made by or in connection with an Exchange subject to the False Claims Act if those payments include any Federal funds. This includes but is not limited to the transitional reinsurance program established under Section 1341 of the Affordable Care Act.

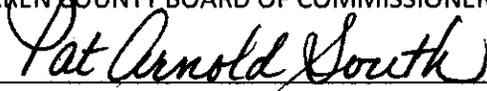
Notably, the CMS online portal does not allow the Board, or presumably any other user, to proceed with registering with CMS for the processing of payments without "checking" this acknowledgment.

The Board and its legal counsel have significant concerns regarding the federal government's imposition of the transitional reinsurance program against state and local governments and believe that the program may violate various constitutional, statutory, and regulatory authority. However, the online registration portal does not provide the Board the ability to address these concerns without foregoing registration with the CMS altogether, thereby potentially placing the Board in legal jeopardy and the imposition of potentially millions of dollars in fines for failing to comply with the terms of the ACA and those administrative regulations that have been developed to implement the ACA. Therefore, we are addressing the issue through this letter.

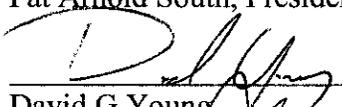
Please note that, notwithstanding the Board's intention to proceed with the online execution of the aforementioned acknowledgment on the online CMS portal and to proceed with the payments required of it pursuant to the terms of the transitional reinsurance program established under Section 1341 of the ACA, the Board is doing so under reservation of rights. The Board reserves the right to bring any available constitutional, statutory, and/or administrative challenge to the ACA itself, including but not limited to the transitional reinsurance program established under Section 1341 of the ACA, and further reserves any and all legal remedies available to it under federal and state constitutional, statutory, and regulatory authority. The Board's execution of the aforementioned acknowledgment and the Board's tendering of any payment thereunder does not constitute a waiver of any of these legal rights.

Respectfully,

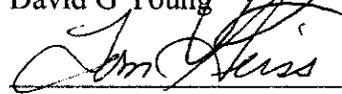
WARREN COUNTY BOARD OF COMMISSIONERS



Pat Arnold South, President



David G Young



Tom Ariss

cc: The Honorable Sylvia Mathews Burwell, Secretary of Health & Human Services
The Honorable Eric Holder Jr., Attorney General of the United States
The Honorable John Kasich, Governor of Ohio
The Honorable Mike Dewine, Attorney General, State of Ohio
The Honorable Rob Portman, United States Senator
The Honorable Sherrod Brown, United State Senator
The Honorable Steve Chabot, United State House of Representatives
The Honorable Shannon Jones, Senator, State of Ohio
The Honorable Ron Maag, Representative, State of Ohio
The Honorable Paul Zeltwanger, Representative Elect, State of Ohio
The Honorable David Fornshell, Warren County Prosecutor
Suzanne Dulaney, Esq., Executive Director CCAO



MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Administration
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Columbus, OH 43215
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January 8, 2015

Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

VIA EMAIL AND REGULAR U.S. MAIL

Re: Protest and reservation of rights regarding the Transitional Reinsurance tax as applied directly against the State of Ohio

Dear Secretary Burwell:

The tax being levied by the federal Department of Health and Human Services in connection with the Affordable Care Act's "Transitional Reinsurance Program" does not and constitutionally cannot apply to State governments and their instrumentalities. The executive branch of the federal government apparently takes a different view of the relationship between the federal government and the States, however, and purports to apply these tax assessments (called mandatory "reinsurance contributions") directly against State and local governments that operate self-insured group health care plans to care for government employees.

Therefore, as chief law officer and litigation counsel for the State of Ohio and its officers and departments, I write: (1) to urge that you reconsider this misguided and unprecedented assertion of federal power that threatens radically to alter the balance of authority between the federal government and the States; (2) to request that the federal government take no action to process these proposed assessments against the State of Ohio and its instrumentalities or to take control of or retain monies made available by the State or its departments through the paygov.com site under this protest and pursuant to federal demand; and (3) to advise you that should the federal government persist in its stated intent to process these assessments against the State and its departments, the State of Ohio intends to take all appropriate legal action to recoup such forced payments exacted from State entities.

We find no explicit statement in the Affordable Care Act that Congress intended to levy the Transitional Reinsurance taxes directly against the State and its instrumentalities; the relevant statutory sections do not extend their reach that broadly. We do not believe that Congress meant to do such violence to our constitutional structures and the checks and balances provided by our system of federalism and the Tenth Amendment. For the federal government to assert a power to tax the States directly, as the executive branch now purports to do in the form of "contributions" mandated from State self-insured government employee group health plans (as operated in our State, for example, by the Ohio Department of Administrative Services and others), would

violate fundamental constitutional principles that ordain and limit federal and State spheres of authority.

This claimed federal authority would be an affront to the structural protections of our United States Constitution even if the tax imposed on State entities were to be directed entirely to providing monies for federal transfer to designated insurance companies. This scheme is all the more blatant, however, because the federal administrative apparatus here is claiming power to tax the States even beyond assessments earmarked for reinsurance purposes, and admits to demanding additional monies destined for the general fund of the United States Treasury. Such “lagniappe” may have its precedents, but not as applied to the States within our federal constitutional structure.

Please provide assurance that the monies being made available by State entities including the Ohio Department of Administrative Services under the federal regulations assessing these taxes will not be taken from the State of Ohio or its departments or instrumentalities. If the federal government does collect these taxes from the State and its instrumentalities, please consider this letter a demand for immediate refund of all monies thus wrongfully taken from the State of Ohio and its State entities.

My staff would welcome the opportunity to speak with your legal representatives at their earliest convenience and would ask that they call my Senior Advisor Fred Nelson (614.728.4947) or State Solicitor Eric Murphy (614.995.2273) to discuss these issues within the next seven days. If we are wrong in our understanding that the federal Administration purports to apply these assessments directly against the States and their instrumentalities, please advise us of that fact promptly: we will be very appreciative if you can correct any misapprehension we have on that score. Thank you very much for what I hope will be your appropriate consideration of these critical concerns.

Very respectfully yours,

A handwritten signature in blue ink that reads "Mike DeWine". The signature is written in a cursive, flowing style.

Mike DeWine
Attorney General of the State of Ohio

cc: Honorable Eric H. Holder, Jr., U.S. Attorney General
Marilyn Tavenner, Administrator, Centers for Medicare & Medicaid Services
Honorable David P. Fornshell, Prosecuting Attorney, Warren County, Ohio