

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

<hr/> ROBERT L. SCHULZ,)	
)	
Plaintiff)	
)	
-against-)	No.
)	
UNITED STATES EXECUTIVE DEPARTMENT,)	
GEORGE W. BUSH, President of the United States,)	
HENRY M. PAULSON, JR., Secretary of the Treasury;)	
UNITED STATES CONGRESS, NANCY PELOSI,)	
Speaker of the House of Representatives, HARRY)	
REID, Senate Majority Leader; UNITED STATES)	
FEDERAL RESERVE SYSTEM, BEN S. BERNANKE,)	
Chairman of the Board of the United States Federal)	
Reserve System,)	
Defendants)	

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF
SHOW CAUSE ORDER FOR TEMPORARY INJUNCTIVE RELIEF**

In support of the proposed Order to Show Cause, based on Plaintiff’s Declaration #1, and the Verified Complaint, Plaintiff, who is *pro se*, states as follows:

JURISDICTION

The Court’s jurisdiction to entertain this motion is provided by the Court’s Local Rules, L.R. 7.1(e) and 7.1(f).

This case arises under the Constitution of the United States of America. The controversy involves violations of the Constitution. The Court has subject matter jurisdiction under Article III, Section 2 of the Constitution, which reads in relevant part: “The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States...to Controversies between two or more States...between a State and citizens of another State ...

between citizens of different States....” This court has jurisdiction also under 28 U.S.C. Sections 1331 and 1343(3).

RELIEF REQUESTED

Plaintiff respectfully requests an order:

- a) Preliminarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors, from participating in commerce by using public, taxpayer funds to purchase any real or personal property from any private entity for any definitively private purpose until this case is finally determined and any appeal thereof, and
- b) Temporarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors, from participating in commerce by using public, taxpayer funds to purchase any real or personal property from any private entity for any definitively private purpose until the return date of this Show Cause Order, and
- c) Expediting these proceedings where this matter might be set for trial, and
- d) Granting any further relief that to the Court may seem just and proper.

THE URGENCY

The standard motion and notice practice cannot be used.

This memorandum is in support of Plaintiff’s proposed Show Cause Order to temporarily enjoin, prohibit and restrict Defendants from using any public, taxpayer funds to *participate* in commerce by purchasing any private assets from any private entity for a private purpose.

The Executive and Legislative branches of the Government of the United States are negotiating the language of an act of Congress that would, *inter alia*, (allegedly) authorize the Executive Department to use approximately \$700 billion to *participate* in commerce by purchasing an untold number of distressed private assets, at some unknown price, for resale at some unknown price (the “ACT”), for a decidedly private purpose.

The Executive and Legislative branches are expected to reach agreement and adopt the Act as early as Thursday, September 25, 2008.

As soon as the Act is adopted the Treasury Secretary is expected to immediately begin purchasing real and personal property from an untold number of unknown, private entities, including those of foreign domicile.

FACTS

On Saturday, September 20, 2008, the Executive Department submitted to the Congress proposed legislation which, if passed by the Congress and signed into law by the President, would (allegedly) “authorize” the Secretary of the Treasury to (unconstitutionally) *participate* in commerce by spending \$700 billion of public, taxpayer funds to purchases of private mortgage-related property and/or private financial instruments. For a copy of the proposed legislation, see Schulz Declaration #1, Exhibit A.

The proposed purchases are for the decidedly *private* purpose of reversing and/or mitigating negative market outcomes that have directly resulted from the private investment and/or contractual activities of those private entities.

While the Congress and the Executive Department have been negotiating the final language, terms and conditions of the draft, addressing such issues as congressional oversight, private executive pay and bonuses, the purchase of assets in addition to mortgage related assets,

adding private assets owned by foreign entities, providing additional relief for homeowners threatened with foreclosure, and the method for determining the private assets to be purchased and the price to be paid, the essential, operative legal framework defined in the draft bill is not expected to change; that is, the Secretary of the Treasury will be authorized to *participate* in commerce by spending \$700 billion of public, taxpayer funds to purchase the private assets and property of an untold number of private parties for definitively private purposes and benefit.

In effect, the legislation would purport (without any Constitutional basis) to "authorize" the use of hundreds of billions of dollars of public, U.S. taxpayer funds to socialize (i.e., nationalize) the losses resulting from the "bad investments" of private entities by purchasing and removing overvalued or otherwise worthless real and personal property from the accounting balance sheets of those private, for-profit entities.

ARGUMENT

DEFENDANTS' USE OF PUBLIC, TAXPAYER FUNDS TO PARTICIPATE IN COMMERCE AS A BUYER OF PRIVATE ASSETS FOR A DEFINITELY PRIVATE PURPOSE IS WITHOUT CONSTITUTIONAL AUTHORITY

The Executive Department is not authorized, with or without the approval of Congress, to *participate* in commerce as a buyer of private assets for decidedly private purposes. This is true, regardless of any noble intent or perceived public benefit of such program. The several arguments put forth in the Complaint are invoked here in full.

PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

The Constitution must be construed in its entirety.

There is no provision of the Constitution that gives the Government of the United States of America the power to participate in commerce as a purchaser and/or marketer of private property for decidedly private purposes.

Under Article I, Section 8 of the Constitution of the United States of America, the People have given Congress the power, **“To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes,”**

Article I, Section 8 of the Constitution of the United States of America gives Congress the power to regulate commerce, not to *participate* in commerce as a purchaser and seller of private property for a definitively private purpose.

The *First Amendment* to the Constitution of the United States of America reads in part:

“Congress shall make no law...abridging ... the Right of the People peaceably to Assemble and to Petition the Government for Redress of Grievances.”

This lawsuit is a Petition for Redress (remedy) of a Constitutional tort. No act of Congress can, in equity or in law, bar this Court from determining the merits of Plaintiff's complaint and granting the requested relief.

The *Fifth Amendment* to the Constitution of the United States of America reads in part:

“No person shall be deprived of ...liberty, or property, without due process of law....”

Plaintiff is a payer of federal taxes. The Right not to have his money taken from him for illicit purposes is an unalienable Property Right of the Plaintiff. The unauthorized use of taxpayer funds infringes upon Plaintiff's individual, unalienable Right to Liberty and Property.

Plaintiff's Liberty and Property depend upon his vigilance and ability to defend against any act or threat by Defendants to diminish the value of his or her Right to retain his money property.

The *Ninth Amendment* reads:

“The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People.”

Plaintiff claims and is exercising his natural Right to challenge Defendants’ cooperative decision to deny Plaintiff his constitutional Right to constitutional governance carried out in decency and good order and to a Government that does not act without the consent of the governed, and to do so in any one of the federal District Courts.

The *Tenth Amendment* to the Constitution of the United States of America reads:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.”

The power to use public, taxpayer funds to participate in commerce by purchasing and selling private assets is clearly reserved to the People, who have not expressly transferred that power to Defendants via the Constitution. The legislation being negotiated among and between Defendants is a usurpation of the inherent power and vital interests of the free People of the United States of America.

Plaintiff, as a citizen of the United States, is to enjoy the privilege and Right of knowing that no branch or official of the United States is acting without constitutional authority.

The Supreme Court and the Founder’s opinions are clear, no department of the Government can violate Fundamental Rights possessed by the People, not even Congress.

“And the Constitution itself is in every real sense a law-the lawmakers being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not rationally possible. 'We the People of the United States,' it says, 'do ordain and establish this Constitution.' Ordain

and establish! These are definite words of enactment, and without more would stamp what follows with the dignity and character of law. The framers of the Constitution, however, were not content to let the matter rest here, but provided explicitly- 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land.' (Const. art. 6, cl. 2.) The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior statute whenever the two conflict. In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, *Adkins v. Children's Hospital*, [261 U.S. 525, 544](#), 43 S.Ct. 394, 24 A.L.R. 1238; but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry. *Schechter Poultry Corp. v. United States*, [295 U.S. 495, 549](#), 550 S., 55 S.Ct. 837, 97 A.L.R. 947." *Carter v. Carter Coal Co.*, [298 U.S. 238](#) (1936) .

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them”. *Miranda v. Arizona*, 384 U.S. 436 (1966)

“There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

“If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there

should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

**“Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.”
Hamilton, *Federalist No. 78***

Lacking any court ruling declaring the full contours of the meaning of the Petition Clause as it applies to ordinary natural citizens seeking Redress against their Government for a constitutional tort, and taking into account the plain language of and the Framers’ intent behind the words of the last ten words of the First Amendment to the Constitution, the 791 years of history documenting the evolution of Liberty from Runnymede to Philadelphia, and the complete absence of any case law in opposition to Plaintiff’s interpretation of the Constitution, the ends of Justice and Liberty require that deference, and the presumption that those fundamental Rights exist as argued by Plaintiff must be secured for Plaintiff who, by this Petition, has claimed and is exercising those Rights.

The individual’s Right, through the Accountability Clause of the First Amendment, to hold any branch of the government accountable to the Constitution, is the “capstone” Right, the period at the end of the sentence on Liberty’s evolution, for “law without it, is law without justice.”

Let the Defendants come forth to present evidence of their Constitutional and statutory authority to engage in this transaction.

IMMEDIATE AND IRREPARABLE HARM

Unless the Temporary and Preliminary Injunctions are issued, Plaintiff's harm will be immediate and irreparable. With no authority to do so, Defendants are about to put at risk at least \$700 billion of public, taxpayer funds to purchase private, so called "toxic" financial assets that are decidedly overvalued and unmarketable at anywhere close to the price the private entities purchased them for.

Within days, with no constitutional authority to do so, Defendants will begin to use public, taxpayer funds to purchase worthless or near worthless property from private entities for definitively private purposes.

Within days, with no constitutional authority to do so, Defendants will begin socializing the losses derived from the private investment and contracting activities of an unknown number of private, for-profit entities, including entities of foreign domicile.

An important part of the immediate and irreparable injury finds its roots in the on-going abridgment by Defendants of Plaintiff's constitutional Rights as articulated above.

Plaintiff has an unalienable, individual Right to a Government that does not have its officials acting without Constitutional and congressional authority. Plaintiff's Rights must be upheld prior to enforcement if they are to be enjoyed at all. "The loss of ...freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Ellrod v. Burns* (1976) [427 U.S. 347](#), 373, 96 S.Ct. 2673, 2690.

Once the spigot is opened by the Act it will not be possible to recover the public funds that will immediately flow from the public treasury to the countless number of unknown private entities earmarked to receive them.

Plaintiff's harm is immediate and irreparable.

BALANCING OF THE EQUITIES

If the injunction issues, no harm will come to Defendants. If in fact any entity is in any real danger of not being able to meet its financial commitments it can file for protection under the nation's bankruptcy laws. That's what the bankruptcy courts are there for.

On the other hand, if the injunction does not issue, Plaintiff's harm will be immediate and irreparable.

CONCLUSION

Based on the above, plaintiff respectfully requests an order under L.R. 7.1(e) and 7.1(f):

- a) Preliminarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors from giving or lending any public money or public credit to purchase any assets from any private entity, foreign or domestic until this case is finally determined and any appeal thereof, and
- b) Temporarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors, from giving or lending any public money or public credit to purchase any assets from any private entity, foreign or domestic until the return date of this Show Cause Order, and
- c) Expediting these proceedings where this matter might be set for trial, and
- d) Granting any further relief that to the Court may seem just and proper.

Respectfully submitted.

September 24, 2008

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