UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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ROBERT L. SCHULZ,

Plaintiff, **1:08-CV-991 (Lead)**
(GLS/DRH)

v.

UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE; Chairman of the United States Federal Reserve System, UNITED STATES DEPARTMENT OF THE TREASURY, HENRY M. PAULSON, JR.; Secretary of the United States Department of the Treasury, and the UNITED STATES,

Defendants.
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ROBERT L. SCHULZ,

Plaintiff, **1:08-CV-1011 (Member)**
(GLS/DRH)

v.

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, and BEN S. BERNANKE; Chairman of the Board of the United States Federal Reserve System,

Defendants.
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PRELIMINARY STATEMENT

Plaintiff Robert L. Schulz has filed two lawsuits. The first seeks to enjoin the federal bailout of AIG.[1] The second seeks to enjoin the larger $700 billion economic bailout. Schulz alleges standing as a taxpayer. In two prior orders, this Court denied Schulz's requests for a temporary restraining order, preliminary injunction and temporary injunction, on the ground that Schulz was asking the Court to interfere in the affairs of both Congress and the Executive Branch, without citation of any authority or any explanation of the Court's jurisdiction.

The defendants[2] now move to dismiss both actions for similar reasons: Schulz still has stated no reason why the Court has jurisdiction, he lacks standing as a taxpayer to interfere with the lawful actions of Congress and the Executive Branch, and his claims against Congress are barred by the Speech or Debate Clause.[3]

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[1] American International Group.

[2] This motion is made on behalf of all defendants in both actions, 08-CV-991 and 08-CV-1011.

[3] Robert L. Schulz appears *pro se*. He will be referred to as Schulz. Defendant "United States Federal Reserve System," properly known as the Board of Governors of the Federal Reserve System, will be referred to as "the Board." Speaker Pelosi, Majority Leader Reid, and the United States Congress, will be referred to collectively as the "congressional defendants." Copies of relevant documents are attached, namely the Complaint in each action, this Court's Text Only Order filed 9/23/08 in 08-CV-911, and this Court's Memorandum-Decision and Order dated 9/25/08.

FACTS

AIG Complaint (08-CV-991)

On September 18, 2008, Schulz filed a Complaint, *Schulz v. United States Federal Reserve System et al.*, 08-CV-991. The defendants include several prominent federal officials and bodies.[4] The Complaint alleges that Schulz pays taxes to the United States and New York State (¶ 4), and the defendants agreed to an $85 billion bailout of an insurance company, American International Group (¶ 10) which puts taxpayer money at risk (¶ 12). The Complaint alleges that the agreement is ultra vires and unconstitutional (¶ 15) and seeks a permanent injunction barring defendants from giving or lending any public, taxpayer monies to AIG (¶ 14).[5]

Schulz also moved for a temporary restraining order (Docket no. 4,5).

$700 billion Complaint (08-CV-1011)

On September 24, 2008 Schulz filed a second Complaint, *Schulz v. United States Executive Department et al.*, 08-CV-1011. This Complaint similarly names several prominent federal officials and bodies, and adds several congressional defendants as well.[6] Schulz again alleges that he pays

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[4] *See* caption, listing "United States Federal Reserve System, Ben S. Bernanki [sic], Chairman of the United States Federal Reserve System, United States Department of the Treasury, Henry M. Paulson, Jr., Secretary of the United State Department of the Treasury, and United States." We respectfully move to amend the caption to correct the spelling of Mr. Bernanke's name. The corrected spelling appears in the caption of this memorandum.

[5] The Complaint has two paragraphs numbered 14. This is the second paragraph 14, which follows paragraph 15 (p. 3).

[6] This caption names as defendants "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 State Federal Reserve System."

taxes to the United States and New York State (¶ 4). Schulz alleges that on September 20, 2008 the Executive Department submitted a proposed Act to Congress, which authorized the Secretary of the Treasury to spend $700 billion of taxpayer funds to purchase distressed mortgage-related assets from private parties (¶ 13); and alleges that this legislation would socialize the losses resulting from the bad investments of private entities (¶ 18). As with the first Complaint, Schulz again alleges that the defendants' actions are ultra vires and without constitutional authority (¶¶ 19-22). Schulz seeks an order declaring that any legislation which implements this action is without constitutional authority, null and void (¶ 24).

Schulz also moved for a temporary injunction (Docket no. 4) and preliminary injunction (Docket no. 5).[7]

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[7] Schulz has also been involved in tax-related constitutional litigation in the Second, Eighth, and Ninth Circuits. In the Second Circuit, the United States brought an action against Mr. Schulz for using We the People Foundation for Constitutional Education, Inc. and We the People Congress, Inc. "to market a nation-wide tax fraud scheme designed to help customers evade their federal tax liabilities and to interfere with the administration of the internal revenue laws." *See United States v. Schulz*, 529 F. Supp. 2d 341 (N.D.N.Y. 2007) (holding Defendants' fraudulent activities warranted injunctive relief), *aff'd by*, 517 F.3d 606 (2d Cir. 2008), *cert. denied*, No. 08-317, 2008 WL 4153770 (Oct. 14, 2008). *See also United States v. Schulz*, No. 07-0352, 2008 WL 2626567 (N.D.N.Y. Apr. 28, 2008) (granting enforcement of *Schulz*, 529 F. Supp. 2d 341), *reconsideration denied*, No. 07-532, 2008 WL 2626950 (N.D.N.Y. May 15, 2008).

In the Eighth and Ninth Circuits, Plaintiff Schulz has moved to quash third-party subpoenas the IRS has directed at PayPal, as the entity through which customers could make "donations" to WTPF, as part of the IRS investigation of Mr. Schulz's failure to pay personal income taxes. *See Schulz v. United States*, No. 05-530, 2006 WL 1788194 (D. Neb. June 26, 2006) (denying plaintiff's motion to quash a third-party IRS summons), *aff'd*, 240 Fed. Appx. 167 (8th Cir. 2007); *see also Schulz v. United States*, No. 05-80184, 2005 WL 3021919 (N.D. Cal. 2005) (denying plaintiff's motion to quash), *aff'd*, 97 A.F.T.R.2d 2006-815 (Nov. 21, 2005), *aff'd*, 230 Fed. Appx. 709 (9th Cir. 2007).

<u>This Court has denied Schulz's requests for temporary relief based upon his failure to show jurisdiction</u>.

This Court has issued two orders to date. On September 23, 2008, this Court denied Schulz's request for a temporary restraining order regarding 08-CV-991 (the AIG Complaint), as follows: "Without citation to authority or an explanation of this courts jurisdiction, except conclusory statements of the law, Robert Schulz, asks this court to interfere in the affairs of the legislative and executive branches. Since Schulz has provided no authority for the court to take such action, at this junction, the Motion for TRO is denied." Text Only Order, filed 9/23/08.

This Court also issued a Memorandum-Decision and Order on September 25, 2008 regarding both cases (Docket no. 11, 08–CV-991). This decision consolidated both cases since they appeared to be related (p. 3). 08-CV-991 was designated the lead case and 08-CV-1011 became the member case. *Id*. The Court also denied Schulz's requests for a preliminary injunction and temporary injunction, in virtually identical language to the previous order, namely that Schulz had failed to cite any authority or provide any explanation of the court's jurisdiction, justifying his proposed interference by the Court in the affairs of the legislative and executive branches.[8]

<u>STANDARDS ON A MOTION TO DISMISS</u>

On a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), a court must "accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Thompson v. County of Franklin*, 15 F.3d 245, 249 (2d Cir.1994) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). "Standing, moreover, like other jurisdictional

[8] "Without citation to authority or an explanation of this court's jurisdiction, except conclusory statements of the law, Robert Schulz asks this court to interfere in the affairs of the legislative and/or the executive branches. Again, since Schulz has failed to provide any authority for the court to take such action, both applications are denied." (p. 3).

inquiries, cannot be inferred argumentatively from averments in the pleadings, . . . but rather must affirmatively appear in the record." *Id.* at 249 (quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (internal quotation marks omitted)). On a motion to dismiss under Rule 12(b)(1) for lack of standing, the party seeking to invoke the jurisdiction of the court bears the burden of proof. *Id.* at 249. A challenge to standing under Rule 12(b)(1) can either be a facial attack (limited to the face of the pleading) or a factual attack (in which the court considers additional evidence). *See* JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 12.30[4], p. 12-44 (3d ed. 1999).

For purposes of this motion all of the factual allegations in Schulz's complaints will be taken as true. The defendants are making both a facial and factual attack on subject matter jurisdiction: whether the Complaint is examined only on its face, or considered in light of the surrounding events and circumstances,[9] Schulz lacks standing as a taxpayer and has failed to cite any authority or provide any explanation of this Court's jurisdiction.

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[9]For the Court's information, with respect to the Lead Suit, the credit facilities granted to AIG by the Federal Reserve Bank of New York (the "Reserve Bank") and related transactions are described in the releases referenced below. *See*
http://www.newyorkfed.org/newsevents/news/markets/2008/an080929.html;
http://www.federalreserve.gov/newsevents/press/other/20081008a.htm;
http://www.federalreserve.gov/newsevents/pressother/20081110a.htm.

For the Member Suit, subsequent to the filing of the Complaint, Congress enacted the Emergency Economic Stabilization Act of 2008. *See* http://www.ustreas.gov/initiatives/eesa/.

ARGUMENT

I. The Court Lacks Jurisdiction to Consider Any of Plaintiff's Claims

A. Schulz Lacks Standing to Maintain the Lead and Member Suits and Their Claims in Federal Court

"[T]he question of standing is whether the particular litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (quoting *Warth,* 422 U.S. at 498). The Supreme Court has handled the issue of standing under two different "strands": (1) "Article III standing, which enforces the Constitution's case-or-controversy requirement," and (2) "prudential standing, which embodies 'judicially self-imposed limits on the exercise of federal jurisdiction.'" *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-62 (1992); and quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984). Schulz lacks standing to maintain his suit in a federal court under both approaches.

1. Schulz Lacks Standing Under Article III for Either Suit

To establish Article III standing, a plaintiff must plead three elements: (1) "injury in fact," (2) a "causal connection" between the injury and the challenged act, and (3) that the injury "likely" would be "redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also* *Allen,* 468 U.S. at 751 (citations omitted) (stating that to maintain standing, Plaintiff must have suffered, or is in imminent danger of suffering, a "distinct" and "palpable" "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief"). In the case before this Court, Schulz's claims fail to meet, at a minimum, both the first and second of these requirements.

First, Schulz fails to satisfy the "injury in fact" component of standing. To maintain standing, a plaintiff must allege an injury that is "'(a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical.'" *Altman v. Bedford Cent. School Dist.*, 245 F.3d 49, 69-70 (2d Cir. 2001) (quoting *Lujan,* 504 U.S. at 560). Such a concrete and particularized injury is one that "'affect[s] the plaintiff in a personal and individual way.'" *Id* at 70.

Schulz alleges as his injury that he is a "payer of federal taxes" and has a legal interest "not to have his money taken from him" for purposes he deems illicit.[10] Any alleged injury to Schulz's interest in the federal budget—an interest which he shares with all members of the public—is "not 'concrete and particularized,' but instead a grievance the taxpayer 'suffers in some indefinite way in common with people generally,'" and one that does not create standing. *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 344 (2006) (quoting *Massachusetts v. Mellon,* 262 U.S. 447, 488 (1923)). In such cases where the alleged injury is based upon the "effect of allegedly illegal activity on public revenues, to which the taxpayer contributes," the Supreme Court has consistently rejected standing. *See id.* at 344 ("[A] federal taxpayer's 'interest in the moneys of the Treasury . . . is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventative powers of a court of equity.'" *Id.* (quoting *Massachusetts* at 486-87).

Second, Schulz fails to allege any facts demonstrating any causal nexus between 1) the loan to AIG and any injury to his alleged interests as a taxpayer and 2) the $700 billion bailout and any

[10] Plaintiff alleges this injury in his memorandum of law in support of the lead Complaint. However, Plaintiff has not, as of yet, alleged any actual injury upon which to base the member Complaint. Presumably he would allege the same injury as stated in the lead suit, and this memorandum of law proceeds on that assumption.

injury to his alleged interests as a taxpayer. *See Lujan,* 504 U.S. at 560 (stating that the plaintiff must establish a "causal connection between the injury and the conduct complained of—the injury has to be 'fairly trace[able] to the challenged actions of the defendant'"). Schulz has made no effort to demonstrate how a loan to AIG or implementation of the larger bailout has any specific injurious impact on the federal budget that his tax dollars help to maintain. Even were Schulz to allege facts establishing that the actions of the Board and the Treasury would negatively impact the federal budget, he would nonetheless need to show that the impact on the federal budget would in turn injure him as a taxpayer. And such an injury would almost certainly be '"conjectural or hypothetical" in that it depends on [speculating] how legislators [would] respond to a reduction in revenue" and thus fail to establish standing. *See DaimlerChrysler*, 547 U.S. at 344.[11]

2. Schulz Lacks Prudential Standing

The principle of prudential standing includes "the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches." *Elk Grove*, 542 U.S. at 12 (citing *Allen*, 468 U.S. at 751). The Supreme Court has repeatedly "rejected claims of standing predicated on 'the right, possessed by every citizen, to require that the Government be administered according to law,'" as "[s]uch claims amount to little more than attempts 'to employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government.'" *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 482-83 (1982) (citations omitted).

[11] In the second Complaint, 08-CV-1011, Schulz does not allege that Congress has acted to date. This means that, in addition to being deficient for the reasons cited previously, Schulz's second suit fails for lack of ripeness, since "[j]urisdiction of the court depends on the circumstances that exist at the time the action is commenced." JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 3.02[4][a], 3-10 (3d ed. 1999).

The Court has been particularly wary of permitting lawsuits based on "taxpayer standing." The sole route toward establishing taxpayer standing requires "an individual [to] demonstrate that the challenged agency action is based on the Government's taxing and spending power, and, in addition, that the action is contrary to a specific constitutional limitation on the exercise of that power." *Gosnell v. F.D.I.C.*, 938 F.2d 372, 375 (2d Cir. 1991), (citing *Valley Forge,* 454 U.S. at 478-79 and *Flast v. Cohen*, 392 U.S. 83, 102-03 (1968) (taxpayer standing upheld for alleged violation of taxing and spending clause (Art.1, § 8) challenge involving the Establishment Clause)). However, repeatedly, the Court has found standing only in the limited circumstance of challenges that involve Congressional appropriations implicating the Establishment Clause, and has refused to extend taxpayer standing to purported violations of other constitutional provisions. *See Hein v. Freedom from Religion Foundation, Inc.*, 127 S. Ct. 2553 (2007) (taxpayer standing under *Flast*, even for Establishment Clause claim must involve a direct Congressional appropriation, not Executive Branch spending discretion) (plurality opinion); *DaimlerChrysler*, 547 U.S. at 354 (Ginsburg, J., concurring) ("The *Flast* exception has not been extended to other areas."); *see also U.S. v. Richardson*, 418 U.S. 166 (1974) (no taxpayer standing with respect to requirement that statements of expenditures be published as required by Article 1, § 9, cl. 7 of the Constitution); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208 (1974).

Here, with respect to the Reserve Bank's loan to AIG, neither the taxing or spending power nor the Establishment Clause is implicated. Federal Reserve Bank funds are not derived from taxes levied under the taxing and spending power of Article 1, § 8 of the Constitution, so the first prerequisite for showing taxpayer standing is absent. Reserve Banks are separately capitalized by member banks within their districts (12 U.S.C. § 287), and Congress does not appropriate funds for

their operations. *Lewis v. United States*, 680 F.2d 1239, 1242 (9th Cir. 1982).[12] The Board's own expenditures are based on assessments on the Reserve Banks and by statute "shall not be construed to be government funds or appropriated moneys." 12 U.S.C. § 244. Moreover, Schulz does not allege that the Federal Reserve Bank of New York's ("FRBNY's") loan to AIG violates any particular constitutional provision, much less allege a congressional appropriation that violates the Establishment Clause.

B. **<u>This Court Has No Jurisdiction to Consider Schulz's Claims Against the Congressional Defendants</u>.**

1. **<u>Schulz's Claims Against the Congressional Defendants are Barred By the Speech or Debate Clause</u>**

Schulz's suit against the congressional defendants (Speaker Pelosi, Majority Leader Reid and the United States Congress) challenges the consideration or passage of legislation and is, therefore, squarely barred by the Speech or Debate Clause. U.S. CONST. art. I, § 6, cl. 1 (providing that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place"). The Clause affords Members of Congress an absolute immunity from damages, injunctions, and declaratory judgments for all conduct falling within the "sphere of legitimate legislative activity." *Eastland v United States Servicemen's Fund*, 421 U.S. 491, 501 (1975); *Doe v. McMillan*, 412 U.S. 306, 311-12 (1973) (quoting *Gravel v. United States*, 408 U.S. 606, 624 (1972)); s*ee also Newdow v. U.S. Congress*, 328 F.3d 466, 484 (9th Cir. 2003) (dismissing Congress

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[12]The Federal Reserve Banks do transfer a substantial portion of their profits each year to the United States Treasury in the form of interest on Federal Reserve Notes, but these transfers are currently not required by statute. *See* Federal Reserve Annual Report, 2007, "Income and Expenses," at, http://www.federalreserve.gov/boarddocs/rptcongress/annual07/sec2/c3.htm#nl7; *cf* 12 U.S.C. § 289(b) (requiring transfer from Federal Reserve Bank surplus to United States Treasury during fiscal year 2000).

from challenge to Pledge of Allegiance statute, stating that under Speech and Debate Clause "the federal courts lack jurisdiction to issue orders directing Congress to enact or amend legislation"), *rev'd on other grounds*, *sub nom. Elk Grove v. United Sch. Dist.,* 542 U.S. 1 (2004). Consequently, no jurisdiction exists to entertain the complaint against the congressional defendants.[13]

CONCLUSION

For the reasons stated previously, both of Schulz's Complaints, 08-CV-991 (Lead) and 08-CV-1011 (Member), against all defendants should be dismissed.

Dated: November 24, 2008

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[13]As a related matter, Schulz's complaint fails to state a claim against the congressional defendants for their legislative actions in passing the challenged legislation, as the courts have uniformly held that no cause of action exists to sue Congress or its Members for the performance, or nonperformance, of legislative duties. *See Richards v. Harper*, 864 F.2d 85, 88 (9th Cir. 1988) (affirming dismissal of action against Members of Congress because their failure to respond to constituent's request was "neither inappropriate nor actionable") (citation omitted); *Keener v. Congress*, 467 F.2d 952, 953 (5th Cir. 1972) (affirming dismissal of plaintiff's action to compel Congress to abandon gold standard); *Newell v. Brown*, 981 F.2d 880, 887 (6th Cir. 1992) (upholding dismissal of claim against Congressman arising out of service to a constituent, stating that "[f]or the federal judiciary to subject members of Congress to liability for simply doing their jobs would be unthinkable").