

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

FEB 11 2009

2458 Ridge Road
Queensbury, NY 12804

LAWRENCE K. BAERMAN, CLERK
ALBANY

February 11, 2009

Hon. Gary L. Sharpe, Judge
U.S. District Court
James T. Foley Courthouse
445 Broadway
Albany, NY 12207-2936

Re: Schulz v. Federal Reserve System, et al.
Case No. 08 -cv-991 (Lead)
Schulz v. U.S. Executive Dept, et al.
Case No. 08 -cv-1011 (Member)

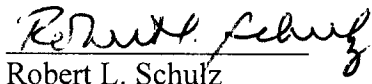
Dear Judge Sharpe:

Please consider this letter to be plaintiff's motion to file a sur-reply.

On January 30, 2009, defendants filed a reply regarding their motion to dismiss.

On February 4, 2009 plaintiff received a copy of defendants' reply.

Respectfully submitted,


Robert L. Schulz

Copy to: Charles E. Roberts
Assistant U.S. Attorney
100 South Clinton St.
Syracuse, NY 13261-7198

FEB 11 2009

LAWRENCE K. BAERMAN, CLERK
ALBANY

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

ROBERT L. SCHULZ,

Plaintiff,

-against-

**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.

1:08-CV-991 (Lead)

ROBERT L. SCHULZ,

Plaintiff

1:08-CV-1011 (Member)

-against-

**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 SUR-REPLY REGARDING MOTION TO DISMISS

Defendants argue in their Reply that a constitutional challenge by taxpayers, “very similar to the one at bar” had recently been dismissed for lack of standing: *Henry Builders, Inc. et al. v. United States et al.*, 1:09-cv-0299 (E.D.N.Y. Jan. 26, 2009).

Defendants’ reliance on *Henry Builders* is misplaced. The cases are not similar. The principle of law Plaintiff is relying on in the instant case was not relied on by the parties or by the Court in *Henry Builders*. In addition, Plaintiff is not acting in his capacity as a “taxpayer.” He is acting in his capacity as sovereign citizen who expects to live the rest of his life alongside elected officials who are chained and bound down by the Rule of Law – the Constitution – not under the Rule of Man, Whim or the will of any Majority.

In *Henry Builders*, as Judge Vitaliano stated on page 2 of his decision, Plaintiffs argued that the Emergency Economic Stabilization Act of 2008, “violates the Constitution’s guarantee of equal protection because plaintiffs ... who, in common with the whole of the population and millions of the nation’s businesses, are not financial institutions – are ineligible for relief under the Act’s provisions. In sum, plaintiffs charge that TARP is the equivalent of a financial ‘bridge to nowhere’ and that they are aggrieved because Congress did not build one for them too.”

Here, Plaintiff has clearly charged Government defendants acted *ultra vires* in adopting the EESA, that is, without any constitutional authority whatsoever. In effect, Plaintiff has charged defendants with seizing or usurping power from the People – that is, oppressing the People by acting arbitrarily and capriciously.

Quoting *DaimlerChrysler Corp. v Cuno*, 547 U.S. at 345 (2006), Judge Vitaliano dismissed *Henry Builders* in part because Plaintiffs were seeking to invade “policy judgment[s] committed to the broad and **legitimate discretion of lawmakers**, which the courts cannot presume either to control or to predict.” *Henry Builders* at page 3. (plaintiff’s emphasis).

Here, unlike *Henry Builders*, plaintiff has charged Congress acted *ultra vires* – that is, **illegitimately**.

In addition, quoting *Lance v Coffman*, 549 U.S. at 439 (2007), Judge Vitaliano dismissed *Henry Builders* in part because Plaintiffs raised, “only a generally available grievance about government – claiming only harm to [their] and every citizen’s interest in proper application of the Constitution and laws....” *Henry Builders* at page 3-4.

Here, unlike *Henry Builders*, plaintiff’s challenge is not directed at whether some provision of the Constitution or laws has been improperly applied. Plaintiff’s claim is that the Defendants acted without any authority whatsoever – that is, that the Constitution was ignored altogether.

Thus far, Defendants have utterly failed to cite their authority to give or lend public money to private corporations for decidedly and definitively private purposes. Defendants’ motion to dismiss for lack of standing must be denied.

Again, Plaintiff has suffered an actual injury in fact. The AIG Agreement and EESA are invasions of a legally protected interests. Plaintiff’s injuries are as particularized and concrete as any injury can be – that is, loss of Plaintiff’s Right of sovereignty and self-government, and loss of Plaintiff’s Grand

Right to government based on the consent of the governed. Plaintiff's injuries are clearly traceable to the AIG Agreement and to EESA. Only a favorable decision by the Court will remedy Plaintiff's injury.

To dismiss this case for lack of standing would be to cause Plaintiff further injury: loss of Plaintiff's Right to Due Process and loss of Plaintiff's fundamental, First Amendment Right to Petition the Government for Redress of violations of the Constitution and Government's obligation to respond.

CORRECTION


The sixth paragraph on page 7 of Plaintiff's Opposition, dated January 19, is in error. It should read: "While the free People of the United States of America can do anything they want to do as long as (constitutional) law does not prohibit the behavior, Defendants, on the other hand, can only do what the Constitution authorizes them to do – if it's not in writing, they can't do it."

CONCLUSION

Plaintiff respectfully requests an order denying Defendants' motion to dismiss. Thus far, Defendants have utterly failed to cite their authority to give or lend public money to private corporations for decidedly and definitively private purposes.

Respectfully submitted,

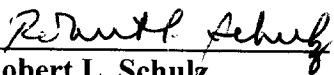
Dated: February 11, 2009


ROBERT L. SCHULZ, pro se
2458 Ridge Road
Queensbury, NY 12804
518-656-3578

DECLARATION OF SERVICE

Robert L. Schulz, under penalty of perjury, declares:

1. I am the plaintiff in this matter.
2. On February 11, 2009 I served a copy of Plaintiff's Motion for a Sur-Reply and this Declaration of Service by enclosing them in a pre-paid USPS Priority Mail envelope addressed to Charles E. Roberts, Assistant Attorney General, P.O. Box 7198, 100 Clinton Ave., Syracuse, New York 13261-7198.
3. I mailed the envelope to Mr. Roberts at the Cleverdale, NY branch of the USPS, located at Queensbury, NY.


Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804