

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. 1:07-cv-352-TJM-RFT
)
ROBERT L. SCHULZ;)
WE THE PEOPLE FOUNDATION FOR)
CONSTITUTIONAL EDUCATION, INC.; and)
WE THE PEOPLE CONGRESS, INC.,)
)
Defendants.)

DECLARATION OF IRS REVENUE AGENT DAVID GORDON

1. I am over 18 years of age and am competent to testify to the facts stated below.
2. I am a duly commissioned Revenue Agent for the Internal Revenue Service.
3. As part of my duties as a revenue agent, I am assigned to investigate whether Robert Schulz, We the People Congress, and We the People Foundation for Constitutional Education are engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 or 6701 and subject to an injunction under 26 U.S.C. §§ 7402 and 7408. In the course of my investigation, I learned the facts set forth in this Declaration.
4. Robert Schulz is the founder and chairman of We the People Foundation for Constitutional Education, Inc., and We the People Congress, Inc., (collectively referred to as “We the People”) which are entities used to disseminate his materials that are part of “Operation Stop Withholding.”
5. Defendants market and promote the scheme through the websites www.givemeliberty.org, www.bostonteapartyii.com, www.wethepeoplecongress.org, and www.wethepeoplefoundation.org.

6. In 2001, We the People purchased full-page advertisements in the newspaper U.S.A Today to advertise its programs.

7. On March 23, 2001, defendants purchased a full-page advertisement in U.S.A. Today, claiming that three self-proclaimed experts state that U.S. citizens are not required to file income tax returns or pay federal taxes. These individuals include John B. Kotmair, Larken Rose, and William Benson. I have attached a true and correct copy of that advertisement as Exhibit 1.

a. Prior to advertisement, John B. Kotmair was convicted and sentenced to a two-year prison term for willfully failing to file income tax returns in violation of 26 U.S.C. § 7203 for 1975 and 1976. *Kotmair v. Commissioner*, 86 T.C. 1253 (1986).

b. Similarly, William Benson was convicted of willful failure to file income tax returns in violation of 26 U.S.C. § 7203. *See United States v. Benson*, 67 F.3d 641 (7th Cir. 1995).

c. Larken Rose was also convicted of willful failure to file income tax returns in violation of 26 U.S.C. § 7203, and was sentenced to a term of fifteen months confinement. *See United States v. Rose*, 95 A.F.T.R.2d (RIA) 2648 (M.D. Pa. May 25, 2005).

8. John B. Kotmair was permanently enjoined from promoting tax-fraud schemes in November 2006. I have attached a true and correct copy of the Court's Order as Exhibit 2.

9. Following the March 23, 2001 publication, on April 11, 2001, U.S.A. Today informed defendant that the newspaper would not print any future advertisement from We the People. Defendants summarize the letter from U.S.A Today on their website, and note that a representative from the newspaper stated that future advertisements would not be printed because the previous ones "promoted illegal activities." I have attached as Exhibit 3 a true and correct copy of We the People's website describing the U.S.A Today letter, which I copied on November 10, 2005.

10. On March 15, 2003, Schulz and We the People started marketing a package they called the “Legal Termination of Tax Withholding for Companies, Workers and Independent Contractors” as part of Operation Stop Withholding. I have attached a true and correct copy of Schulz’s letter advertising the scheme as Exhibit 4.

11. As part of this initiative, Schulz has stated that on April 2, 2003, he wrote to Commissioner of Internal Revenue and to United States Attorneys in thirty-seven cities across the country to advise them that he would start instructing employers and employees on how to stop withholding taxes from wages.

12. As part of Operation Stop Withholding, Schulz and We the People supply to customers forms purporting to enable the customers to legally withdraw from income tax system.

13. The forms provided by Schulz and We the People include, among others, instruction for entities and employers that explain how to use “We the People Forms #1-10.”

14. I have attached hereto as Exhibit 5 a true and correct copy of the “Instructions for Worker & Contractors” provided by Schulz and We the People as part of Operation Stop Withholding.

15. I have attached hereto as Exhibit 6 a true and correct copy of the “Memo to Entities” provided by Schulz and We the People as part of Operation Stop Withholding.

16. I have attached hereto as Exhibit 7 a true and correct copy of the “Instruction and Forms for Entities” provided by Schulz and We the People as part of Operation Stop Withholding.

17. I have attached hereto as Exhibit 8 a true and correct copy of the memorandum to “Chief Executives of Entities Created or Organized within the U.S.A.” provided by Schulz and

We the People as part of Operation Stop Withholding.

18. I have attached hereto as Exhibit 9 a true and correct copy of “WTP Form #1” provided by Schulz and We the People as part of Operation Stop Withholding.

19. I have attached hereto as Exhibit 10 a true and correct copy of “WTP Form #2” provided by Schulz and We the People as part of Operation Stop Withholding.

20. I have attached hereto as Exhibit 11 a true and correct copy of “WTP Form #3” provided by Schulz and We the People as part of Operation Stop Withholding.

21. I have attached hereto as Exhibit 12 a true and correct copy of “WTP Form #4” provided by Schulz and We the People as part of Operation Stop Withholding.

22. I have attached hereto as Exhibit 13 a true and correct copy of “WTP Form #5” provided by Schulz and We the People as part of Operation Stop Withholding.

23. I have attached hereto as Exhibit 14 a true and correct copy of “WTP Form #6” provided by Schulz and We the People as part of Operation Stop Withholding.

24. I have attached hereto as Exhibit 15 a true and correct copy of “WTP Form #7” provided by Schulz and We the People as part of Operation Stop Withholding.

25. I have attached hereto as Exhibit 16 a true and correct copy of “WTP Form #8” provided by Schulz and We the People as part of Operation Stop Withholding.

26. I have attached hereto as Exhibit 17 a true and correct copy of “WTP Form #9” provided by Schulz and We the People as part of Operation Stop Withholding.

27. I have attached hereto as Exhibit 18 a true and correct copy of “WTP Form #10” provided by Schulz and We the People as part of Operation Stop Withholding.

28. I have attached hereto as Exhibit 19 a true and correct copy of a page from the defendants’ website located at givemeliberty.org describing William Benson’s incarceration and

the § 861 Argument promoted by Thurston Bell. I copied this material on November 10, 2005.

29. I have attached hereto as Exhibit 20 a true and correct copy of a page from the defendants' website located at givemeliberty.org advertising their program to purportedly allow employees and employers to stop having taxes withheld. I copied this material on November 10, 2005. I have reviewed this page and note that defendants only "encourage" customers to have the materials reviewed by legal counsel.

30. I have attached hereto as Exhibit 21 a true and correct copy of a page from defendants' website located at givemeliberty.org, which is a letter from Robert L. Schulz dated January 21, 2003. In the letter, Schulz states that he is initiating a nationwide program to instruct employers and employees on methods to "stop withholding, filing and paying any taxes." Schulz goes on to state that defendants are offering a legal defense fund to provide assistance to employees and employers that have stopped "withholding, filing and paying any taxes."

31. I have attached hereto as Exhibit 22 a true and correct copy of a page from the defendants' website located at givemeliberty.org, which is a letter from Schulz to the Senate Finance Committee dated April 5, 2001. In the letter, Schulz states, among other things, that the 16th Amendment was fraudulently ratified, there is no law that require most citizens to file a tax return, and that the payment of employment taxes, including Social Security taxes is voluntary. Schulz further states that most citizens are not required to pay taxes based on the "861 Argument."

32. I have attached hereto as Exhibit 23 a true and correct copy of a page from the defendants' website located at givemeliberty.org, describing the criminal trial of Richard Simkanin. I copied this material on November 10, 2005.

33. I have attached hereto as Exhibit 24 a true and correct copy of a page from the defendants' website located at givemeliberty.org, which is a full page advertisement placed in U.S.A. that lists several employers that have stopped withholding taxes on their employees wages, including Simkanin, David Bossett, Al Thomson, and Nick Jesson.

a. On January 7, 2004, the Dick Simkanin was convicted of failing to file federal income tax returns in violation of 26 U.S.C. § 7203, willfully failing to collect and pay over federal income taxes and FICA taxes from his employees in violation of 26 U.S.C. § 7202, and knowingly making and presenting fifteen false claims for the payment of refunds in violation of 28 U.S.C. §§ 287. Simkanin was sentenced to eighty-four months imprisonment for employing Defendant's schemes. *United States v. Richard M. Simkanin*, 420 F.3d 397 (5th Cir. 2005).

b. On February 27, 2003, a Federal District Court for the Middle District of Florida permanently enjoined David Bossett from promoting tax-fraud schemes, including the "§ 861 Argument."

c. On September 27, 2005, a Federal District Court for the Eastern District of California enjoined Al Thomson from failing to comply with the federal tax laws. Specifically, the Court's order required Thompson to withhold federal employment and unemployment taxes, and file federal tax returns.

34. I have attached hereto as Exhibit 25 a true and correct copy of a page from the defendants' website located at givemeliberty.org, which describes the criminal prosecution of Al Thomson, who is listed in defendants' advertisement attached as Exhibit 24.

35. I have attached as Exhibit 26 a true and correct copy of a letter, and We the People Forms, sent by one of defendants' customers to the IRS. The letter and attached forms show that this customers presented the We the People forms to their employer, General Motors, in order to

stop having taxes withheld.

36. I have attached as Exhibit 27 a true and correct copy of a letter, and We the People Forms, sent by one of defendants' customers to the IRS. The letter and attached forms show that this customers presented the We the People forms to their employer, Wendy's of San Antonio, in order to stop having taxes withheld. I reviewed IRS records related to this individual and found that she did not file income tax returns for 2003-2004. Consequently, the IRS prepared a substitute for return for the 2003 tax year. In addition, this individual had insufficient taxes withheld from her wages for 2004.


37. I have attached as Exhibit 28 a true and correct copy of a letter sent from one of defendants' customers to their employer. The letter indicates that the employee presented their employer, Nashville Construction, with forms alleging that they were not required to withhold taxes from the individual's pay.

38. During the course of my investigation I also learned that 997 of defendants' customers that have not filed federal tax returns for a period of three years or more, which represents more than 2991 unfiled tax returns.

39. Attached as Exhibit 29 is a document estimating the IRS's costs associated with processing frivolous filings as of June 2004.

40. Based on the June 2004 estimated costs stated in Exhibit 29, the IRS expends \$1,607 in processing substitutes for returns for non-filers. The estimated cost to the U.S. Treasury attributable to filing substitutes for returns for the 2991 unfiled returns equals \$4,806,537. This amount does not include the time or expenses IRS Revenue Officers must expend attempting to collect the amount of unpaid tax due from these individuals.

Executed this 13 day of June 2007



David Gordon
Revenue Agent

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