

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

UNITED STATES OF AMERICA)	
)	Case No. 1:07-CV-0352 TJM/RFT
Plaintiff)	
)	
)	
v.)	
)	
ROBERT L. SCHULZ;)	
WE THE PEOPLE FOUNDATION FOR)	
CONSTITUTIONAL EDUCATION, INC.;)	
WE THE PEOPLE CONGRESS, INC.)	
)	
Defendants)	

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR STAY OF ENFORCEMENT OF INJUNCTION**

In support of this motion, based on Declaration #12 by Robert Schulz, and the prior pleadings, Defendant Robert L. Schulz, who is pro-se, and Defendants We The People Foundation for Constitutional Education, Inc., and We The People Congress, Inc., who are represented by attorney Mark Lane, state as follows:

RELIEF REQUESTED

Defendants move this Honorable Court for an entry of an Order:

- a) Temporarily staying the enforcement of the permanent injunction order entered August 9, 2007, pending the resolution of Defendant's post-judgment motion for reconsideration, and pending the resolution of any

motion by Defendants filed by August 26 to narrow the injunction order and, in the event such post-judgment motion(s) are denied,

- b) Staying the enforcement of the permanent injunction order entered August 9, 2007, pending appeal of the ruling and the order, and
- c) Granting any further relief that to the Court may seem just and proper.

THE URGENCY

This memorandum is filed in support of the Show Cause Order for a temporary stay of enforcement of the injunction order, which required Defendants to take certain affirmative actions including: posting the Memorandum, Decision and Order on their website; providing a copy of the Memorandum, Decision and Order to all persons who have obtained their tax plans; providing Plaintiff with a list of certain information that identifies all persons who have obtained their tax plans; and removing certain materials from their website.

The injunction order directed Defendants to immediately implement the terms of the injunction and to provide the Court with an affidavit of compliance by August 30, 2007.

On Monday, August 20, 2007, Defendants received a letter from Mr. Newman by facsimile, stating he intends to file a motion for contempt by August 23, 2007 unless Defendants immediately implement the terms of the injunction.

STATEMENT OF FACTS

Defendant Schulz was in Iowa on August 9, 2007 when the injunction order was issued. After Schulz's receipt and review of the Order on Tuesday, August 14, 2007, Schulz directed his webmaster to disable all links to the material that was the subject of the complaint. Those links were disabled on August 16, 2007. Schulz turned his attention to the research and preparation of a motion for reconsideration.

Schulz was not able to work with corporate Defendants' Attorney Lane until Saturday, August 18, 2007, following Lane's Friday evening return from his trip to California.

On Monday, August 20, 2007, Defendants timely filed a Motion for Reconsideration by sending the original by US Priority Mail to the Office of the Clerk of the Court in Binghamton, NY. A copy was sent by Priority Mail to Mr. Newman, attorney for the Plaintiff. The Postmaster said the packages should take two days but could take three days to be delivered.

Defendants are now working on a motion for leave to file a out-of-time motion to narrow the terms of the injunction order. The absence of time prevented the timely filing of the motion.

See Declaration #12 attached for a copy of Defendants' motion for reconsideration (without Exhibits), which was mailed on August 20, 2007 but may not be received by the Court until August 22, 2007 or August 23, 2007.

ARGUMENT

Defendants incorporate by reference the arguments contained in their Memorandum of Law in support of their motion for reconsideration.

There are material facts that are in dispute and material facts that are not in dispute that argue against the summary judgment in the absence of a full adversarial proceeding with a hearing, and in the absence of strict scrutiny of Defendants' First Amendment Petition and Speech and Petition claims and affirmative defenses.

There are issues raised by Defendants in their motion for reconsideration that are sufficiently "serious, substantial, difficult and doubtful, as to make them fair ground for litigation," and for that reason, this motion for a stay should be granted. See *Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189, 195 (4th Cir. 1977) (discussing meaning of "likelihood of success" in the context of preliminary injunctions).

The potential immediate impact from enforcement of the injunction on Defendants outweighs the harm to Plaintiff occasioned by a brief delay in enforcement.

CONCLUSION

Defendants respectfully request an order granting the motion for a stay.
Respectfully submitted,

Dated: August 21, 2007

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