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 MODIFICATION OF ORDER

In support of this motion, based on Declaration #13 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

In the event the Court denies Defendants' pending motion for reconsideration of the Court's Decision and Order dated August 9, 2007, Defendants move this Honorable Court for an entry of an Order:

a) Modifying the order entered August 9, 2007, to narrow the injunction order, and

b) Granting any further relief that to the Court may seem just and proper.

ARGUMENT

The Order is impermissibly broad and has elements that are vague.

Defendants are having a great deal of difficulty discerning what is constitutionally protected by the First Amendment's Petition clause and what is not protected. Defendants are also having a great deal of difficulty discerning what is constitutionally protected by the First Amendment's Speech clause and what is prohibited as false commercial speech. The Order does not mention, much less does it appear to be limited to the specific target of the Government's Complaint – i.e., Defendants' March 15, 2003 letter and the Forms in the Blue Folder.

Defendants' confusion is not self-induced.

The injunction is different from the narrowly drawn injunctions in similar 6700 cases. See for instance U.S. v Raymond, 228 F.3d 804, 815 (7th Cir. 2000), where before construing the District Court's injunction narrowly, the Court said, "Like the Kaun injunction, we conclude that the injunction here is a prior restraint on speech…However, as in Kaun, we construe the injunction narrowly such that it is not an impermissible prior restrait that violates the First Amendment Rights of the appellants." (citations omitted).

Defendant Schulz provides sworn testimony that he does not understand the vague order. See accompanying Declaration #13.[1]

FRCP 65(d) requires than an injunction "shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail … the acts or acts sought to be restrained."

"The judicial contempt power is a potent weapon. When it is founded upon a degree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid." *International Longshoremen's Assoc. v. Philadelphia Marine Trade Assoc.*, 389 U.S. 64, 76 (1967).

Defendants are in the unenviable and impermissible position of having to make assumptions as to what is prohibited, and what is not, and they could be subject to criminal contempt if they, even in good faith, guess incorrectly as to what is forbidden.

The Court offered no opinion on Defendants' defense under the First Amendment's Right to Petition clause, and offered no opinion on the nature or extent of the relationship necessary between Petitions for Redress and the

[1] For instance, Schulz testified that "Since I am unable to determine with any certainty what specific acts, speech, and portions of any communication materials are prohibited by the Order, or mandated to be removed by the Order, I do not know what acts, speech, or specific literature or audio/visual materials distributed by Defendants would place Defendants in danger of contempt." Declaration #13.

distribution of materials that turns the protected exercise and enforcement of the Right into unprotected advocacy of the Right. Nor did the Court elucidate the nature or extent of the relationship necessary between Speech and the distribution of materials that turns protected speech into unprotected fraudulent commercial speech.

The Court did not construe or modify its injunction order so that Defendants can understand precisely which speech is enjoined.

This leaves Defendants in a precarious and untenable position – having to guess what opinions about the Rights of the People and the Obligations of the Government under the First Amendment's Petition Clause Defendants can advocate. Of particular concern, of course, is Defendants ability to continue to advocate the fundamental Right of Redress Before Taxes, particularly in light of Defendants' presentation of the historical record and purpose of the last ten words of the First Amendment and the overwhelming support of the scholars of Defendants' interpretation of the meaning of the Petition Clause and the total absence of any Act of Congress or Court decision that contradicts Defendants' interpretation.

Approximately ninety-nine percent of Defendants' activities since 1999 have been in defense of the Constitution's war powers, tax, money and privacy clauses through reliance on the First Amendment's Petition clause. One percent or less of

Defendants' activities and revenue has been tied to the specific target of the Government's complaint -- Operation Stop Withholding (the March 15, 2003 letter to the Government and the Blue Folder's forms).

Unless the Order is modified, Defendants would be at risk of being held in contempt of Court if they continued to pursue their Right to Petition program – Defendants' sole reason for being.

As a citizen and as defenders of the Constitution, including the First Amendment, Defendants have the Right to advocate for Government's compliance by Petitioning Government for Redress of **constitutional torts**, and the Right to hold the Government accountable to the Constitution, using the ONLY non-violent means available to them – advocating withdrawal of financial support in the face of unconstitutional acts and a refusal by the Government to justify its behavior.

The Government did not deny Defendants' arguments in support of the Right to Petition Government for a Redress of constitutional torts. The Court did not reach the merits of Defendants RTP claim and affirmative defense which was properly presented.

The Court declared in its Order that, "any injunction must be narrowly drawn to separate protected speech from unprotected speech and to protect Defendants' First Amendment rights."

In then saying, "Accordingly, the Court rejects Defendants' First Amendment defense and denies their motion to dismiss in its entirety," the Court was apparently only referring to Defendants' speech in Defendants' March 15, 2003 letter and as printed on the forms in Defendants' Blue Folder (the clear target of the complaint, and the object of the Court's preceding discussion it its Decision). The Court was apparently referring to Defendants' First Amendment Speech Clause defense, not to Defendants' First Amendment Petition Clause defense, to which the Court gave no apparent opinion.

With respect, Defendants argue that it would not be possible to enjoin Defendants activities related to its Petitions for Redress and "No Answers, No Taxes" advocacy without reaching the merits on Defendants' Right to Petition arguments.

In that regard, the Court's attention is invited to last week's decision by the 10th Circuit Court of Appeals in Van Deelan v. Johnson, Case No 06-3305, issued August 14, 2007.

Van Deelan supports Defendants' interpretation of the meaning of the Petition clause. As the Court may remember, the DC circuit, in dismissing We The People v. United States, cited the *Smith* and *Knight* cases in holding that the Government did not have to respond to Defendants' Petitions for Redress of constitutional torts. Defendants argued *inter alia* that those cases were off point

because Defendants were ordinary, private citizens, not public employees. Defendants also distinguished We The People by arguing Defendants' petitions for redress were targeting constitutional torts, not public employment conditions as was the case in Smith and Knight.

> In *Van Deelan*, the 10th Circuit made clear that under the "public concern" doctrine, "the government may, in some instances employ constraints on the [first amendment rights] of employees that would be unconstitutional if applied to private citizens."

CONCLUSION

Defendants respectfully request that the Court narrow the Order such that it is not an impermissible prior restraint that violates the First Amendment Petition, Speed or Assembly and Associational Rights of the Defendants.

Respectfully submitted,

Dated: August 22, 2007

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