IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee* v. ROBERT L. SCHULZ; WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION, INC.; and WE THE PEOPLE CONGRESS, INC. *Defendants-Appellants*	)	No. 07-3729-cv

UNITED STATES' OPPOSITION TO
APPELLANTS' MOTION FOR STAY PENDING APPEAL

The United States of America, appellee herein, by and through its counsel, opposes the motion of Robert L. Schulz and his two corporations, We the People Foundation for Constitutional Education, Inc., and We the People Congress, Inc. (collectively, the defendants) for a stay of the District Court's civil injunction order pending appeal. As we explain below, the motion should be denied, because the appellants cannot make the requisite showing that they will prevail on the merits, because they will not be harmed by compliance with the injunction, and because a stay will result in substantial harm to the public interest.

ISSUE

Whether the appellants are entitled to a stay of a civil injunction order pending appeal, where they cannot prevail on appeal and will suffer no irreparable

harm if required to follow the order, and where the public interest will be harmed if compliance with the order is postponed.

STATEMENT

The United States brought this action seeking injunctive relief under Sections 7402(a) and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) (I.R.C. or the Code), which provide statutory authority for injunctions where appropriate to prevent the recurrence of sanctionable activities, including the promotion of abusive tax shelters and the aiding and abetting of the understatement of tax liability. (Doc. 1 at 1.)[1] *See* I.R.C. §§ 6700, 6701, 7408. Among other relief, the complaint asked the District Court to order the defendants to "produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all persons and entities who have been provided Defendants' Tax Termination materials or any other similar materials." (*Id.* at 12.) The defendants moved to dismiss the complaint on First Amendment grounds, and the United States moved for summary judgment. (Doc. 12, 14.) The District Court granted the Government's

[1] "Doc." references are to the documents comprising the record of the District Court as numbered by the Clerk of that court. "Schulz Decl. #1" and the associated exhibits are attached to Doc. 12, the defendants' Motion to dismiss. All other declarations referred to herein are attached to Doc. 30, the Government's combined opposition to the defendants' motion to dismiss and cross-motion for summary judgment. Where a document has been divided into two segments for purposes of electronic filing, the segment number is included in parentheses.

motion and denied the defendants' subsequent motions to modify the injunction and to stay the injunction pending appeal. (Doc. 37, 38.)

Both in its complaint and in the motion for summary judgment, the United States argued that the defendants engage in activities subject to penalty under I.R.C. §§ 6700 and 6701. (Doc. 1, 14.) Schulz's declarations and the defendants' own promotional materials reveal that the defendants promote a scheme ("Operation Stop Withholding") whereby they purport to enable individuals to "opt-out" of paying federal taxes. The package of materials associated with this scheme (the "blue folder" to which the defendants refer (Mot. 2, 9)) is distributed at seminars and over the internet, in exchange for a $20 "donation." (Schulz Decl. #1 ¶¶ 2-16, Exhs. C, H, & I.) The defendants have distributed over 3,500 copies of this "blue folder." (*Id.*)

The materials in the "blue folder" instruct the defendants' customers to complete "We the People" (WTP) forms to "legally terminate the existing W-4 agreement" and to falsely declare that the taxpayer's Social Security number cannot be disclosed. (Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 17-19, 45), & C (pp. 7-8); Gordon Decl. Exhs. 6-8, 16.) Customers are also supplied with threatening forms for submission to employers who continue to withhold taxes. (Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 20, 48-64) & C (p. 8); Gordon Decl. Exhs. 5, 17-18.)

The forms and other materials distributed by the defendants are replete with false, fraudulent, and misleading statements regarding frivolous and discredited tax theories. For example, WTP Form #1 cites *United States v. Malinowksi*, 347 F. Supp. 347, 352 (E.D. Penn. 1972), *aff'd* 472 F.2d 850, 873 (3d Cir. 1973), and *Holmstrom v. PPG Ind.*, 512 F.Supp. 552 (W.D. Penn. 1981), for the proposition that a company is obliged to honor an employee's false Form W-4. (Schulz Decl. #1 Exh. B(2) (p. 23).) In fact, *Malinowski* states that "[e]very employer who pays wages is required to withhold from the wages a tax." 347 F.Supp. at 352. In *Holmstrom*, the employer was not required to withhold taxes from a pension check only by virtue of a treaty between the United States and Sweden, the pensioner's country of residence, rather than because of a false Form W-4. *See* 512 F.Supp. at 556 (employer would be liable for withholding if he had reason to know the form was false). WTP Form #3 advances the position that I.R.C. § 861 limits the scope of I.R.C. § 61, and thus exempts United States citizens from tax on domestic income. (Schulz Decl. #1 ¶ 4, Exhs. B (38-40), B(2) (p. 30), C (p. 14); Gordon Decl. Exhs. 11, 19, & 22.) This argument has been uniformly rejected by courts that have considered it. *See, e.g., United States v. Bell*, 238 F. Supp. 2d 696, 700 (M.D. Pa. 2003); *Loofbourrow v. Commissioner*, 208 F. Supp. 2d 698, 710 (S.D. Tex. 2002); *Williams v. Commissioner*, 114 T.C. 136 (2000); *Solomon v. Commissioner*, 66 T.C.M. (CCH) 1201, 1202 (1993), *aff'd*, 42 F.3d 1391 (7th Cir.

1994); *Corcoran v. Commissioner*, 83 T.C.M. (CCH) 1107, *aff'd*, 54 Fed. Appx. 254 (9th Cir. 2002).[2]

Schulz has admitted that he adopted his frivolous theories from two individuals who he knows have been subject to civil and criminal sanctions for advancing them. (Schulz Decl. #2(2) ¶¶ 19-25.) In addition, Schulz has participated as a plaintiff and as a witness in cases where courts have rejected his arguments. *We The People Foundation, Inc. v. United States*, 485 F.3d 140 (D.C. Cir. 2007); *United States v. Simkanin*, 420 F.3d 397, 403 (5th Cir. 2005), *cert. denied*, 547 U.S. 1111 (2006). At least one court, moreover, convicted an employer who had stopped withholding taxes from his employees' paychecks based on the Schulz's ideas, and despite Schulz's testimony for the defense. (Gordon Decl. ¶¶ 33-34, Exhs. 19 & 24-25.) *See also Simkanin*, 420 F.3d at 403.

The Government accordingly argued that the defendants' persistence in promoting arguments that they know have been rejected by the courts demonstrates that an injunction is necessary. (Doc. 14 at 10-11.) The defendants'

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[2] Customers are encouraged to join a further scheme, also promoted by the defendants, involving a list of questions compiled by Schulz. The defendants contend that participants in the scheme need not file returns or pay taxes until the Government answers the questions. Within the last five months, the Court of Appeals for the District of Columbia Circuit rejected that argument in a suit brought by Schulz and his corporations. *We the People Foundation, Inc. v. United States*, 485 F.3d 140 (D.C. Cir. 2007). The defendants charge individuals a $250 annual fee to participate in the scheme; employers may participate in the scheme for a $500 annual fee. Over two thousand of the defendants' customers are plaintiffs in *We the People*.

speech was not protected under the First Amendment, the Government explained, because it consisted largely of false and fraudulent commercial speech, and, to the extent that it was non-commercial, because the speech aided and abetted violations of the tax law. (*Id.* at 16.)

The District Court granted the injunction requested by the Government. (Doc. 30.) The court found that the defendants' conduct implicated the proscriptions of I.R.C. § 6700, because the defendants had organized a plan or arrangement – Operation Stop Withholding – and had made false and fraudulent statements concerning the tax benefits to be derived from the plan, with the result that numerous individuals had stopped paying their taxes. (*Id.* at 13-14.) The court also found that the disclaimer included in some of the defendants' materials, taken in context, "appears not to disclaim at all." (*Id.* at 12-13.)

The District Court also concluded that an injunction was necessary to prevent future violations of I.R.C. § 6700. (Doc. 30 at 14-17.) It found that the defendants' activities were harming both individuals, who were exposing themselves to criminal liability by following the defendants' instructions, and the United States, which was not receiving required tax payments and was required to expend resources to collect the unpaid taxes. (*Id.* at 14-15.) The court also noted that the defendants knew or should have known that their theories "have been consistently rejected by the courts," but had expressed no recognition of their own

culpability and, on the contrary, had continued to promote their scheme. (*Id.* at 15-16, 17.) "It is a virtual certainty," the Court found, "that, absent injunctive relief, future violations can be anticipated." (*Id.* at 17.)

Finally, the District Court rejected the defendants' argument that their activities constituted protected speech under the First Amendment, and specifically the right to petition the Government for redress. (Doc. 30 at 17-23.) The court acknowledged that "[m]uch of Defendants' conduct is protected speech" (*id.* at 20), but it stated that the First Amendment affords no protection for a defendant who "urges the preparation and presentation of false IRS forms with the expectation that the advice will be heeded" or who makes "knowingly false statements . . . as part of a scheme to defraud" (*id.* at 19). The court also observed that the defendants' speech might indeed be considered commercial, because they advertise their program, request "donations" for each packet of materials, encourage their customers to become paying members of their organization, and sell videos, pamphlets, CD-Roms, bumper stickers, brochures, and flags. (*Id.* at 20 n.10.) The court held that false, misleading, and deceptive commercial speech could clearly be enjoined (*id.* at 20) and that the defendants' speech could still be enjoined even if it were not commercial, because the First Amendment does not protect speech that incites imminent lawless action. (*Ibid.*, *citing Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).) "Defendants are not merely advocating," the

court found, "but have gone the extra step in instructing others how to engage in illegal activity and have supplied the means of doing so." (*Id.* at 21, *citing United States v. Schiff*, 269 F.Supp. 2d 1262, 1280 (D. Nev. 2003) and *United States v. Bell*, 414 F.3d 474 (3d Cir. 2005)).

The District Court accordingly granted summary judgment for the Government and enjoined the defendants from engaging in activity subject to penalty under I.R.C. §§ 6700 and 6701. (Doc. 30 at 23.) Further, the court required the defendants to notify their customers of the opinion and order, to produce their customer list to counsel for the United States, to remove the offending material from their websites, and to display the court's opinion on their websites for one year. (Doc. 30 at 23-24.) The defendants were required to comply immediately and to provide an affidavit of compliance by August 30, 2007. (*Id.* at 25.)

DISCUSSION

To obtain a stay under Rule 8 of the Federal Rules of Appellate Procedure, the moving party must establish: (1) a "strong" showing that he will prevail on the merits on appeal; (2) that irreparable injury will result unless the stay is granted; (3) that issuance of a stay will result in no substantial harm to other interested persons; and (4) that issuance of a stay will result in no substantial harm to the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). A party seeking a

stay must show both the likelihood of success on the merits and the possibility of irreparable injury or, alternatively, that serious legal questions are raised and that the balance of hardships tips sharply in his favor. *Kaplan v. Board of Ed.*, 759 F.2d 256, 259 (2d Cir. 1985). These two interrelated tests are not separate, but rather represent the outer reaches of a single continuum. *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002).

1. The defendants cannot make the requisite "strong" showing that they will prevail on the merits on appeal. They contest the District Court's factual findings on only two points.[3] First, they argue (Mot. 11-13) that the District Court erred in finding harm imposed by their program solely on the basis of certain declarations by IRS personnel. The defendants contend that these declarations conflate their "Operation Stop Withholding" program (which the Government here sought to have enjoined) with their separate scheme (the subject of *We The People*, 485 F.3d 140) to charge taxpayers $250-$500 a year in order to join their petition for grievances.

This argument fails on two grounds. To begin with, the District Court's finding that taxpayers had relied on the defendants' program to stop paying taxes

[3] The defendants also argue that there is a factual dispute regarding whether they distributed the "blue folders" for economic gain. (Mot. 9.) The District Court, however, concluded that distribution of the folders could be enjoined even assuming that the materials at issue were not commercial speech. (Doc. 30 at 20.) Accordingly, any factual dispute on this point is not material to the District Court's order.

was not based solely on the declarations of IRS personnel. Rather, the court found that "Defendants' own submissions reveal that people have acted upon Defendants' advice," and it cited one of the defendants' documents that claims that "[a]nother case involves a group of 12 oil workers in Arkansas that recently sought to terminate their withholding agreements (W-4s) *en masse*, by submitting WTP Form #1 to their company." (Doc. 30 at 14 n.7.) The court further observed that the Government had produced copies of the defendants' forms that had been submitted to the IRS or to employers by the defendants' customers. (*Id.*) Moreover, the District Court did not err in relying on the fact that the defendants' dues-paying members, plaintiffs in the *We The People* suit, were also participants in the "Operation Stop Withholding" scheme that is the subject of this suit. The defendants' own materials present the two schemes as complementary, with the "Operation Stop Withholding" materials providing the means by which members of the petition scheme might avoid paying taxes.[4]

The defendants' second factual challenge is their claim that their scheme was "clearly intended to do nothing more than incite workers to take certain written material about withholding of pay to their companies" for the ultimate

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[4] Because there is no reason to believe that the members of the petition scheme and the individuals participating in "Operation Stop Withholding" are mutually exclusive groups, the extra-record documents that the defendants seek to introduce here (*see* Mot. 12-13) to identify the members of the petition scheme are irrelevant.

benefit of tax professionals. (Mot. 16.) This contention addresses the District Court's conclusion (Doc. 30 at 12-13) that the defendants' disclaimer (where it appeared) was ineffective. The disclaimer states that:

> Although these materials may be used in attempting to secure and exercise one's Constitutionally protected Rights . . . We The People specifically encourages all workers and business owners to submit these materials to qualified legal counsel for review and advice.

As the District Court observed (Doc. 30 at 13), this disclaimer "appears not to disclaim at all." Instead, it clearly states that the "materials may be used in attempting to secure and exercise one's Constitutionally protected Rights." Moreover, as the District Court also pointed out (*ibid.*), the materials represent that they were created by tax professionals, thus removing any incentive to customers to refer the materials for further review by yet more tax professionals. Finally, as the District Court observed (*ibid.*), the disclaimer is not included on all the materials distributed by the defendants. For these reasons, the District Court correctly concluded that the defendants' scheme was intended to do more than provide information, via employers and employees, to tax professionals.

2. The bulk of the defendants' arguments are directed not to showing that they will prevail on appeal, but to avoiding any such showing on the ground that their First Amendment rights are implicated by the District Court's order. (Mot. 7-8, 10.) As the District Court explained, however (Doc. 30 at 17-23), the defendants' fraudulent speech is not protected by the First Amendment, and the

defendants therefore were properly enjoined from distributing and promoting their "Operation Stop Withholding" materials.

As an initial matter, it bears noting exactly what the injunction here at issue prohibits. The defendants' distribution of materials, via their websites and otherwise, is prohibited only to the extent that the materials promote the fraudulent tax scheme. The injunction does *not* prohibit the defendants from selling legitimate tax advice, criticizing the Government, or engaging in legitimate tax-related activities or advocacy. (Doc. 30 at 23-24.) If the illegal instructions, documents, and related advertising that constitute §§ 6700 and 6701 penalty conduct were removed, distribution of the remaining materials, or display of the remaining portions of the websites, would be permitted.[5]

The Supreme Court has held that speech related to illegal conduct and false commercial speech are not protected by the First Amendment and may be banned. Every court that has considered the issue has applied these principles to tax-evasion schemes and has held that selling and promoting tax-evasion instructions may be enjoined consistent with the First Amendment as both "fraudulent *conduct*" and false commercial speech. *E.g., United States v. Estate Preservation*

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[5] That Schulz correctly understands the scope of the District Court's order is demonstrated by his affidavit of compliance with that order, where he states that he has disabled the links on his websites to "the WTP forms that were in the Blue Folder and that are the subject of the Government's complaint in this action." (Doc. 42.)

Servs., 202 F.3d 1093, 1106 (9th Cir. 2000) (emphasis added). The defendants' arguments to the contrary in this case lack merit.

The Supreme Court has made clear that banning a course of conduct does not violate the First Amendment "'merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.'" *Ohralik v. Ohio St. Bar Ass'n*, 436 U.S. 447, 456 (1978) (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)). Numerous examples exist of communications that may be regulated without offending the First Amendment. *See Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 389 (1973) (order prohibiting newspaper from publishing discriminatory advertisement); *Nat'l Soc'y of Prof'l Eng's v. United States*, 435 U.S. 679, 696-699 (1978) (injunction against publication of ethical canon); *NLRB v. Retail Store Employees Union, Local 1001*, 447 U.S. 607, 616 (1980) (ban on secondary picketing). Of particular relevance here, the Supreme Court has emphasized that the First Amendment "does not shield fraud." *Madigan v. Telemarketing Assocs.*, 538 U.S. 600, 612 (2003). In each of these cases, legislation or injunctions aimed at prohibiting specific commercial activities were upheld, even though the prohibition had an indirect impact on speech.

Similarly, the courts have held that the First Amendment does not shield publishers who aid and abet crimes by distributing instructions on how to commit

those crimes. *United States v. Bell*, 414 F.3d 474, 483 (3d Cir. 2005); *Rice v. Paladin Enter., Inc.*, 128 F.3d 233 (4th Cir. 1997); *United States v. Barnett*, 667 F.2d 835 (9th Cir. 1982). Such "instructions" are unprotected by the First Amendment because teaching "techniques" is far different from mere "theoretical advocacy." *Rice*, 128 F.3d at 249. Thus, every circuit that has addressed the issue has "concluded that the First Amendment is generally inapplicable to charges of aiding and abetting violations of the tax laws." *Rice*, 128 F.3d at 245 (collecting cases).

As this Court has explained, one who comments "generally on the tax laws . . . without aiding, assisting, procuring, counseling or advising the preparation or presentation of . . . false or fraudulent tax documents," does not violate the Internal Revenue Code. *United States v. Rowlee*, 899 F.2d 1275, 1280 (2d Cir. 1990). For those who aid or abet other taxpayers in filing false or fraudulent tax forms, however, "the First Amendment afford[s] no defense." *Ibid.* Here, the defendants' speech violated both I.R.C. §§ 6700 and 6701. As fraudulent conduct, and as an act aiding and abetting the preparation of false returns, that speech may be enjoined.

Many courts have applied the illegal-conduct and commercial-speech doctrines to Congress's regulation of tax-evasion products – including books and websites – and have determined that speech incorporated into those products is *not*

protected by the First Amendment and can properly be penalized under §§ 6700 and 6701 and enjoined under § 7408. *See, e.g., Bell*, 414 F.3d at 484 (enjoining speech that "advertised, marketed or sold false tax advice, or aided and abetted others, directly or indirectly, to violate tax laws"); *Estate Preservation*, 202 F.3d at 1096 n.3, 1097, 1099, 1106 (enjoining as "fraudulent conduct" and misleading "commercial speech" the "marketing" and "selling" of a "training manual" that provided "false tax advice"); *United States v. Raymond*, 228 F.3d 804, 807, 815 (7th Cir. 2000) (enjoining as "false or misleading commercial speech" advertisements and a three-volume book); *United States v. Kaun*, 827 F.2d 1144, 1152 (7th Cir. 1987) (enjoining as false "commercial speech" and speech used to "further an illegal activity" written materials providing false information regarding the tax laws); *United States v. Smith*, 657 F. Supp. 646, 648-649, 658 (W.D. La. 1986) (enjoining as "commercial speech, which effectively promotes unlawful activity," a book containing false tax advice), *aff'd per curiam*, 814 F.2d 1086 (5th Cir. 1987); *United States v. Buttorff*, 761 F.2d 1056, 1057 n.1, 1065 n.11, 1066 (5th Cir. 1985) (enjoining certain "written information" as false "commercial speech [that] promotes an illegal activity"); *United States v. White*, 769 F.2d 511, 512, 516-517 (8th Cir. 1985) (enjoining "a cassette tape and written materials," including sample tax forms and "detailed instructions" about "fraudulent means to evade federal income taxes," as false "commercial speech" and speech used to

promote "an illegal activity"); *Abdo v. United States*, 234 F. Supp. 2d 553, 567-568 (M.D.N.C. 2002) (enjoining "materials" promoting that "[p]aying income taxes is voluntary" as false "commercial speech"), *aff'd*, 63 Fed. Appx. 163 (4th Cir. 2003); *United States v. Savoie*, 594 F. Supp. 678, 680, 682-683 (W.D. La. 1984) (enjoining two "tax publications" promoting fraudulent statements such as "Wages Not Income" as illegal conduct and false "commercial speech"); *NCBA/NCE v. United States,* 843 F. Supp. 655, 666 (D. Colo. 1993) (holding that a book advocating the unconstitutionality of federal taxes in connection with a commercial scheme that helped others evade taxes was not protected by the First Amendment), *aff'd*, 42 F.3d 1406 (10th Cir. 1994). Indeed, not a single case has refused to enjoin – on First Amendment grounds – speech that violates §§ 6700 or 6701.

The D.C. Circuit has specifically rejected these defendants' position that the First Amendment permits them to withhold monies owed to the Government as a form of protest. *We The People Foundation,* 485 F.3d at 143-144. *See also United States v. Buttorff*, 572 F.2d 619 (8th Cir. 1978) (sustaining conviction under 26 U.S.C. § 7205 of promoters who instructed other to file false Forms W-4 despite their First Amendment defense); *United States v. Freeman*, 761 F.2d 549 (9th Cir. 1985). In *Malinowski*, 472 F.2d at 857, the Third Circuit noted that "[t]o urge that violating a federal law which has a direct or indirect bearing on the

object of protest is conduct protected by the First Amendment is to endorse a concept having no precedent." *Id.*

In simple terms, the defendants are free to communicate their political message without also instructing customers how to make illegal tax filings, and assisting them in doing so. The injunction here is limited to restraining the defendants from engaging in conduct that is false commercial speech, that incites others to violate laws, and that assists others in violating laws. That speech may be enjoined.

3. There is no merit to the defendants' assertion (Mot. 15-16, 19) that requiring them to provide the Government with a list of individuals to whom the "Operation Stop Withholding" materials have been distributed violates Schulz's or the recipients' First Amendment associational rights. First, the record showed that the defendants operated as a commercial enterprise, not as a political organization. Producing customer lists of such an enterprise does not offend the First Amendment, because commercial transactions do not give rise to associational rights. *Bell*, 414 F.3d at 485 (list of tax promoter's customers not protected by freedom of association); *IDK, Inc. v. County of Clark*, 836 F.2d 1185, 1193-95 (9th Cir.1988) (escort/client relationship not protected by freedom of association); *In re PHE, Inc.*, 790 F. Supp. 1310, 1317 (W.D. Ky. 1992) (holding that commercial relationship between publisher and its customers was not protected

"associational right" under First Amendment); *In re Grand Jury Subpoena Served Upon Crown Video Unlimited, Inc.*, 630 F. Supp. 614, 619 (E.D.N.C. 1986) ("the commercial relationship arising from the sale of videotapes by the subpoenaed corporations to their customers is not protected by the first amendment's freedom of association guarantee," even though videotapes themselves were protected form of speech).

Furthermore, even in non-commercial contexts, the courts have held that the Government's interest in enforcing the tax laws outweighs any associational rights that may be implicated. *See, e.g., St. German of Alaska Eastern Orthodox Catholic Church v. United States*, 840 F.2d 1087, 1094 (2d Cir. 1988) (enforcing summons that sought "disclosure of contributors' names" because the IRS's "compelling governmental interest" in "enforcement of the tax laws" outweighed associational rights of organizations' members); *Kerr v. United States*, 801 F.2d 1162, 1164 (9th Cir. 1986) (enforcing an IRS summons even though it required producing names of organization's members). The Government similarly has a compelling interest in enforcing the tax laws here.

Disclosure of the defendants' customer list is necessary, among other reasons, to monitor whether the defendants are complying with other provisions of the injunction, such as the requirement that the District Court's order be sent to all customers. *See, e.g., Abdo*, 234 F. Supp. 2d at 569 (ordering promoter to mail

court's order to his customers and "provide evidence of his compliance with the foregoing" by filing a "complete list of names and addresses" of those customers). Moreover, to the extent that customers have used the defendants' services and products to file false returns, they have likely violated the Code and are subject to possible civil and criminal penalties. The IRS's interest in investigating such violations is a "compelling interest" that outweighs any associational rights. *First Nat'l Bank of Tulsa v. Dep't of Justice*, 865 F.2d 217, 220 (10th Cir. 1989). The District Court did not abuse its discretion or violate the defendants' First Amendment rights when it ordered disclosure of the client list.

4. Finally, the balance of hardships weighs strongly against a stay pending appeal here. The record demonstrates that the defendants' conduct causes irreparable harm and if allowed to continue would cause further harm. Each day that the defendants do not turn over their customer list, statutes of limitations may be expiring, making unpaid taxes uncollectible and permanently reducing the public fisc. The irreparable harm also includes injury to the defendants' customers, who expose themselves to civil and criminal liability, and the draining of IRS resources through the effort required to detect those customers and ensure their compliance with the tax laws.

On the other hand, the injunction does not irreparably harm the defendants, because it does not enjoin them from any lawful activity – it only enjoins them

from breaking the law. The defendants have not and cannot demonstrate any right to defraud the Government or the public, and hence an injunction requiring them to refrain from such conduct can hardly be said to result in genuine, much less irreparable, harm. *See Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (injunctions requiring people to follow the law do not cause hardship).

CONCLUSION

For the foregoing reasons, the defendants' motion for a stay of the District Court's order pending appeal should be denied.

Respectfully submitted,

RICHARD T. MORRISON
Acting Assistant Attorney General

GILBERT S. ROTHENBERG
Acting Deputy Assistant Attorney General

ANDREA R. TEBBETS (202) 353-9703
BETHANY B. HAUSER (202) 514-2830
Attorneys
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044

Of Counsel:

GLENN T. SUDDABY
United States Attorney

Dated: This 12th day of September, 2007.

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing opposition has been made on appellant Robert Schulz, appearing *pro se*, and on the attorney for appellants We the People Foundation for Constitutional Education and We the People Congress on this 12th day of September, 2007, by mailing to each a copy thereof in an envelope properly addressed as follows:

Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

Mark Lane, *attorney for*:
We the People Foundation for Constitutional Education
We the People Congress
2523 Brunswick Road
Charlottesville, VA 22903

BETHANY B. HAUSER
Attorney