UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 04C 7403
	)	
Plaintiff,	)	Judge Filip
	)	
v.	)	Magistrate Judge Keys
	)	
WILLIAM J. BENSON,	)	
	)	
Defendant.	)	
	)	

BENSON'S MOTION TO STRIKE AND MOTION TO HAVE FACTS DEEMED ADMITTED

Comes now Defendant, William J. Benson ("Benson"), by and through his counsel of record, Jeffrey A. Dickstein, and respectfully moves this court for an order striking paragraphs 31-51 of the Government's Response to Benson's Local Rule 56.1 Statement of Material Facts, and deeming as admitted the facts set forth in those paragraphs. Benson further respectfully moves the court to strike those portions of the United States Reply Brief that fail to sufficiently state any defense to Benson's arguments contained in his Opposition to the Government's Motion for Summary Judgment.

Local Rules 56.1(a)(3)(B) and (b)(3)(B) require the government to controvert any additional facts that require denial of summary judgment. Failure to controvert results in the additional facts being deemed admitted. The issue before the court is quite simple: whether Benson's speech that the Sixteenth Amendment was not ratified is in actuality true or false. If his speech is true, his "tax advice" is not "false and fraudulent" and the government loses its case. Paragraphs 31 – 51 of Benson's statement of material facts undeniably, and conclusively, show an insufficient number of states ratified the proposed Sixteenth Amendment to allow it to

become a part of the United States Constitution. Benson's speech is absolutely true as a matter of fact.

The government has not, and cannot, controvert Benson's facts. Instead, it has imposed spurious, frivolous objections to the facts themselves. Whether or not Benson's speech is true is the very issue and subject matter of this civil action. How do facts that conclusively provide the answer to that question become irrelevant, immaterial, impertinent or scandalous? They don't, and Plaintiff's argument suggesting they do is patently without merit.

Benson predicted in his Motion to Dismiss the Complaint that the government would attempt to prevent him from putting on any defense. The motion was prophetic. According to the government, the issue of the truth or falsity of Benson's speech is "beyond review" by the courts. According to the government, Benson's facts are not admissible. Hence, according to the government, Benson is to have no defense, as a matter of law or as a matter of fact, that he hasn't engaged in conduct subject to penalty. The government, as well as this court, was made aware in Benson's Motion to Dismiss the Complaint that to proceed against Benson in this manner would, according to the United States Supreme Court, violate Benson's constitutional rights to due process. The government, with proven prior knowledge of its illegal conduct, nonetheless here proceeds. In so proceeding, Plaintiff has asked the court to entertain a defense not allowed by years of Constitutional precedent.

One does not, in the United States, lose freedom by being subjected to an irrebutable presumption. Yet, the last two papers filed by the Plaintiff, its Response to Benson's Rule 56.1 Statement of Material Fact and the United States Reply Brief, seek to have the case determined by that very unconstitutional and illegal methodology. Rule 12(f) of the Rules of Civil

Procedure authorizes this court to strike insufficient defenses from pleadings. Benson is moving the court to strike the government's insufficient defenses.

According to the government, the "purported 'facts'" set forth in paragraphs 31 through 51, inclusive, of Benson's Local Rule 56.1 Statement of Material Facts "relate solely to defendant's contention that the Sixteenth Amendment was never ratified." (Response to Benson's Local Rule 56.1 Statement of Material Facts, p. 1.) Unless Plaintiff is using some Rules of Evidence unknown to the legal community at large, by definition Benson presented facts relevant and material to the issues and subject matter before the court. The Plaintiff isn't even entitled to "object" to these facts, its obligation being to "controvert" these facts "including, in the case of any disagreement, by providing specific references to the affidavits, parts of the record, and other supporting materials relied upon." Local Rule 56.1(b)(3)(B). The government has failed to do so.

So too, the government has not demonstrated in any way that the facts presented by Benson, including well established mathematical rules of subtraction, are impertinent or scandalous. What is impertinent is the government's refusal to admit the facts in light of their total inability to prove they are false. What is scandalous is the government intentionally attempting to deny Benson due process of law and to impugn his character by suggesting he has a mental deficiency resulting in "twisted logic." (Response to Benson's Local Rule 56.1 Statement of Material Facts, p. 1.)

Furthermore, the government's contention that Benson is collaterally estopped from challenging the validity of the Sixteenth Amendment or its ratification in a case in which he was precluded from making the argument, much less present supporting evidence, is also patently frivolous. Lawsuits are a means of settling a dispute between litigants. In the Benson criminal

case, the dispute as to whether the Sixteenth Amendment was ratified was not litigated. The government filed a motion to prevent Benson from litigating the issue, and the district court granted the motion. Benson challenged the granting of that motion on appeal and lost. This sequence of events does not constitute an actual litigation of the issue on its merits.

Had Benson been convicted for criminal fraud for falsely telling people that the Sixteenth Amendment was not ratified, and had he been given an opportunity to prove that he was not falsely telling people that the Sixteenth Amendment was not ratified, then collateral estoppel might preclude him from defending a later case on the same grounds. That, however, is not the state of the matter. The causes of action against Benson in the criminal case were one count of income tax evasion and two counts of misdemeanor failure to file. No evidence whatsoever, indeed no issue of non-ratification of the Sixteenth Amendment, was presented to any trier of fact in that case. The issues litigated were whether certain payments were required to be reported. That the legislature of the State of Oklahoma intentionally amended, by legislative protocol, the proposed Sixteenth Amendment was not presented. That Secretary of State Knox and his Solicitor declared ratification based upon false presumptions was not presented. There is no case in the history of United States litigation that has ever addressed the arguments and the facts ***HERE*** presented by Benson.

Specifically addressing Benson, the Seventh Circuit stated they had reviewed the arguments made in The Law That Never Was in the *Thomas* case, and concluded that "Benson did not discover anything." That statement is absolutely false. First, *Thomas* didn't make the arguments being made here. Second, the Seventh Circuit admits it only considered what Secretary of State Knox considered. Third, Benson did discover something that Knox never considered. Knox never looked at any evidence other than the certificates of ratification because

he presumed no State did what they are precluded by law from doing. Benson discovered that in fact several States engaged in conduct they were precluded by law from doing, and he has proven that in this litigation. This argument, and the proof supporting it, has not been raised in any prior case involving Sixteenth Amendment ratification. This issue has never been litigated anywhere.

In the very reference cited by the government, 18 Charles A. Wright, *et al*., Federal Practice and Procedure § 4418 at 169-170 (1981), it is stated: "To be sure, issue preclusion is seldom appropriate if successive actions grow out of entirely separate fact settings." The facts of the government's criminal case against Benson's and the successive action of the government here are "entirely separate fact settings." *United States v. Bailin*, 977 F.2d 270 (7th Cir. 1992), cited by the government, is not only wholly inapplicable to any factual situation present in this case, but also fails to support the government's legal theory. The case in fact supports Benson's contention that the government's collateral estoppel argument does not present a cognizable defense, and should be struck.

Let's be clear. The government brought this action against Benson. The government specifically raised the issue that Benson's telling people the Sixteenth Amendment wasn't ratified, is false. The government's sole ability to win its case is dependent upon Benson's statements constituting "false and fraudulent" tax advice. The government's assertion has been factually proven to be wrong. The case law relied upon by the government as precedent has been shown to be seriously defective and non-binding on Benson. The government has presented no opposition to the contention that the enrolled bill rule and RS 205, as applied with respect to the ratification of the Sixteenth Amendment, violates Article V of the United States Constitution and are themselves unconstitutional.

The government seriously underestimated the results of its ill designed litigation against Benson and has been defeated. The government's new strategy of preventing Benson from presenting a defense, a strategy Benson predicted, violates due process of law. The government's strategy does not amount to a sufficient defense because the defense is not authorized at law.

Benson's speech, being true, prevents any application of the commercial speech exception to the First Amendment, not that such exception is applicable to Benson's political speech in the first instance. Benson is not engaged in the commercial selling of trusts. That people hearing Benson's speech may have engaged in conduct costing the federal government substantial tax revenues is not controlling with respect to First Amendment speech. The issue under the First Amendment is whether Benson's speech invokes imminent lawless conduct. It does not. Despite admitting fact number 52 that inquiry of Benson is being made by a criminal investigator of the federal government, Plaintiff makes no refutation that Benson has a Fifth Amendment right to remain silent, and therefore neither has to admit nor deny that he has "customers."

Finally, the government has failed to deny, or support its denial with the required reference to proof of fact to the contrary, paragraphs 31 through 51 of Benson's Local Rule 56.1 Statement of Material Facts.

Wherefore, Benson moves this court for an order striking those portions of the government's recent pleadings, under the authority of F.R.C.P. 12(f), that fail to present a sufficient defense. Benson further moves this court for an order, pursuant to the provisions of Local Rule 56.1, deeming as admitted the facts contained in paragraphs 31 through 51 of Benson's Local Rule 56.1 Statement of Material Facts.

Dated: December 20, 2005.

The Law Offices of Robert G. Bernhoft, S.C.

by: /s/ Jeffrey A. Dickstein

Jeffrey A. Dickstein
Attorney Pro Hac Vice
207 E. Buffalo Street, Suite 600
Milwaukee, WI 53202
(414) 276-3333