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 MEMORANDUM OF LAW IN OPPOSITION TO THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT

Comes now Defendant, William J. Benson ("Benson"), by and through his counsel of record, Jeffrey A. Dickstein, and respectfully submits his memorandum of law in opposition to the United States' motion for summary judgment.

STATUTORY SCHEME

Section 7408 of the Internal Revenue Code (26 U.S.C. § 7408) is a grant of subject matter jurisdiction allowing the United States to seek an injunction to prohibit a person from continuing to engage in conduct that violates 26 U.S.C. §§ 6700, 6701, 6707 or 6708 of the Internal Revenue Code. *See* 26 U.S.C. § 7408(c). If the court finds a person actually engaged in conduct proscribed by those sections, and that injunctive relief is appropriate to prevent recurrence of such conduct, the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under Title 26. *See* 26 U.S.C. § 7408(b). The court's jurisdiction to enjoin is found at 26 U.S.C. § 7402(a). Section 6700 of the Internal Revenue Code allows for the imposition of a penalty on any person who either organizes or participates in the sale of any entity, plan or arrangement and makes in connection with the entity, plan or arrangement a statement with respect to: (1) the allowability of a deduction or credit; (2) the excludability of any income; or (3) the securing of any

other tax benefit by holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter.

ALLEGATIONS AGAINST BENSON

The complaint asserts Benson is promoting, organizing or selling plans or arrangements and making statements regarding the excludability of income that he knows or has reason to know are false or fraudulent as to a material matter. (Complaint, ¶ 1.a.) In particular, the complaint alleges Benson offers for sale on his website a set of documents that Benson contends is a compendium of information: (1) giving the purchasers of the information the education and choice toward not filing an income tax return, and (2) giving the purchasers of the information the education to say "Based on my state-of-mind, frame of mind, reliance and belief I am obeying the dictates of Constitutional law." (*Id.*, ¶¶ 5-6.) The complaint further alleges that Benson falsely tells customers the federal income tax is unconstitutional because the Sixteenth Amendment to the Constitution was not properly ratified by the states, (*Id.*, ¶ 8.), and that those false statements constitute "false and fraudulent tax advice." (*Id.*, ¶ 9.) Finally, the complaint alleges Benson falsely tells customers "[t]o date, the IRS has steadfastly refused to prosecute any person standing on this defense." (Id., ¶ 11.)

PRIOR PROCEEDINGS

Upon receipt of the government's complaint and motion for preliminary injunction, Benson filed a motion to dismiss the complaint on the ground that the district court lacked subject matter jurisdiction. (Motion to Dismiss, Dkt. 11.) Benson cited to appellate and Supreme Court cases all of which have held the issue of the ratification of a constitutional amendment is a political question outside the jurisdiction of the federal judiciary, or is otherwise "beyond review" by the courts. (Dkt. 11, pp. 3-7.) Benson also complained that if it were to be presumed the Sixteenth Amendment has been properly ratified, and he were not allowed to contest the matter, he would be denied equal protection and due process of the law. (Dkt. 11, pp. 12-14.) Benson provided proof that then

Secretary of State Knox relied on presumptions to dispose of various State notifications showing non-ratification, and proof that the statement of the Seventh Circuit that it actually addressed the relevant questions regarding ratification was embarrassingly wrong. (Dkt. 11, pp. 8-11.) Benson specifically makes and incorporates the same arguments made in his motion to dismiss as part of his opposition to the government's motion for summary judgment.

This court, rather than accept the Seventh Circuit's opinion that the issue is "beyond review," denied Benson's motion to dismiss and scheduled a status conference. (Dkt. 13.) At that conference, the court ordered Benson to file a response to the complaint and opposition to the motion for preliminary injunction, (Dkt. 17), which he did (Dkts. 20 and 21). Benson specifically makes and incorporates the same defenses and arguments made in his answer to complaint and opposition to the motion for preliminary injunction as part of his opposition to the government's motion for summary judgment.

Regarding Sixteenth Amendment issues, the court directed Benson to file a short letter brief as to what evidence, beyond that contained in The Law That Never Was, he would adduce during an evidentiary hearing. (Dkt. 22.) Benson advised the court that all facts of the non-ratification of the 16th Amendment were contained in the Law That Never Was, but of course, the original certified state archive documents are not contained in the book. Benson advised the court those documents can be brought into Court for inspection or admission into evidence. (Dkt. 27.)

The government has not posed any challenge that the actual, certified, state documents do not say exactly what Benson quotes them as saying in his book. Many of those facts are now set forth by Benson as material statements of fact. Should the government object to those statements of fact, Benson demands an evidentiary hearing in which to authenticate and admit into evidence, the actual, certified state documents themselves. Later, the court also authorized Benson to submit a 25-page brief "regarding history on ratification of the Sixteenth Amendment" (Minute Order, Dkt.

26), which he did (Dkt. 35). That document argues there is a clearly defined factual dispute between the parties: whether Benson's speech regarding the Sixteenth Amendment is false and fraudulent, as the government contends, or true, as Benson contends. (Dk. 26, p. 1.)

Benson argued that any conclusive presumption under Section 205 of the Revised Statutes, and the so called "enrolled bill rule" would violate Article V of the United States Constitution if it allowed as part of our constitution a proposed amendment not ratified by three-fourths of the states then in the union. (Dk. 26, pp. 2-10.) Benson, referencing his certified documents, pointed out: a) the states that outright rejected the proposed amendment; b) those states that voted against the amendment or failed to vote at all; c) those states that intentionally exercised legislative protocol to formally change the wording of the proposed amendment; d) those states that voted on something other than the actual proposed amendment, and e) those states that violated one or more of their own legislative requirements on how to pass a resolution. (Dk. 26, pp. 10-19.) For each category of error, Benson cites to case law establishing the correctness of his position that an insufficient number of states ratified the proposed Sixteenth Amendment. Benson specifically makes and incorporates the same arguments made in his Law That Never Was Brief as part of his opposition to the government's motion for summary judgment.

ISSUES

I. Whether Benson Is Falsely Telling People That The Sixteenth Amendment To The United States Constitution Was Not Ratified.

In or about 1894, a man very much like Benson dared to contend the government was proceeding contrary to the constitution in attempting to extract a tax from him. At that time, such people were not classified as illegal tax protesters and such issues were not "beyond review." Indeed, Mr. Pollock was correct in his assertion, and the United States Supreme Court so declared. *See Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, *aff. reh.*, 158 U.S. 601 (1895). The

Supreme Court suggested if Congress wished to proceed in imposing a direct tax on income without apportionment, it needed to amend the Federal constitution, *Pollock*, 158 U.S. at 634-635, and that is exactly what Congress attempted to do. The government has not argued in this case, as indeed it cannot, that if in fact the Sixteenth Amendment was not properly ratified, then today's income tax is just as unconstitutional as the 1894 tax struck down in *Pollock*. *See Eisner v. Macomber*, 252 U.S. 189, 205 (1920). No U.S. Citizen would be required to file a Form 1040 or to pay the income taxes imposed in Subtitles A and C of the Internal Revenue Code.

The government has so far failed and refused to rebut the factual and legal positions established in Benson's prior pleadings that he is not falsely telling people that the Sixteenth Amendment was not ratified. Instead, the government clings to case law that it now knows was wrongly decided, and insists upon impressing upon Benson a conclusive presumption that he is violating the law and subject to penalty. The government was made aware in Benson's pleadings that such presumptions were themselves in violation of the constitution. (Benson's Motion to Dismiss, Dkt. 11, pp. 12-14.)

Two points remain uncontested and prevent the government from prevailing on summary judgment: First, Benson has presented evidence of the non-ratification of the Sixteenth Amendment that was never reviewed by Secretary Knox, his Solicitor of State, or any court. Knox and his Solicitor unequivocally proceeded upon the presumption that because states do not have any authority to make changes to a federal constitutional amendment proposed by Congress, they did not do so. Unless the government wishes to challenge the validity of the state archived certified documents collected by Benson, he has conclusively shown in this litigation the falsity of that presumption.

Second, having shown the falsity of the presumption relied upon by Secretary Knox and his Solicitor of State, cases such as *United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986); *United*

States v. Foster, 789 F.2d 457 (7th Cir. 1986); *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986); *Miller v. United States*, 868 F.2d 236 (7th Cir. 1988) and their progeny both in the Seventh and other Circuits, can no longer be considered valid law. As admitted by the Seventh Circuit itself, the issue was poorly briefed, if briefed at all, in those cases. *See Foster*, 789 F.2d at 462. Benson has shown that the Seventh Circuit did not in fact address the issue that several states intentionally changed the wording of the proposed amendment or otherwise did not vote on the proposed amendment. (Benson's Motion to Dismiss, Dkt. 11.)

Unlike the parties in previous cases, Benson has presented undeniable proof that at least three states, Oklahoma, Missouri and Washington, intentionally changed, by legislative protocol, the language of the Sixteenth Amendment proposed by Congress. Benson has also presented undeniable proof that another eight states, Kentucky, Kansas, Tennessee, South Dakota, Arkansas, Idaho, California and Maryland, either failed to vote on the proposed amendment or voted on language that was not identical to the language contained in the proposed Sixteenth Amendment.

Forty-eight states were in the Union in 1909. Pursuant to constitutional mandate, thirty-six states had to ratify the proposed Sixteenth Amendment. Forty-two states submitted ratification certificates. Four states rejected the amendment. Another eleven failed to ratify. That brings the total states that did not ratify the Sixteenth Amendment to fifteen, nine less than the constitutionally mandated thirty-six.

Benson's statements are absolutely true and correct. Thus he has not engaged in any conduct subject to penalty or otherwise subject to being enjoined. The United States is not entitled to a preliminary or permanent injunction, must less summary judgment.

II. Whether The First Amendment Bars The Court From Issuing The Injunction.

Benson fully understands that Congress enacted §6700 for the purpose of stopping not only what actually are abusive tax shelters, but also to stop people from selling materials designed to

effectuate the underreporting of tax liability. Benson also understands there is no First Amendment protection for false statements made in the course of commercial advertising, the so called "commercial speech" exception. *See Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 63-65 (1983).

The government complains that Benson advocates that the Sixteenth Amendment to the Constitution was not properly ratified by the states, and therefore the income tax is unconstitutional. (Complaint, ¶ 8.) According to the Supreme Court in *Coleman v. Miller*, 307 U.S. 433, 450 (1939), such matters raise "political questions." If, indeed, that is a "political question," then Benson's talking about it is "political speech."

It is nowhere alleged that Benson tells people not to file tax returns or to violate any law. There is no risk, much less an allegation, that Benson's "advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

The government alleges Benson's "plan" is the selling of documents over the Internet. The government's exhibits attached to its motion for summary judgment show the material contains hundreds of pages of documents, including federal district court trial transcripts, letters, legal opinions from attorneys, government reports and court cases, a DVD and video tapes. Reading and watching and understanding the material requires an enormous amount of time. The days, or even weeks, required to digest the material belies any assertion of imminent lawless conduct or a likelihood of inciting imminent lawless conduct. The government has not even alleged that Benson advocates breaking the law . If we accept the allegations of the complaint as true, Benson told readers of his website that his compendium will give them the "education and choice" toward not filing income tax returns. (Complaint, ¶ 6.) If we accept the allegations of the complaint as true, then Benson believes one would be "obeying the dictates of Constitutional law" (Complaint, ¶ 6) if

they followed the educational information contained in his compendium. Benson's advocacy is clearly addressed toward influencing belief, not action, and therefore is protected speech. *See Yates v. United States*, 354 U.S. 298, 313-318 (1957); *Brandenburg,* 395 U.S. at 447-449.

Examining the instant case in *Brandenburg's* light, Benson's speech is clearly protected by the First Amendment. Unlike Dennis Kaun, in *United States v. Kaun*, 827 F2d 1144 (7th Cir. 1987), Benson did not tell people not to file tax returns or to pay taxes, nor did he advocate bogging down the IRS with numerous FOIA requests. Even in *Kaun*, however, the Seventh Circuit seemed deeply troubled by the First Amendment implications of the injunction contemplated there, as evidenced by Judge Ripple's thoughtful concurrence. "I believe it would be a mistake for the government or for the district courts in this circuit to interpret this case as signaling any diminution in our scrutiny of government submissions aimed at curtailing first amendment rights." *Kaun*, 826 F.2d at 1153-54 (Ripple, J., concurring).

Moreover, other circuits have rejected government attempts at abridging protected speech in the tax area, as evidenced by the thoughtful decision in *United States v. Dahlstrom,* 713 F.2d 1423 (9th Cir. 1983). There, defendants were charged criminally under 26 U.S.C. § 7206 for promoting a tax avoidance trust scheme, and were convicted in the district court below. *See id.* The appeals court, however, overturned their convictions on First Amendment grounds: "Nothing in the record indicates that the advocacy practiced by these defendants contemplated imminent lawless action. Not even national security can justify criminalizing speech unless it fits within this narrow category; certainly concern with protecting the public fisc, however laudable, can justify no more." *Id.* at 1428.

The government argues that several alleged purchasers, including Mr. Doyle, did in fact commit lawless actions. But the *Brandenburg* test does not rise and fall on the actions of listeners, but on the actual conduct of the speaker:

> Even if the defendants knew that a taxpayer who actually performed the actions they advocated would be acting illegally, the first amendment would require a further inquiry before a criminal penalty could be enforced. With the exception of Durst, no defendant actually assisted in the preparation of any individual tax return. Rather they merely instructed the audience on how to set up a particular tax shelter.

Id. at 1428 (citing *Brandenburg*, 395 U.S. at 444).

If the First Amendment protected Dahlstrom and his co-defendants, who actually advocated aggressive participation in a tax avoidance scheme which they knew could result in criminal and civil penalties against investors, how much more is Benson protected from government attempts to silence his political speech? Much more so. As Justice Douglas eloquently taught in his *Brandenburg* concurrence:

> The line between what is permissible and not subject to control and what may be made impermissible and subject to regulation is the line between ideas and overt acts. The example usually given by those who would punish speech is the case of one who falsely shouts fire in a crowded movie theatre. This is, however, a classic case where speech is brigaded with action . . . . Apart from [those types of] rare instances speech is, I think, immune from prosecution. Certainly there is no constitutional line between advocacy of abstract ideas as in Yates and advocacy of political action as in Scales. The quality of advocacy turns on the depth of the conviction; and government has no power to invade that sanctuary of belief and conscience.

Brandenburg, 395 U.S. at 456 (citations omitted).

Benson's political speech was not intended to, nor could it, incite imminent lawless actions. And regardless of what use alleged purchasers made of that information some months later, Benson's speech is protected by the First Amendment. *See Dahlstrom*, 713 F.2d at 1423; *Brandenburg*, *supra*. Moreover, enforcing that protection serves important public interests, because there is a self-evidently stronger policy interest in protecting the free exchange of political, historical, theological and legal information, than in protecting books that teach how to build bombs or depict some novel form of sexual debauchery.

Furthermore, Benson's advocacy cannot be considered merely as proposals to engage in commercial transactions. Nor is it sufficient that Benson may have had an economic motive for his advocacy. The fact that his material addressed issues of great political importance to a huge segment of the citizenry, i.e., whether a proposed amendment to the United States Constitution was in fact actually ratified, is enough to exempt his words from the "commercial speech" classification. *See Bolger, supra*. Telling people that the Sixteenth Amendment was not ratified and therefore the income tax is unconstitutional is not unlawful conduct nor is it misleading. *See Central Hudson Gas & Elec. Corp. v. Public Service Comm'n*, 447 U.S. 557 (1980). No one can doubt that if the Sixteenth Amendment was not ratified, the income tax is unconstitutional. That part of Benson's speech is absolutely true. The government is here attempting to make the utterance of the statement – that the Sixteenth Amendment was not ratified – unlawful activity subject to penalty, but the statement in reality does nothing more than state an opinion contrary to the government's opinion. A free people decide important questions by comparing opinions, not by censoring unpopular ones.

Here, the government asserts the Constitution has been amended to give it additional powers. Benson, and apparently a lot of other people, believe the government's assertion is false and fraudulent. The right to publicly remonstrate fraudulent and illegal abuse of power by the government in the strongest terms, and to put their neighbors upon their guard against the craft of open violence of men in authority, is the very mainstay of our freedom. A Federal Republic cannot function if the people are prohibited from having, and expressing, a different opinion than that of those holding public office.

The government is using § 6700 to suppress the free expression of debate regarding whether the Sixteenth Amendment was, or was not, properly ratified by the states. It would be one thing if Benson were telling others not to file tax returns. He is not. Section 6700 is not content neutral, and as applied here, violates the First Amendment prohibition that Congress shall make no law

abridging the freedom of speech or of the press. *See United States v. O'Brien*, 391 U.S. 367, 377 (1968).

III. Whether The Names Of Those Who Agree With Benson, If Any, Have A Right To Freedom Of Association That Protects Disclosure Of Their Names.

The First Amendment also prohibits laws abridging the rights of the people peaceably to assemble and to petition the government for a redress of grievances. The right applies to organized activities ranging from political parties and media organizations to protest committees and dissident groups:

> [C]ollective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.

Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984).

Effective speech often requires more resources than a single individual can bring to bear, and political impact often depends on numbers. The government offers no proof that all members of the group comprised of Benson's alleged customers engaged in unprotected criminal activity, much less knowingly and intentionally supported the unprotected criminal activity. The First Amendment prohibits guilt by association. *See Scales v. United States*, 367 U.S. 203, 220-222 (1961); *Noto v. United States*, 367 U.S. 290, 296-300 (1961). Furthermore, the alleged customers themselves have a privacy interest in the non-disclosure of their names. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982).

IV. Whether Injunctive Relief Is Appropriate To Prevent Recurrence Of Such Conduct.

Benson has removed all of the allegedly prohibited speech from his website, and has stopped offering for sale the allegedly defective materials. Therefore, his speech no longer has any commercial component whatsoever. Further, Benson is willing to enter into a stipulated settlement

that without admitting penalty conduct, he will not sell the material complained of by the government. But the government has requested the injunction, based on § 6700 penalty conduct, be published on Benson's website and that Benson disclose the names and addresses of those who purchased material from him. *See* Motion for Summary Judgment, page 2, items (f) through (j).

Items (f) through (j) are not in anyway related to preventing a future occurrence by Benson. Instead, they are related to computing the amount of penalties to be imposed against Benson for violating § 6700, to the investigation of other politically minded individuals, and to gather evidence to be used to prosecute Benson and others for one or more of the following federal crimes: conspiracy to defraud the IRS, conspiracy to willfully fail to file tax returns, conspiracy to willfully evade taxes, aiding and abetting income tax evasion, aiding and/or abetting the filing of false and fraudulent tax returns.

V. Whether The Court Can Issue An Injunction Compelling A Person To Give Up His Right To Remain Silent And His Right Not To Incriminate Himself.

Attached to Benson's opposition to the government's motion for preliminary injunction as Exhibit A is a notarized Affidavit from Steven Perry Austin, dated June 2, 2005. Mr. Austin swears that on May 19, 2005, at approximately 5:00 p.m., in connection with a criminal federal grand jury subpoena handed to him by a Criminal Investigation Division Special Agent for the Internal Revenue Service, he was questioned regarding Bill Benson. Such information is more than enough to call into operation Mr. Benson's rights under the Fifth Amendment to the United States Constitution. *See Maness v. Meyers*, 419 U.S. 449, 461 (1975); *United States v. Sharp*, 920 F.2d 1167, 1170 (4th Cir. 1990) (quoting *Maness*, 419 U.S. at 461); *United States v. Neff*, 615 F.2d 1235, 1239 (9th Cir.), *cert. denied*, 447 U.S. 925 (1980); *United States v. Doe*, 465 U.S. 605, 612-613 (1984); *United States v. Argomaniz*, 925 F.2d 1349 (11th Cir. 1991). The government's

investigation of Benson for possible violations of criminal law provides a constitutional bar to compelled disclosure from him.

VI. Whether Benson Knew, Or Had Reason To Know, The Content Of His Speech (Complaint, ¶¶ 8 and 11) Was False Or Fraudulent.

In the not too distant past, the majority of justices sitting on the United States Supreme Court, a multitude of other judges, and prosecutors, as well as those legislatures enacting laws, held black people were, in fact, property. Based upon the argument of the government here, they had no right whatsoever to claim they were people or to demand to be treated like people, because they, and their attorneys, knew, according to the case law, their position was "false or fraudulent."

Benson has briefed both in his motion to dismiss and here why the court decisions relied upon by the government are not entitled to rise to the status of irrefutable, conclusive evidence of Benson's knowledge; he has in his possession evidence not considered by Knox and therefore not considered by the Seventh Circuit. What evidence Benson has, and what that evidence lead him to believe, is a question of fact not to be precluded by official government position to the contrary in the form of defective case law. As noted above, the opinions of men in government positions are sometimes not only wrong, but dangerously wrong.

The government asserts at page 11 of its Memorandum of Law in Support of its motion for a preliminary injunction that their level of proof must be by a preponderance of the evidence. Other courts disagree, and hold the level of proof must be by clear and convincing evidence due to the penal nature of § 6700. *See Marsellus v. United States*, 544 F.2d 883, 885 (5th Cir.1977); *United States v. Campbell*, 704 F.Supp. 715, 725 (N.D.Tx. 1988); *Warner v. United States,* 700 F.Supp. 532, 533 (S.D.Fla.1988); *Barr v. United States*, 67 F.3rd 469 (2nd. Cir. 1995).

Regardless of the standard, however, the burden is on the government to show Benson's scienter. By virtue of the showing made by Benson, it is clear that he does not believe the cases

cited by the government were rightly decided. If the mere existence of those cases is enough to prove Benson's subjective state of mind against him, then Section 6700 has to be unconstitutional under the First Amendment, because the very core of Benson's contested speech and belief is that Knox perpetrated a fraud on all Americans, and that those cases are simply wrongly decided.

VII. Whether, To The Extent The Enrolled Bill Rule Allows The United States Constitution To Be Amended Other Than As Constitutionally Mandated, It Is Unconstitutional.

The cases cited in Benson's Motion to Dismiss and Law That Never Was Brief on the ratification of the Sixteenth Amendment establish that the federal courts follow the "enrolled bill rule" when considering whether a proposed constitutional amendment has actually been ratified. Benson has shown that at least three states actually intended to change the proposed Sixteenth Amendment and therefore they did not ratify the proposed amendment. The truth then would be at odds with the enrolled bill rule – the former showing in fact the Sixteenth Amendment is not a part of our Constitution, and the latter pretending it is. Such pretense, while convenient for those holding the reins of power, constitutes an overthrow of the government ordained by the people of this country. If the "enrolled bill rule" prohibits the court from adjudging Benson not guilty of violating the penalty provisions of § 6700, then it is overbroad and unconstitutional.

CONCLUSION

Newspapers charge for their publications, yet no one doubts newspapers maintain rights under the First Amendment to the United States Constitution. The mere fact that money may be exchanged does not turn Benson's political speech into unprotected speech subject to penalty. Political parties also raise money in order to continue with their political agendas.

According to the documents submitted by the government itself, Judge Plunkett found that Benson "is a person who has convictions and believes in them and speaks out about them." (Ponzo Declaration, Dkt. 40, 16th Amendment Reliance Package, p. 39.) Judge Plunkett

also stated he "hope[s] the day doesn't come when we punish people for that." *Id.* The documents submitted by the government also contains Benson's reasons for his complained of activity:

> An uninformed, or misinformed populace, cannot remain free for very long. It has been my objective with this [reliance] letter, my speeches and my writings to educate you and inform you of the truth [sic] we can remain optimistic about our nation's future as long as the truth can be broadcast about. r[sic]emember, the truth shall set you free. If you agree be a guardian of liberty and insist your public servants serve you and not vice versa.

(Howell Declaration, Dkt. 41, Exhibit A, p. 15.)

Further, the documents submitted by the government also set forth the four part program of the Free Enterprise Society as follows: 1) read The Law That Never Was; 2) read the reliance package; 3) lobby the executive and legislative branches of government for relief, and 4) file law suits demanding the federal judiciary answer the issues. (Cantrell Declaration, Dkt. 42, Exhibit C, p. 17.) The action of the government here is tantamount to obtaining an injunction against Martin Luther King prohibiting him from speaking out about the state of the law in America regarding black people because Rosa Parks refused to sit in the back of the bus.

WHEREFORE, Benson objects to the government's request for summary judgment, and objects to the granting of any injunction, preliminary or permanent.

Dated: December 1, 2005.

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by: /s/ Jeffrey A. Dickstein

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