IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Case No. <<CASE NO>>

(USDC Case No.: <<CASE NO>>)

<<YOUR FULL NAME>>**,**

Appellant,

v.

United States of America
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF FOR

<<YOUR FULL NAME>>

NOT "<<YOUR FULL ALL CAPS NAME>>"

Appellant

<<YOUR FULL NAME>>
<<ADDRESS>>
<<CITY>>, <<STATE>> <<ZIP>>
Email: <<EMAIL>>

Sui Juris

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The above named Appellant hereby submits APPELLANT'S REPLY BRIEF pursuant to FRAP 28(c).

1 MINOR CORRECTIONS AND AMENDMENT(S) TO OPENING BRIEF

1.1 Affirmation added for entire Opening Brief

Appellant noted after filing that the Opening Brief was not signed under penalty of perjury. This was an unintentional oversight. The affirmation signed as part of this Reply Brief shall also refer to the entire content of the Opening Brief as well.

1.2 Addition of Declaration of Facts to Opening Brief

The Appellant incorporates by reference into the Opening Brief the Exhibit 1 attached to the Opposition to the Motion for Sanctions signed by him on June 4, 2007. That exhibit provides a declaration of facts pertinent to this case, including a summary of all the issues on appeal and all events that lead up to the appeal.

2 RESTATEMENT OF THE ISSUES

The issues on appeal are clearly stated in Sections 4.1 through 4.4.4 of the Opening Brief. Those issues are tersely summarized in Exhibit 1, Sections 3 to 3.5 attached to the Opposition to the Motion for Sanctions signed June 4, 2007 by the Appellant. That document is hereby incorporated by reference into the Opening Brief with the filing of this Reply.

Appellee has mis-stated the issues on appeal in order to divert attention of the Court away from the substantive issues. Appellant did not give him permission to

speak for the me and his comments about the issues on appeal should be disregarded. I, as the Appellant, am the *only* one who can describe or define the issues on appeal or any other aspect of my rights or status. I remind this honorable Court that this is a tax case and the Declaratory Judgments Act, 28 U.S.C. §2201(a) expressly forbids this Court from ascribing any status to me that might be in conflict with what I state under penalty of perjury in a tax case. This includes any determinations that might be in conflict with Exhibit 1 attached to my Opposition to Motion for Sanctions, Signed on June 4, 2007.

This appeal focuses on four simple issues, not one as the Appellee suggests.:

1. No demonstrated statutory jurisdiction by district court pursuant to 4 U.S.C. §72. This includes the requirement to produce the statutes that "expressly extend" enforcement authority to states of the Union in areas NOT under the jurisdiction of Congress pursuant to 40 U.S.C. §3112 AND
2. No demonstrated enforcement authority pursuant to the Federal Register Act and the Administrative Procedures Act. Appellee never met the burden of proof in providing either an implementing regulation published in the Federal Register OR proof that Appellant is a member of the three groups

specifically exempted from the requirement for publication of said enforcement regulations.

3. Is the Appellant the "person" defined in 26 U.S.C. §6671(b)? There is no proof on the record that he is and the rules of statutory construction forbid including him.
4. Violations of due process by the district court. This includes:
    a. Use of biased witnesses with a financial and conflict of interest whose illegal activities were exposed by the very speech sought to be enjoined in violation of 18 U.S.C. §208.
    b. Punishing persons for asserting their First Amendment Right to *NOT speak* or to demand that they be allowed to respond to discovery ONLY in writing as permitted by F.R.Civ.P. 31.
    c. Abusing inapposite caselaw not compatible with the circumstances of the plaintiff.
    d. Ignoring the mandatory requirements of the Minimum Contacts Doctrine in the case of a nonresident defendant and then LYING to the appeals court that Appellant is a "citizen of California". This is in contradiction to evidence in the Answer, Doc. 05, Aff. Matl. Facts.

3 STATEMENT OF THE CASE

A succinct statement of the case is contained in Section 2 of the Opening Brief. Amplifying factual information about the nature of the case is also contained in Exhibit 1 attached to the Opposition to the Motion for Sanctions, signed by the Appellant on June 4, 2007 and mailed on June 6, 2007. In particular, see questions 2, 4, 5, and 6 of that Exhibit 1. That Exhibit is incorporated by reference into this Reply Brief.

4 STATEMENT OF THE FACTS

4.1 Facts of the Case

Facts of the case are stated in Exhibit 1 attached to the Opposition to the Motion for Discovery Sanctions, Signed June 4, 2007, which is incorporated by reference herein.

Additional undisputed facts of this case are also found in the Answer, Doc. 05, Aff. Matl. Facts, Sections 3 and 4.

4.2 Disputed Factual Allegations of Appellee

The following statements of fact appearing in the Opposition Brief of the Appellee are false and are hereby rebutted. They are provided in tabular form to conserve space:

#	*False statement*	*Location in Opp. Brief*	*Place where rebutted in record*	*Notes*	*Comments*
1	<<YOUR LASTNAME>> was born in <<STATENAME>> and currently resides there.	p. 3	Doc. 5, Aff. Mat. Facts, Section 3		
2	<<YOUR LASTNAME>> promoted several tax evasion schemes under the names 'Family Guardian' and 'Sovereignty Education & Defense Ministry'	p. 4		2, 4, 5, 12	
3	<<YOUR LASTNAME>> encouraged customers to use his materials 'to start your war with the tyrants at the IRS.'	4		3, 11	
4	He sold a "Citizenship Administrative Repudiation" program that purposed to enable purchasers to immunize themselves from taxation by exchanging their "U.S. citizenship" for "American National citizenship". <<YOUR LASTNAME>> charged $2,000 for an individual and $2,700 for a couple to participate in this program.	4		2	Appellant specifically denied responsibility for this program at the time of the 30NOV2005 deposition. See Doc. 72, Exhibit 10. Appellant never received any money or consideration for this offering and it wasn't even available at the time the Answer was filed or during the issuance of the injunction order.
5	<<YOUR LASTNAME>> also sold guidebooks on how to evade federal taxes, including instructions for obstructing IRS examinations.	4		12	It is impossible for a person who has signed an SEDM Member Agreement under penalty of perjury stating that he or she is a "nontaxpayer" not subject to the I.R.C. to "evade" any duty under the I.R.C. See Doc. 72, Exhibits 1 through 4.
6	<<YOUR LASTNAME>> advised his customers to assert frivolous positions in response to IRS audits.	5		2, 3	
7	He made false or fraudulent	5		4	Appellant didn't make this argument. He agreed with the government's

#	False statement	Location in Opp. Brief	Place where rebutted in record	Notes	Comments
	statements in furtherance of his schemes: for example, (1) that wages are not income;				position on this in Doc. 72, Exhibit 8, Section 2.
8	(2) that taxes are voluntary, because filing of returns the payment of taxes is not required by law;	5	Doc. 72, Mem. Law, Section 5.1		Payment of taxes is voluntary for "nontaxpayers", who the applicable Member Agreements and Disclaimers, Doc. 72, Exhibits 1 to 4, say are the ONLY authorized audience for the speech sought to be enjoined. Government may not 'pretend" that "nontaxpayers" do not exist when even the U.S. Supreme Court recognizes their existence. South Carolina v. Regan, 465 U.S. 367 (1984).
9	(3) that the income tax applies only within the District of Columbia and the federal territories and possessions;	5	Doc. 72, Exhibit 8, Section 6. Doc. 72, Mem. Law, Section 5.3	4, 6, 7	
10	(4) that only federal employees and persons doing business with the Federal Government are subject to the income tax.	5	Doc. 72, Exhibit 8, Section 7	4, 6, 7	
11	(5) that only federal employees or federal officeholders are required to complete Form W-4 withholding statements;	5	Doc. 72, Exhibit 8, Section 10	4, 6, 7	
12	(6) that the Internal Revenue Code is not valid law.	5	Doc. 72, Exhibit 8, Section 20	4, 6, 7	
13	<<YOUR LASTNAME>> is aware that courts have rejected his positions relating to the federal tax laws.	5	Doc. 72, Mem. Law, Section 4.10.1.2.		FALSE. <<YOUR LASTNAME>> presented attached to Doc. 72, Exhibit 11 a pamphlet documenting the origin of his beliefs, which come right from the U.S. Supreme Court, the IRS, and the legal profession. Based exclusively on government's own statements and publications, there is no basis to believe these arguments are false because there ARE no sources of credible belief that anyone in government is willing to take responsibility

#	False statement	Location in Opp. Brief	Place where rebutted in record	Notes	Comments
					for and the courts say you can't trust anything the IRS says or writes. Government was demanded to rebut this basis for his beliefs and told that if they remained silent, then they agreed with it. They may NOT proceed to disagree with their own previous estoppels.
14	For approximately $50, <<YOUR LASTNAME>> sold form letters containing these types of frivolous positions for customers to use in responding to IRS correspondence.	6		13	
15	<<YOUR LASTNAME>> also advised customers not to cooperate with an IRS examination until the examining agent completes a so-called "Test for Tax Professionals" that he offers for sale.	6		3, 6	Test for Tax Professionals has NEVER been for sale that I am aware of. It has always been FREE on the Family Guardian Website and nothing on the Family Guardian website has ever been for sale.
16	<<YOUR LASTNAME>> advised his customers not to file tax returns, . . .	7		3, 6	
17	For customers who did file returns, <<YOUR LASTNAME>> helped them to file returns that falsely showed only one cent of income and that requested a refund of payments made or taxes previously withheld.	7		6	Appellant stated under penalty of perjury at the 30NOV2005 deposition that he has NEVER prepared returns for anyone and that anyone who does is STUPID. See Doc. 72, Exhibit 10. Disclaimers and Member Agreements prohibit preparing or advising in the preparation of tax returns. See Doc. 72, Exhibits 1 through 4.
18	His website includes sample returns and instructions, and he	7		2, 11	

#	False statement	Location in Opp. Brief	Place where rebutted in record	Notes	Comments
	provided customers with materials that set forth his false arguments in support of such erroneous filings, to be attached to the returns.				
19	As part of his program, <<YOUR LASTNAME>> incited and assisted his customers to file false IRS Forms W-4 (Employee's Withholding Allowance Certificate) and W-8. . .	8		2, 3, 4, 6	
20	<<YOUR LASTNAME>> also advised customers to attach erroneous IRS 4852 Forms ("Substitute for Form W-2") to their tax returns.	8		2, 3, 4, 6	
21	For a $100 hourly fee, <<YOUR LASTNAME>> offered to meet with customers for administrative or consulting services and to prepare documents for them.	8		13	
22	<<YOUR LASTNAME>> also provided customers with false "opinion letters" that he falsely claimed were a "defense" against penalties for willful failure to file returns. . .	8		13	Appellant has never sold opinion letters to anyone.
23	The IRS notified <<YOUR	9	Answer, Doc. 05,		IRS has NEVER notified Appellant that anything on SEDM was under

#	False statement	Location in Opp. Brief	Place where rebutted in record	Notes	Comments
	LASTNAME>> that his programs were under investigation and that his conduct is subject to penalty under I.R.C. §§6700 and 6701 and subject to injunction under I.R.C. §§7401 and 7408.		Aff. Matl. Facts, Section 6, para. 12.		investigation. The only contact with the IRS prior to this injunction proceeding was in June 2003, and the SEDM website did not exist at that time. IRS has repeatedly refused invitations to meet with Appellant to offer evidence of what they thought was wrong and why it was wrong so the appropriate third parties could be notified to correct the beliefs and opinions that are not factual which reflect said statements. See Answer, Doc. 05, Aff. Matl. Facts, Section 6, para. 12.
24	Nevertheless, <<YOUR LASTNAME>> continued to market his programs and interfere with the administration and enforcement of the federal tax laws.	9	Answer, Doc. 05, Aff. Matl. Facts, Section 6, para. 12.	4	FALSE. There was no marketing and never has been any advertising or factual speech in connection with any of the materials in question. If it isn't factual, it can't be false, actionable, or enjoinable. See Doc. 72, Exhibits 1 to 4. None of the materials sought to be enjoined even existed at the time of the ONLY contact with the IRS in June 2003 prior to the injunction proceeding.
25	<<YOUR LASTNAME>>'s programs have cost the United States substantial amounts of lost tax revenue, drained IRS resources, and subjected his customers to potential civil and criminal sanctions.	9		4, 6, 7	The IRS cannot lawfully claim an injury because of loss of revenues in connection with persons who are "nontaxpayers" and who have become the target of unlawful enforcement actions. The ONLY authorized audience for any of the materials sought to be enjoined are "nontaxpayers" not subject to the I.R.C. See Doc. 72, Exhibits 1 through 4.

NOTES:

1. Government's statement of the facts of the case is controverted and completely inconsistent with all the statements made in The Answer, Doc. 05, Aff. Matl. Facts.
2. Appellant is not responsible and was not responsible for the websites identified at the time the order was issued and no evidence other than inadmissible opinion evidence of biased witnesses indicates otherwise.
3. Appellant never advised anyone of anything. He is not the author of the materials sought to be enjoined and the Disclaimers themselves say that the ONLY authorized audience is the authors themselves and not other readers. There is therefore no basis for reliance. See Doc. 72, Exhibits 1 and 2.
4. Irrelevant because no factual speech is at issue in this proceeding. The applicable Disclaimers and Member Agreements posted on the websites at issue

#	False statement	Location in Opp. Brief	Place where rebutted in record	Notes	Comments
	specifically state that the speech in question is "religious and political beliefs and opinions that are NONfactual, NONactionable, and not admissible as evidence pursuant to F.R.E. 610".[1] Appellant claims the same protections for his own verbal statements. The characterization of speech as "factual" and therefore "actionable" is up to the *speaker* and not the hearer, and the speech itself clearly declares its nature. No change in that nature can occur without a violation of the First Amendment. It is therefore IMPOSSIBLE for that which identifies itself as simply a belief or opinion to be either false or factual or actionable. This is emphasized in the applicable Disclaimers and Member Agreements, Doc. 72, Exhibits 1 to 4.				
5.	Appellant never "promoted or advertised" anything and that advertising is only meaningful in describing "factual speech". Advertising is *not* permitted by the SEDM Member Agreement either.[2] There is no evidence on the record from any third party source that links him to any kind of factual speech, whether designed to induce a commercial transaction or not.				
6.	Appellant does not and never has interacted with "taxpayers" in the context of the websites in question, who would be the only proper audience for "tax shelters". The websites themselves FORBID and always have forbade "taxpayers" from reading or using the information the make available. See Doc. 72, Exhibits 1 through 4.				
7.	The term "customers" is only meaningful in the context of "taxpayers", since the I.R.C. pertains ONLY to "taxpayers" and NOT to "nontaxpayers". It is a franchise agreement to which those who engage in a "trade or business" must implicitly or explicitly consent.				
8.	Appellant never sold any plan or arrangement that was guaranteed to produce any result and the Member Agreement pertaining to the materials mandates that guarantees are FORBIDDEN. See Doc. 72, Exhibit 4.				
9.	Appellant never filed returns on anyone's behalf and he denied doing so under penalty of perjury at the Deposition held 30NOV2005. See Exhibit 10 attached to Doc. 72.				
10.	<<YOUR LASTNAME>> has never provided opinion letters to any third party, and certainly not for a fee. There is no evidence to the contrary and the belief of biased witnesses does not constitute evidence. Government's claim is a presumption and a religious belief, not a fact.				
11.	This reference comes from statements within free materials on the Family Guardian website which are not available for free and are therefore protected by the First Amendment.				
12.	Website Disclaimers and Membership Agreements specifically prohibit use of any of the materials available for an unlawful purpose. See Doc. 72, Exhibits 1 to 4.				
13.	No material evidence from any disinterested third party proving this. Only inadmissible opinions of biased witnesses with a financial conflict of interest and who were afraid of having their own illegal activities exposed and prosecuted by the very materials sought to be enjoined.				

[1] See Opp. to the Motion for Summary Judgment, Doc. 72, Aff. Matl. Facts, section 4.9.1 and Exhibit 1 through 4.

[2] Doc. 72, Exhibit 4.

5 SUMMARY OF ARGUMENT

Appellee continues to falsely argue that he has jurisdiction within a state of the Union to enforce the Internal Revenue Code but stubbornly REFUSES to provide admissible evidence to support that repeated, groundless assertion, including:

(1) Statutes authorizing the enforcement "public offices" and the "public offices" that are the subject of the tax upon a "trade or business" (26 U.S.C. §7701(a)(26) says this means a "public office" as MANDATED by 4 U.S.C. §72;

(2) Implementing enforcement regulations published in the Federal Register for 26 U.S.C. §§6700, 6701, 7402, and 7408 **OR** proof that the Appellant is a member of one of the three groups specifically exempted from the requirement for publication.

(3) The Treasury Order or Presidential Executive Order that establishes IRS enforcement authority in any state of the Union within OTHER than federal areas.

Where is the "beef", sir? Appellee is ***NOT*** asking for caselaw because NONE provides the specific proof of jurisdiction demanded in this quo warranto challenge to his jurisdiction. By his willful silence and omission in not providing the proof requested, he has demonstrated that his actions are a NAKED USURPATION and TREASON deserving of criminal prosecution. He has violated his position of trust as a public officer and has essentially admitted that he and his employer have turned that trust into a SHAM TRUST for their own personal and financial benefit, which is unconscionable. Without proof of jurisdiction on the record, he is

engaged in criminal racketeering in violation of 18 U.S.C. §1956 and this court is a willing participant by condoning his conduct or refusing to require proof of his jurisdiction on the record.

By his willful acts of omission in dealing with the issues and his self-serving refusal to acknowledge the WHOLE truth throughout this proceeding, Appellee has defaulted to all of the issues raised in the Opening Brief by not responding to ANY point directly which was raised. Therefore, this case is already decided in favor of the Appellant.

Appellee:

(1) Has self-servingly mis-stated this cause of action. This case focuses ***not*** primarily on "abuses of discretion", but more importantly on ***absence of jurisdiction***. It is a challenge to jurisdiction in the form of a "quo warranto" action in which the Appellant is simply asked to provide ***specific*** statutory and regulatory authority for his conduct ON THE RECORD, which he has refused to provide. Caselaw is not responsible to the questions before this court. ONLY statutes and regulations and proof that the Appellant is a federal instrumentality or agent ON THE RECORD will answer the questions posed. Since he has not provided it, he is without jurisdiction and this case ***must*** be dismissed with prejudice.

(2) Is trying to manufacture a bogus controversy out of speech which identifies itself as simply a religious belief and opinion and not a fact;

(3) Is prejudicially and illegally applying the provisions of the I.R.C., which is private law and a franchise agreement pertaining to those engaged in a "trade or business" (defined as a "public office" in 26 U.S.C. §7701(a)(26)), against a *non-party* to it and a "nontaxpayer" not subject to it as a nonresident alien not engaged in a "trade or business". He has not satisfied the burden of proving that Appellant is subject to the I.R.C. BEFORE citing or enforcing it against him. This amounts to a prejudicial presumption which violates due process and the rights of the Appellant and results in involuntary servitude combating his false presumptions in this court.

(4) Is deliberately and maliciously ignoring the right of the speakers to characterize the significance of their statements (creations) as NONfactual, NONactionable, religious beliefs and statements in violation of the First Amendment.

(5) Is trying to abuse this honorable court to create the equivalent of a "thought crime" by abusing the legal process itself as a method to punish "political

dissidents" and unlawfully engage the court in "political questions" beyond its jurisdiction.

(6) Is trying to make Appellant responsible for the conduct of speech that is not his and that he did not write and which he stated under penalty of perjury at the 30NOV2005 deposition that he did not write. See Doc. 72, Exhibit 10 for the transcript.

(7) Is engaging in an unjust prosecution by illegally trying to make persons who he falsely believes are authors of the speech in question responsible for uses of materials that are **SPECIFICALLY PROHIBITED** by the applicable Disclaimers and Member Agreements. Doc. 72, Exhibits 1 to 4.

Appellee's and the government's position on this injunction are unsustainable and this injunction cannot stand. Once again, this honorable Court is requested to focus ALL of its attentions ONLY on the issues raised directly in the Opening Brief, which the Appellee is suspiciously and completely silent on. It is asked to direct ALL of its attention to the issues and facts summarized in Exhibit 1 attached to the Opposition to the Motion for Sanctions. It should not entertain "delay tactics" and obstruction of justice by the Appellee, which are obvious based on his

motion for sanctions and his refusal to deal with any of the issues directly that were raised in the Opening Brief.

6 ARGUMENT

6.1 Appellee is LYING to this court

The Appellee is LYING to this Court about the nature of this case on a number of points. For a detailed listing of the things he states that are simply FALSE and FRAUDULENT, refer to Section 4.2 earlier. These are not innocent mistakes, but malicious, pervasive, repeated mis-statements of the truth that have repeatedly been contradicted by the Appellant under penalty of perjury throughout these proceedings with no rebuttal from the Appellee. Fed.R.Civ.Proc. 8(d) says that a failure to deny constitutes an admission. The Appellee has abandoned the battlefield of truth long ago and continues to abuse these proceedings for clearly political purposes. By doing so, he is practicing what essentially amounts to a state-sponsored religion, whereby inadmissible "beliefs and opinions" supersede the reality or the facts.

6.2 Appellee Defaulted to all the arguments raised by refusing to address ANY of them

Throughout this case, both in the lower court and in this court, Appellant has repeatedly asked the Appellee to remain silent on everything stated in the petitions

and pleadings of Appellant that he agrees with and which is truthful.[3] All the Appellee had to produce to counter the Opening Brief were the specific forms of evidence ON THE RECORD that the law requires to prove his jurisdiction, and he *did not*. The evidence demanded included that summarized in section 2 earlier and Exhibit 1 attached to the Opposition for the Motion for Sanctions signed June 4, 2007.

Where is the "beef", sir? Appellee is ***NOT*** asking for caselaw because NONE provides the specific proof of jurisdiction demanded in this quo warranto challenge to his jurisdiction. By his willful silence and omission in not providing the proof requested, he has demonstrated that his actions are a NAKED USURPATION and TREASON deserving of criminal prosecution. He has violated his position of trust as a public officer and has essentially admitted that he and his employer have turned that trust into a SHAM TRUST for their own personal and financial benefit, which is unconscionable. Without proof of jurisdiction on the record, he is engaged in criminal racketeering in violation of 18 U.S.C. §1956 and this court is a willing participant by condoning his conduct or refusing to require proof of his

[3] See Doc. 72, Federal Pleading Attachment; Doc. 95, Exhibit 4, etc. All of these exhibits applied to all present as well as future filings with any federal court.

jurisdiction on the record. Appellee's silence constitutes a breach of the public trust and his position as trustee.

6.3 Appellee's arguments and Court's Order are MOOT because factual speech has NEVER been at issue

Throughout this proceeding, Appellant has always maintained that the information and/or communication that is the subject of this proceeding identifies itself as "religious and political beliefs and opinions that are NONfactual, NONactionable, and not admissible as evidence pursuant to Fed.R.Ev. 610".[4] He also emphasized this at the 30NOV2005 deposition at least ten times. Appellee cannot continue to pretend that he is dealing with an issue of fact or speech which could truthfully be characterized as "false", nor has he demonstrated the delegated authority to reclassify speech into factual speech in direct contradiction to what the speech actually classifies itself. Speech which identifies itself as a belief or opinion cannot rationally or truthfully be false or fraudulent. Appellee has repeatedly been asked to reconcile this contradiction at the 30NOV2005 deposition, in the multiple Certificates of Compliance that were filed, and even in

[4] See Doc. 72, Aff. Matl. Facts: Section 4.9.1 and Exhibits 1 through 4;

open court and refuses to address it.[5] Appellee's silence on this issue constitutes an admission that he is engaging in a criminal conspiracy against the rights of a group whose speech is protected by the First Amendment. The fact protected beliefs and opinions may be connected with commerce of any kind does NOT take them out of the protected category or change their character so as to bring them within the ambit of this court.

> *"The fact that conduct qua expression is "speech" does not mean that it can not at all be regulated or made a crime,[6] but does result in severe limitations on that process. The first amendment by its negative drafting ("Congress shall make no law . . . abridging the freedom of speech. . . .") protects conduct qua expression unless it can be removed from that protection pursuant to some doctrine judicially recognized as consistent with the first amendment.* ***Thus, one who challenges the application of a statute to conduct which amounts to expression does not have the burden of bringing his expression within the first amendment. Rather the burden is on his opponent to show that such expression is within one of those narrow areas which by their relation to action partake of the essential qualities of action rather than expression and therefore are carved away from the first amendment."***
> *[U.S. v. Dellinger, 472 F.2d 340, (1972)]*

6.4 Appellee's arguments are MOOT because the illegal uses of the materials he alleges have ALWAYS been UNAUTHORIZED by the Materials

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[5] See Doc. 95, Exhibit 2; Doc. 113, Exhibit 5.

[6] Cox v. Louisiana, 379 U.S. 536, 554, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965).
As to any given statute then there is first the *threshold* question whether the statute relates to expression and is therefore governed by first amendment considerations. We look for that answer in reality and not solely in the words of the statute. Thus, if a statute in its impact has or can be expected substantially to involve expression, that must be sufficient, whether or not the words of the statute so provide. There is, secondly, the *removal question*, whether the expressive conduct is so related to action that the expression is therefore carved away from the protection of the first amendment.

Appellee alleges that the materials sought to be enjoined incite or endorse "tax evasion". This is simply impossible. To "evade" a tax under 26 U.S.C. §7207, one must act illegally. The materials sought to be enjoined have always prohibited their use for any illegal purpose or their use by anyone OTHER than the original authors. They indicate that their ONLY authorized use is for the entertainment and education, but not USE of persons other than the original authors. See the applicable Disclaimers and Member Agreements, Doc. 72, Exhibits 1 through 4. Furthermore, these same Disclaimers and Member Agreements forbid reading or use of any of the materials by "taxpayers" as defined in 26 U.S.C. §7701(a)(14). "Taxpayers" in turn are the ONLY proper subject for "tax shelters".[7] Therefore, he is attempting to prosecute what he falsely believes are the authors or purveyors of materials for uses of the materials that are specifically forbidden by the applicable Disclaimers and Member Agreements. This issue was previously raised and both the Appellee and the judge were silent and refused to address this issue.[8] They

[7] Black's Law Dictionary, Sixth Edition, p. 1462-1463 definition of "tax shelter": "
Tax shelter. **A device used by a taxpayer** to reduce or defer payment of taxes. Common forms of tax shelters include: limited partnership interests, real estate investments which have deductions such as depreciation, interest, taxes, etc. The Tax Reform Act of 1986 limited the benefits of tax shelters significantly by classifying losses from such shelters as passive and ruling that passive losses can only offset passive income in arriving at taxable income (with a few exceptions). Any excess losses are suspended and may be deducted in the year the investment is sold or otherwise disposed of.

[8] See Doc. 72, Mem. Law, Section 6, para. 6 et seq.; Doc. 05, Aff. Mat. Facts, Section 5.10; Doc. 95, Exhibit 8, Section 12.1.

were trying to protect themselves from a Bivens Action for what they obviously knew was a conspiracy against rights of the authors.

6.5 First Amendment Does protect the speech in question

Appellee is correct that the Free Exercise Clause does not protect promotion of tax-evasion programs. However, it *does* protect beliefs which identify themselves as NONfactual, NONactionable religious beliefs that are not admissible. Such beliefs and opinions can *never* lawfully become the subject of a controversy because they are not even admissible pursuant to Fed.R.Ev. 610 and it would be a violation of the First Amendment to re-characterize them against the express wishes of the speaker.

Appellee is also correct that speech which identifies itself as or implies itself as FACTUAL COMMERCIAL speech which is fraudulent is not protected by the Free Speech Clause. However, the speech specifically identifies itself as FACTUAL and therefore incapable of being false or fraudulent. See Doc. 72, Exhibits 1 through 4. The Appellant never denied these exhibits and therefore agrees with them.

For further arguments of why the speech in question is protected by the First Amendment, see Doc. 72, Mem. Law, Sections 4.9 through 4.9.6. Neither the

Appellee nor the Court would oppose these arguments and therefore they AGREE with them and are estopped from now contradicting them.

Appellant is NOT to blame for failure to cooperate with discovery: (1) Appellant gave the government over 2000 pages of deposition transcript signed under penalty of perjury, a copy of which was attached to Doc. 72, Exhibit 10; (2) Appellant offered unlimited written interrogatories to the government in lieu of in-person testimony and his only motivation for doing so was to avoid subornation of perjury because the Appellee kept interrupting his answers at the 30NOV2005 deposition and thereby deliberately censored THE WHOLE TRUTH from entering the record, causing subornation of perjury in violation of 18 U.S.C. §1622.

The fact that the government wasn't able to obtain any evidence useful from the Appellant's testimony that it could use against Appellant and the fact that his testimony was highly prejudicial to the government was the reason the USDC decided to exclude it and the reason why the Magistrate requested a SECOND deposition that the Appellee never even asked for.[9] No reason was given why a F.R.Civ.P. 31 Deposition Upon Written Questions would not be sufficient, which Appellant insisted his right to. Nor would the Magistrate even respond to an

[9] See Order, Doc. 62.

Affidavit of Duress clearly showing that she was VIOLATING THE law.[10] Such hostile activities by an Appellee who was colluding with the Magistrate in a conspiracy to deprive me of rights eventually became the subject of a Criminal Complaint attached to Doc. 95, Exhibit 1.

The Appellee has no one but himself for pursuant a malicious prosecution against a person for speech which specifically identifies itself as NONfactual, NONactionable religious beliefs and opinions that are not admissible as evidence pursuant to F.R.E. 610. He has no one to blame but himself for not getting any cooperation in what clearly amounted to a malicious criminal conspiracy against rights and a persecution against persons for what they expressly identify as beliefs and opinions and NOT facts. Any amount of aid or assistance to him in this process by the Appellant would have amounted to misprision of felony and made the Appellant into an accessory after the fact in violation of 18 U.S.C. §§3, 4. It is ironic that the Appellee now wants to abuse the authority of law to punish those who refuse to cooperate with his own clearly illegal activities. This is an obstruction of justice for which his employer should prosecute him and take away his bar card.

[10] See Doc. 38, Exhibit 1.

6.6 District Court Sanctions were NOT proper because Appellant did properly assert FIRST not FIFTH amendment rights.

Appellee's mis-states the Appellee's response to the government's discovery. The Amplified Deposition Transcript sent to the Appellee contained amplified but not altered answers that included the imposition of *First Amendment* rather than Fifth Amendment defenses in response to questions which were not answered. The First Amendment right includes the right to NOT speak, and there are not qualifications upon said right. See Doc. 72, Exhibit 10, Amplified Deposition Transcript. The SEDM Member Agreement specifically defines the significance of the answers given as indicating the invocation of the First and not Fifth Amendment, and Appellant cited it as his authority and provided a copy at the 30NOV2005 deposition. Doc. 72, Exhibit 10 contains a copy of the transcript and all exhibits. The SEDM Member Agreement is attached to Doc. 72 as Exhibit 4, and section 7 of that agreement defines all responses as implying the First Amendment and NOT Fifth Amendment.

> *Moreover, **freedom of thought and expression "includes both the right to speak freely and the right to refrain from speaking at all."** Wooley v. Maynard, 430 U.S. 705, 714, 97 S.Ct. 1428, 1435, 51 L.Ed.2d 752 (1977) (BURGER, C.J.). We do not suggest this right not to speak would sanction abuse of the copyright owner's monopoly as an instrument to suppress facts. But in the words of New York's Chief Judge Fuld:*

> *"The essential thrust of the First Amendment is to prohibit improper restraints on the* voluntary *public expression of ideas; it shields the man who wants to speak or publish when others wish him to be quiet. There is necessarily, and within suitably defined areas, a concomitant freedom* not *to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect."* Estate of Hemingway v. Random House, Inc., *23 N.Y.2d 341, 348, 296 N.Y.S.2d 771, 776, 244 N.E.2d 250, 255 (1968)*.
> ***[***Harper & Row Publishers, Inc. v. Nation Enterprises, *471 U.S. 539, 559, 105 S.Ct. 2218, 85 L.Ed.2d 588 (1985)***]***

7 CONCLUSIONS

Appellant has always agreed with the government that: (1) The statements they allege are false would definitely be false *if they were factual and OTHER than a belief or opinion*; (2) That they are not found on any of the websites sought to be enjoined; (4) That the Appellant was not the author; and..(5) That they are specifically and individually rebutted in materials posted on said websites. See Doc. 95, Exhibit 7; Doc. 72, Exhibit 8. The Appellee seems more interested discrediting, harassing, and destroying the speakers than in making sure the public receives accurate information. Their approach towards protected speech that clearly identifies itself as NONfactual, NONactionable, religious and political beliefs and opinions that are not admissible pursuant to F.R.E. 610 is supposed to be "content neutral", but in fact shows signs of malice, prejudice, "selective enforcement", and entirely political motives. Nearly all of the speech Appellee complains about has ALWAYS been free and available for no charge, and he has

tried to associate it FALSELY with commerce while not once directly connecting it with commerce throughout this litigation. The fact that speech sought to be enjoined was ALSO provided in a different format for a nominal fee does not suddenly subject it to regulation of false commercial speech, because it still maintains its self-described character as NONfactual speech in whatever form it is provided. None of the alleged false statements are even material to the reasons readers would have acted upon the materials to begin with. The main if not only arguments that form the basis for action by readers remain *unchanged* on the websites and the Appellee has never criticized these issues or made them the subject of this proceeding. All of those reasons focus on the very jurisdictional issues which the Appellant is so conspicuously silent in addressing. Where is the "beef" sir?

Appellant wants justice as much as the Appellee wants it. However, he will not condone or participate in the abuse of legal process by Appellee to persecute people for speech that they, the speakers, specifically identify as NONfactual, NONactionable religious beliefs and opinions that are not admissible as evidence pursuant to F.R.E. 610. Both the Appellee and the Court have taken every opportunity to evade this reality by pretending it doesn't exist. Justice Lorenz even

perjured *both* of his Orders in willfully and deliberately misrepresenting the speech as factual in order to unlawfully usurp jurisdiction over it.[11] He attributed statements and intentions to the Appellant that in fact were NEVER made and which were deliberately and repeatedly misrepresented for prejudicial and self-serving reasons.

None of this malicious prosecution was ever warranted or necessary. The websites in question have *always* invited and welcomed administrative feedback from the government.[12] The Appellee has never even attempted to provide such feedback or to pursue *any* administrative remedy and has never denied this fact throughout this proceeding. Instead, he has "blind sided" the Appellant all the way up to the Summary Judgment, Doc. 68 , before he would *finally* disclose EXACTLY what he thought was wrong about said websites and refused prior invitations to go over the materials so that the appropriate third parties could correct anything provably inconsistent with reality but not "false". He has no injured third parties and all his witnesses are persons with financial and personal conflicts of interest whose own illegal activities are at risk of exposure and

[11] See Doc. 91, p. 17, lines 20-21 and Doc. 105, p. 20, lines 18-19., in which Lorenz falsely attributed to me the statement that the speech was "factual". Even after being demanded to correct it in the Petition to Amend, Doc. 93-95, he absolutely refused to correct the perjury.

[12] See: http://famguardian.org/aboutus.htm, Section 19; and http://sedm.org/AboutUs.htm, Section 12.

prosecution because of the very speech their ***fraudulent*** testimony seeks to discredit. This is not what I would call "justice": This is an ***inquisition***!

If this had been a lawful proceeding in which real factual speech was at issue and real third parties had demonstrated an injury because of demonstrated reliance upon said speech, and if the government had been able to prove that there was a basis for said reliance, and if they had connected each instance of factual speech with specific commercial transactions, and that the victims were domiciled in states of the Union, then I would have cooperated more fully to the limited extent I am able.

I'm still waiting for the Appellee to produce evidence on the record of his authority to proceed in satisfaction of the challenge to jurisdiction to his authority. On the one hand, he implies that the United States has territorial jurisdiction outside of its own territory, but when pressed:

1. For the SPECIFIC statutes establishing the "public offices" for enforcement and the "public offices" that are the subject of the tax on a "trade or business" within states of the Union, he is silent, thereby admitting he has NO authority or jurisdiction.

2. For either implementing regulations published in the Federal Register OR proof that the Appellant is a member of one of the groups specifically exempted from said requirement, he is silent, thereby admitting that he has NO authority or jurisdiction in this matter.

3. To prove that the speech sought to be enjoined is FACTUAL using proof from the speech itself, he is silent and thereby agrees that he is persecuting people for their beliefs and opinions and creating a de facto "thought crime".

4. For proof that the speech was INTENDED or AUTHORIZED to be used in the way that it allegedly was when the Disclaimers and Member Agreement specifically prohibited unlawful uses or uses by "taxpayers", he was silent.[13]

Appellee has not satisfied the burden of proof that he has jurisdiction as the moving party in this quo warranto challenge to his jurisdiction, and he is the *only* one with an obligation to satisfy that burden of proof. If the Court refuses to compel him to produce the evidence requested, it is aiding and abetting *treason*.

> *"In another, not unrelated context, Chief Justice Marshall's exposition in Cohens v. Virginia, 6 Wheat, 264 (1821), could well have been the explanation of the Rule of Necessity; he wrote that a court "must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by, because it is doubtful. With*

[13] The Disclaimers and Member Agreements, Doc. 72, Exhibits 1 to 4, have always prohibited unlawful uses or uses by "taxpayers" of the materials in question. It is completely unjust to hold not only the authors, but third parties who the government has yet to prove are the authors, responsible for the abuses of said speech.

> *whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us.* ***We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution****. Questions may occur which we would gladly avoid; but we cannot avoid them." Id., at 404 (emphasis added)*
> *[U.S. v. Will, 449 U.S. 200 (1980)]*

Until the Appellee produces the proof of jurisdiction demanded ON THE RECORD, he will get no further cooperation of any kind from me. To do otherwise would be to aid and abet unlawful activity. This malicious prosecution MUST be dismissed with prejudice.

8 AFFIRMATION

I declare under penalty of perjury from without the "United States" and from within the United States of America pursuant to 28 U.S.C. §1746(1) that the facts, statements, and legal authorities provided by me in this Declaration are true, correct, and complete to the best of my knowledge and belief. This perjury statement may ONLY be litigated subject to the terms in the Federal Pleading Attachment included with Doc. 113, Exhibit 6 of Case No. 05cv00921 in the District Court for the Southern District of California.

This affirmation applies not only to this Reply Brief, but to the Opening Brief and all Petitions or responses filed in this matter.

I certify pursuant to Fed. R. App. P. 32(a)(7)(C), this brief complies with the type-volume limitations in Fed. R. App. P. 32(a)(7)(B) and contains approximately 6,952 words exclusive of the Table of Contents and Tables of Points and Authorities at the beginning.

Respectfully executed this _____ day of _____June, 2007.

_____

<<YOUR FULL NAME>>, Sui Juris
NOT "pro per" or "pro se"

9 CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing has been made upon the following addressee by depositing a copy in the United States mail, postage prepaid, this _____ day of _____, 20_____ addressed to:

<<U.S. ATTORNEY FULLNAME>> Attorney, Tax Division Department of Justice PO Box 502 Washington, DC 20044 Phone: 202-514-1937	Office of the Clerk U.S. Court of Appeals Post Office Box 193939 San Francisco, CA 94119-3939

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_____ _____

Signature Date

Printed Name:_____

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