

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:04-cv-07403
	)	
Plaintiff,	)	Judge Samuel Der-Yeghiayan
	)	
v.	)	
	)	
WILLIAM J. BENSON,	)	
	)	
Defendant.	)	
_____	)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
DEFENDANT AND APPLICANT INTERVENORS’  
MOTION TO QUASH IRS ADMINISTRATIVE SUMMONS**

Come now Defendant, William J. Benson (hereinafter “Benson”), and Applicant Intervenor, by and through their undersigned attorney of record, who submit the following memorandum of points and authorities for an order quashing an Internal Revenue Service Administrative Summons.

**Res Judicata:**

Claim preclusion, or *res judicata*, prevents parties from relitigating claims that were or could have been brought in an earlier lawsuit that resulted in a final judgment on the merits. *Cole*, 497 F.3d at 772-73. *Res judicata* applies when (1) there has been a final judgment on the merits in an earlier action, (2) there is an identity of parties or privies in the two suits, and (3) there is an identity of the causes of action in the two suits. *Ross v. Bd. of Educ. of Twp. High Sch., Dist.* 211, 486 F.3d 279, 283 (7th Cir.2007).

*Jagla v. BMO Financial Group*, 248 Fed.Appx. 743, 744-745 (7th Cir. 2007).

All of the conditions for application of the doctrine of *res judicata* have been met here:

**Final Judgment On The Merits:**

There has been a final judgment on the merits; judgment was entered on January 10,

2008. (Doc. 117). Benson has appealed to the Seventh Circuit Court of Appeals, and the case is now pending there.

Identity of Parties:

The parties are identical. The real party plaintiff in interest in this litigation is the Internal Revenue Service. The cause of action arose under the Internal Revenue Code, and the action was requested by the Chief Counsel of the Internal Revenue Service. (Doc. 1, p. 2, ¶ 2). Affidavits were filed by employees of the Internal Revenue Service, and the case was prosecuted by the Tax Division of the Department of Justice. The Internal Revenue Service was the client being represented by the Tax Division. The administrative summons was issued by the Internal Revenue Service.

Identify of Causes of Action:

The cause of action is also identical. The information the Internal Revenue Service now seeks through administrative summons is the identical information it previously sought in this litigation. The subject matter is identical. The right of the IRS to obtain that information was fully litigated, and the Court found the Internal Revenue Service was not entitled to the information.

In seeking to enforce the summons the Internal Revenue Service would make the precise arguments it made in the Section 6700 litigation, and Benson and the Applicant Intervenors would make the precise arguments in opposition as they made in the Section 6700 action. The parties, the issue and the cause of action are identical. Any action for enforcement the Internal Revenue Service might bring would be barred by the doctrine of *res judicata*.

The administrative summons is nothing more than an attempt by a disgruntled party to

circumvent the Court's order. The administrative summons should be quashed.

**Fifth Amendment:**

There is no question that both the United States and this Court believe Benson is a criminal; the cold record discloses such on its face. Benson has an absolute right not to provide testimony that would incriminate him, or that would serve as a chain in the link to evidence that could be used against him. This right applies to the production of documents. *See Doe v. United States*, 487 U.S. 201, 209 (1988); *United States v. Grable*, 98 F.3d 251 (6th Cir. 1996)(holding Fifth Amendment applies to IRS summons cases.)

**First Amendment Rights of Third Parties:**

In granting the United States' motion for summary judgment, the Court found that Benson's First Amendment rights would not be violated by the issuance of the injunction. The Court never directly addressed the First Amendment rights of the people that may have received the material from Benson. The right of the people to receive the material, to read the material, to associate, to not be put on a list and to be let alone by the government is well defined. *See Bread v. City of Alenandria, La*, 341 U.S. 622, 628 (1951); *King v. Federal Bureau of Prisons*, 415 F.3d 634, 638 (7th Cir. 2005)(Posner, J.); *Lamont v. Postmaster General of the United States*, 381 U.S. 301, 307 (1965); *Roberts v. United States Jaycees*, 468 U.S. 609. 617-18 (1989); and *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). The issue is fully briefed in Doc. 80.

Under the facts of this case, enforcement of the administrative summons would violate both the First and Fifth Amendment to the Constitution of the United States of America. The summons should be quashed.

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WHEREFORE, Benson and Applicant Intervenors move this Court for an order quashing the administrative summons issued on February 14, 2008.

Dated: February 21, 2008.

/s/ Jeffrey A. Dickstein  
Jeffrey A. Dickstein  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney for the Plaintiff, Robert D. Metcalfe.

/s/ Jeffrey A. Dickstein