

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.)	
_____)	

**DEFENDANT’S MEMORANDUM IN OPPOSITION TO
MOTION OF UNITED STATES TO HAVE HIM HELD IN CONTEMPT**

The United States has presented no evidence whatsoever that Benson has violated the Court’s injunction. The United States, because Benson exercised his right under the Fifth Amendment to neither admit nor deny that he sold or furnished the Reliance Defense Packages, broadly jumps to the conclusion that he “merely sent copies of the Permanent Injunction to the seven customers identified in the Government’s motion for summary judgment.”

During a February 20, 2008 telephone call between Defendant’s attorney and the United States’ attorney, Mr. Dickstein asked Mr. Metcalfe what proof he had that Benson had not mailed the permanent injunction to other than the seven that were identified in the United States’ motion for summary judgment. Mr. Metcalfe admitted he had no proof whatsoever. *See* Declaration of Jeffrey A. Dickstein, Exhibit A, attached hereto. Mr. Metcalfe will have no more proof to present during the hearing than he had before he filed the motion for contempt.

In reality, the United States seeks to have Benson held in contempt for exercising his Fifth Amendment rights and not give the government proof it wants to criminally charge Benson. Not only does the cold record before this Court establish the propriety of Benson’s exercise of his

Fifth Amendment rights, but so does the very argument made by the United States as shown in this motion. The United States makes this argument:

Whether he agreed with it [the injunction] or not, **when Benson chose** to send copies of the Permanent Injunction to the seven individuals mentioned in the Government's motion for summary judgment, **he acknowledged that he did, in fact, have customers** who were required to receive a copy of the Permanent Injunction. [Emphasis added.]

Doc. 156, p. 4.

First, Benson did not choose to send copies of the Permanent Injunction to anyone; Benson was ordered to do so.¹ Second, the United States considers compliance with the Court's order an admission of having customers. Each such admission is another potential count of conspiracy or obstruction, and an admission of the receipt of income for a charge of wilful failure to file or income tax evasion. Such admissions are exactly what the Fifth Amendment protects against.

The Court will remember that Benson advised the Court of this inherent problem with the Court's injunctive order requiring Benson to make a declaration of compliance, and sought clarification. In the absence of such clarification, Benson had no choice but to protect himself by exercising his right to remain silent. Just as the exercise of a constitutional right cannot be made a crime, it cannot be made a basis for civil or criminal contempt.

In note 5 of its motion, the United States argues Benson's exercise of his Fifth

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1. In light of the Court's granting the motion for summary judgment, which required the Court to find Benson was engaged in commercial speech, the only conclusion that can be reached is that the Court considered the seven people identified by the government were customers of Benson. Indeed, Benson does not agree with that finding, because Benson steadfastly denies that he ever sold the "16th Amendment Reliance Package" to anyone. Benson had no choice, in light of the Court's ruling, to mail a copy of the injunction to those seven people if he wished to avoid being found in contempt.

Amendment right is specious because the government already knows Benson has customers and he was not required to divulge their names. Does the United States pretend it is not now attempting to require Benson to “divulge their names”² by subsequent administrative procedure? The United States’ contention that Benson does not have a Fifth Amendment right under the circumstances here presented is what is “specious.”

The United States has no evidence to present to the Court that Benson did not comply with the mailing provisions of the Court’s injunction, much less any clear and convincing evidence. On the other side, as soon as the §6700 lawsuit was filed, Benson removed from his website the Sixteenth Amendment Reliance Package. He thereafter posted the injunction on the first page of his website as ordered by the Court, and the Court knows that Benson made a mailing, all within the time frame ordered by the Court. The attached Declaration of Jeffrey A. Dickstein is further evidence of compliance.

The United States, having presented no evidence of violation of the injunction, and Benson, having presented direct and circumstantial evidence of compliance with the injunction, the United States has failed to show it is entitled to have Benson held in contempt.

WHEREFORE, Benson moves this Court to deny the United States’ motion to hold him in contempt.

Dated: February 26, 2008.

/s/ Jeffrey A. Dickstein
Jeffrey A. Dickstein
Attorney for Defendant
500 W. Bradley Rd., C-208
Fox Point, WI 53217
(414) 446-4264

2. See Docs. 144 and 147.

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 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