

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,) Appeal No.: 08-1312
)
Plaintiff - Appellee,)
)
v.)
)
WILLIAM J. BENSON,)
)
Defendant - Appellant,)
_____)

**MOTION OF JOHN DOE I, JOHN DOE II AND JANE ROE
TO INTERVENE AS CROSS-APPELLEES**

John Doe I, John Doe II and Jane Roe, by and through their counsel of record in the court below, Jeffrey A. Dickstein, move the Court for an order allowing them to intervene for the purpose of joining Benson’s reply brief to the United States opening brief on its cross-appeal. In support thereof, the following showing is made:

1. The underlying complaint sought an injunction under the abusive tax shelter provisions of the Internal Revenue Code (26 U.S.C. § 6700).
2. The United States sought, among other relief, that Benson provide the names, addresses, social security numbers and e-mail addresses of everyone who obtained the alleged abusive tax shelter from either Benson or another organization.
3. The alleged abusive tax shelter consisted of information pertaining to Benson’s opinion that the Sixteenth Amendment was not ratified by a sufficient number of states to become a part of the Constitution.
4. The Seventh Circuit, as well as the court below, has concluded that whether or not the Sixteenth Amendment was or was not ratified is a non-justiciable political question. *See*

Miller v. United States, 868 F.2d 236, 241 (7th Cir. 1989); District Court order dated August 15, 2006 (Doc. 60, pp. 2-5).

5. Three individuals, John Doe I, John Doe II and Jane Roe moved in the court below for leave to intervene in order to protect their First Amendment rights to either obtain, possess or read the political speech of Benson, or to petition for redress of grievance, all without being subjected to government investigation or other harassment (Doc. 74), as well as a motion for a protective order to preclude the United States from obtaining their names during discovery (Doc. 77).

6. John Doe I obtained Benson's information and used some of the publications and other material therein to petition the government for redress of grievance. John Doe I has filed all federal income tax returns, has paid all federal income taxes shown on those returns, and has tax withheld from his paycheck. (Doc. 74, p. 4, ¶ 11).

7. John Doe II obtained Benson's information and read it. He has at no time used the information contained therein in any way, shape or form other than to become informed as to Benson's position regarding whether Secretary of State Knox wrongly or fraudulently issued his proclamation that the Sixteenth Amendment was ratified. (Doc. 74, pp. 4-5, ¶ 12).

8. Jane Roe wants to purchase and read Benson's information but is precluded from doing so because, subsequent to the filing of the United States' complaint, Benson no longer offers the package for sale on his Internet site or otherwise, in light of the United States' attempt to penalize him for such distribution. (Doc. 74, p. 5, ¶ 13).

9. The district court took both the motion to intervene and the motion for protective order under advisement. (Doc. 86).

10. Thereafter the district court granted summary judgment in favor of the United States (Docs. 105 and 106), but denied the United States' request for the list of names. The district court found that the United States had not provided a compelling reason why the names should be disclosed and the individuals investigated and scrutinized by the government solely because they obtained the information from Benson. (Doc. 106, pp. 18-20).

11. In light of the district court's finding and ruling, the district court dismissed both the motion to intervene and the motion for protective order as moot. (Doc. 106, p. 21).

12. The United States has filed a cross-appeal challenging the district court's holding that it is not entitled to the list of names of those who obtained Benson's information pertaining to the Sixteenth Amendment.

13. The rights of freedom of speech and freedom of the press embraced by the First Amendment absolutely encompass the reciprocal right of the people to hear the protected speech, to request, receive and read protected publications, to possess the protected publications, to associate for the purpose of political debate and action, to petition for redress of grievances, and to form beliefs regarding important social and political questions, all without being put on a list and classified as belonging to a suspect class, being subjected to harassment and punishment, or living in fear of punishment. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Gibson v. Fla. Leg. Investigation Comm.*, 372 U.S. 539, 544 (1963); *United States v. Grayson County State Bank*, 656 F.2d 1070, 1074 (5th Cir.1981), *cert. denied*, 455 U.S. 920 (1982); *In re First Nat'l Bank, Englewood, Co.*, 701 F.2d 115, 118 (10th Cir. 1983); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Brandenburg v. Ohio*, 395 U.S. 444, (1969); *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530, 534-38(1980);

Dennis V. United States, 341 U.S. 494, 520-21 (1951); *Breard v. City of Alexandria, La.*, 341 U.S. 622, 628 (1951); *King v. Federal Bureau of Prisons*, 415 F.3d 634, 638 (7th Cir. 2005); *Lamont v. Postmaster General of United States*, 381 U.S. 301, 307 (1965); *Leblanc-Sternberg v. Fletcher*, 781 F.Supp. 261, 266 (S.D.N.Y. 1991); *McDonald v. Smith*, 472 U.S. 479, 482 (1985); *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

14. John Doe I, John Doe II and Jane Roe are directly effected by the United States' legal action to enjoin Benson's speech regarding whether the Sixteenth Amendment was properly ratified, and will be directly affected by the release of their names to the United States in light of its avowed intention to investigate those with whom Benson communicated, associated, and/or provided written publications and other materials.

15. If this motion is denied, John Doe I, John Doe II and Jane Roe will be without legal representation and their First Amendment rights will not be heard. While the courts are split, many have held that a litigant may not assert the constitutional rights of a third party not before the court.

WHEREFORE, John Doe I, John Doe II and Jane Roe move the Court for an order allowing them to intervene for the purpose of joining Benson's reply brief to the United States opening brief on its cross-appeal.

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Dated: July 10, 2008.

Jeffrey A. Dickstein
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and Jane Roe
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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2008, I mailed a copy of the foregoing document to the attorney for the Appellee by first class mail, postage prepaid, to the following address:

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