

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. 1:07-cv-352-TJM-RFT
)
ROBERT L. SCHULZ;)
WE THE PEOPLE FOUNDATION FOR)
CONSTITUTIONAL EDUCATION, INC.; and)
WE THE PEOPLE CONGRESS, INC.,)
)
Defendants.)

STATEMENT UNDER LOCAL RULE 7.1(a)(3)
NORTHERN DISTRICT OF NEW YORK

Statement Of Material Facts As To Which
The United States Contends There Is
No Genuine Issue For Trial

1. In 1997 Robert L. Schulz organized the two We the People entities ostensibly for educational purposes.

2. Despite the organizations' stated purposes, as chairman of We the People, Schulz has used the organizations to market a nationwide tax-fraud scheme designed to help customers evade their federal tax liabilities and to interfere with the administration of the internal revenue laws.¹

3. Schulz started marketing a tax-fraud scheme he calls the "Legal Termination of Tax Withholding," on March 15, 2003, as part of "Operation Stop Withholding."²

¹Schulz Decl. #1 ¶ 4, Exh. A; Schulz Decl. #2(2) ¶¶ 2-5 (Filed by Schulz in Case No. 1:06-mc-131); Schulz Decl. #2 ¶¶ 75-76; Astrup Decl. ¶¶ 75-76; Deitz Decl. #2 ¶¶ 75-76; Gordon Decl. ¶¶ 4-18, Exhs. 4-21; *United States v. Boos*, 83 A.F.T.R.2d (RIA) 584 (10th Cir. 1999).

²Schulz Decl. #1 ¶¶ 2-6, Exh. A; Schulz Decl #2 ¶¶ 75-76; Schulz Decl. #2(2) ¶¶ 2-5; Astrup Decl. ¶¶ 75-76; Deitz Decl. #2 ¶¶ 75-76.

4. With their tax-evasion materials, defendants also solicit sales of their other products and membership in their organization.³ Schulz admits to having provided over 3,500 copies of his tax termination package in exchange for a \$20 fee, which he calls a “donation,” at seminars nationwide, and on the Internet.⁴

5. The crux of defendants’ tax-evasion scam is that participants can “opt-out” of paying taxes — with defendants’ help — based on several false, discredited premises, including: (1) the income tax is voluntary, (2) the 16th Amendment was never ratified, and (3) U.S. citizens are not required to pay tax on domestic income.⁵

6. Schulz admits adopting these frivolous theories from two individuals, who he confirms have been subject to criminal and civil sanctions for advancing them.⁶ Defendants’ contribution is limited to selling the scheme as a how-to method for enabling customers to evade “withholding, filing, and paying [] tax” using “WTP Forms #1-10.”⁷

7. As part of defendants’ marketing ploy, they advertise the following benefits of their scheme to employers:

- “minimize company income tax reporting requirements to almost nothing.”
- “instantly increase all of your workers’ take home pay without affecting cash flow or profits.”
- “eliminate payment of ‘matching’ employment taxes [contributions.]”
- “enjoy a significant competitive cost advantage over your competitors in direct labor &

³Schulz Decl. #1, Exhs. B(2) (pp. 7-15, & 20), C (pp. 2 & 11); Gordon Decl. ¶¶ 4-18, Exhs. 4, & 20-21.

⁴Schulz Decl. #1 ¶¶ 2-16, Exhs. C, H, & I.

⁵Schulz Decl. #2(2) ¶¶ 19-25; Schulz Decl. #1 ¶ 5 Exhs. B (pp. 19-32, & 36-37), B(2) (p. 24), C (pp. 6-8), I (pp. 2-4); Schulz Decl. #2 ¶ 76; Gordon Decl. ¶¶ 4-18, Exhs. 4-22.

⁶Schulz Decl. #2(2) ¶¶ 19-25 (Schulz collects numerous court decisions rejecting the positions asserted by Benson and Becraft, from whom he took this idea); *see also United States v. Benson*, 67 F.3d 641 (7th Cir. 1995) (sustaining Benson’s conviction for tax evasion); Gordon Decl. Exhs. 19, 23-25. *In re Becraft*, 885 F.2d 547 (9th Cir. 1989) (sanctioning attorney for asserting the “frivolous” argument that the “[16th] Amendment does not authorize a direct non-apportioned income tax”).

⁷Schulz Decl. #1 ¶ 5, Exhs. B(2) (p. 4) & C; Gordon Decl. ¶¶ 10-29, Exhs. 5-20.

overhead costs.”⁸

8. Defendants further boast that their tax-evasion forms are the product of “tax professionals, including: attorneys, paralegals, CPA’s, ... and numerous expert tax law researchers.”⁹ Along those lines, defendants challenge customers to “subject [their forms] for rigorous review,”¹⁰ but no suggestion is made in the materials that the customers consult first with a tax advisor.

9. Defendants’ claim that the instructions require a tax professional to review the scheme is a false statement. Only on their website do defendants warn that the materials are “educational,” and “encourage” customers to submit the forms to “legal counsel for review.”¹¹ Indeed, defendants’ marketing materials go on to explain that “ent[ities] [have] been negligently advised by so-called ‘tax professionals’ [] who false claim that ‘the law requires the Entity to withhold.’”¹² Moreover, defendants offer forms and assistance — including threatening to sue an employer who withholds taxes — if the employer does not accede to the customers’ demands.¹³

10. For a \$500 annual fee, defendants also offer to represent employers that “have ceased, or intend to cease earnings withholding of all federal taxes...” Defendants charge a \$250 annual fee for individuals who agree to “stop filing federal tax returns and/or cease the payment of any alleged federal income taxes.” Defendants contend that a customer’ participation enables

⁸Schulz Decl. #1 ¶ 4, Exhs. B(2) (p. 16) & C (p. 7); Gordon Decl. ¶ 15, Exh. 6.

⁹Schulz Decl. #1 ¶ 5, Exhs. B(2) (p. 15) & C (p. 5); Gordon Decl. ¶ 17, Exh. 8.

¹⁰Schulz Decl. #1 Exh. B(2) (p. 15); Gordon Decl. Exh. 8.

¹¹Schulz Decl. #1 Exh. C (p. 1, 6, & 10.)

¹²Schulz Decl. #1 ¶ 5, Exhs. B(2) (p. 20) & C (p. 58); Gordon Decl. ¶ 14, Exh. 5.

¹³Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 20-21, & 48-64) & C (pp. 11, & 49-58.)

them to legally stop filing returns or paying taxes until defendants' questions are answered.¹⁴

11. Customers are introduced to the fraudulent scheme under two scenarios: (1) the employer and employee are using defendants' scheme in collusion, or (2) the employee-customer uses defendants' threatening forms to coerce the employer's participation.¹⁵ In either case, defendants instruct customers to complete "WTP Form #1," for existing employees, or "WTP Form #3," for new employees, in order to "legally terminate the existing W-4 agreement" to "stop federal and state withholding of income taxes."¹⁶ Thereafter, defendants advise customers to file these documents *in lieu* of a Form W-4.¹⁷

12. Both WTP Form #1 and #3 are replete with false statements that are designed to convince customers — based on numerous frivolous claims — that they are not obligated to pay taxes.¹⁸ On WTP Form #1, defendants willfully misread court decisions and restate out-of-context quotes to convince customers their position is justifiable. For example, defendants cite *United States v. Malinowski*¹⁹ for the proposition that a company is obligated to honor an employee's *false* Form W-4, instead of what the case actually says: "Every employer who pays wages is required to withhold from the wages a tax." 347 F. Supp. 347, 352 (E.D. Penn. 1972), *aff'd* 472 F.2d 850, 873 (3rd Cir. 1973) (The Circuit Court went to state: "To urge that violating a federal law which has a direct or indirect bearing on the object of protest is conduct protected by the First Amendment is to endorse a concept having no precedent...") Moreover, Molinowski's

¹⁴Schulz Decl. #1 ¶ 4, Exhs. B(2) pp. 7-13, Exh. C (p. 5.); Gordon Decl. ¶¶ 24-30, Exhs. 17-21.

¹⁵Schulz Decl. #1 ¶ 4, Exh. B(2) (pp. 17-21); Gordon Decl. Exhs. 17-18.

¹⁶Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 17-19), & C (pp. 7-8); Gordon Decl. Exhs. 6-8.

¹⁷Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 19, 22, 25, & 30), & C (p. 8); Gordon Decl. Exhs. 5, & 9-10.

¹⁸Schulz Decl. #1 ¶ 4, Exhs. B (3-54), B(2) (pp. 19-30), & C; Gordon Decl. Exhs. 9 & 11.

¹⁹347 F. Supp. 347, 352 (E.D. Penn. 1972), *aff'd* 472 F.2d 850, 873 (3rd Cir. 1973).

motion for acquittal based on a First Amendment defense after filing a false Form W-4 in this criminal case was denied); Schulz Decl. #1 Exh. B(2) (p. 23.)

13. In addition, the very next case defendants cite to claim that employers are not obligated to withhold taxes is *Holstrom v. PPG Ind.*, 512 F.Supp. 552 (W.D. Penn. 1981), but they fail to mention that Holstrom was not required to pay taxes based a treaty with Sweden, his country of residence — put simply, his exemption was not based on any spurious, false premise.²⁰ *Id.*

14. Moreover, on WTP Form #3, defendants advance the discredited “§ 861 Argument,” by instructing customers that because they do not “derive income from a taxable source as defined ... 26 CFR 1.861-(f)(i)[i.e. foreign income],” they are not “engaged in a ... taxable activity.”²¹ Section 861 Argument proponents, using a tortured statutory-construction argument, conclude that the foreign-source income rules from § 861 somehow sharply limit the scope of § 61, which defines income as “income from whatever source derived” — to conclude that domestic-source income of U.S. citizens is not taxable.²²

15. Next, defendants instruct customers to complete WTP Forms #2 and #8.²³ WTP Form #8 is an altered Form I-9, declaring that the customers’ Social Security number cannot be disclosed.²⁴ The instructions accompanying the WTP Form #2 tell the employer to sign the form falsely declaring that the employer “made a reasonable effort to obtain [the worker’s] social

²⁰Schulz Decl. #1 ¶ 4, Exhs. B (3-54), B(2) (pp. 19-30), & C; Gordon Decl. Exhs. 9 & 11.

²¹Schulz Decl. #1 ¶ 4, Exhs. B (38-40), B(2) (p. 30), C (p. 14); Gordon Decl. Exhs. 11, 19, & 22.

²²*United States v. Bell*, 414 F.3d 474, 475 (3rd Cir. 2005) (explaining the fallacy of the § 861 Argument); Gordon Decl. ¶¶ 28 & 31, Exhs. 19 & 22.

²³Schulz Decl. #1 ¶ 4, Exh. B(2) (pp. 17 & 19); Gordon Decl. Exhs. 5-6.

²⁴Schulz Decl. #1 ¶ 4, Exh. B(2) (p. 45); Gordon Decl. Exh. 16.

security number” by “request[ing] the worker (more than once) to disclose a Social Security number . . .”²⁵ In doing so, defendants have unquestionably instructed employers to falsify WTP Form #2 since the previous forms prevented the employee from disclosing their Social Security number, including the altered form I-9.²⁶

16. At this point, defendants state that the customers are no longer obligated to have taxes withheld or file returns, and they supply additional threatening forms for submission to employers that continue to withhold taxes.²⁷

17. In his brief, Schulz continues his remonstrations regarding the purported legality of this program despite clear knowledge that it is false.²⁸ For example, in 2003, Schulz testified that “he advised [an employer] that his research showed that the [16th] Amendment had been fraudulently declared to have been ratified” during the criminal trial of an individual who was convicted after he stopped withholding tax from his employees’ wages based on the same arguments.²⁹

18. As recently as 2005, the District Court for D.C. clearly informed defendants that they do not have a “First Amendment right to withhold money owed to the government and to avoid governmental enforcement,” but they continue these same discredited arguments in this matter. In that regard, defendants have unquestionably ignored each warning by continuing to falsely

²⁵Schulz Decl. #1, Exh. B(2) (p. 27); Gordon Decl. Exh. 10. (The form also states that the individual is not liable for FICA taxes.)

²⁶Schulz Decl. #1 ¶ 4, Exh. B(2) (p. 45); Gordon Decl. Exh. 18.

²⁷Schulz Decl. #1 ¶ 4, Exhs. B(2) (pp. 20, 48-64) & C (p. 8); Gordon Decl. Exhs. 5, 17-18.

²⁸Schulz Decl. #2(2) ¶¶ 19-25; Gordon Decl. ¶¶ 6-9, & 32-34, Exhs. 3, & 21-25.

²⁹*United States v. Simkanin*, 420 F.3d 397 (5th Cir. 2005). *See also* Gordon Decl. ¶¶ 33-34, Exhs. 19 & 24-25.

promote the legality of their scheme.³⁰

19. Moreover, during the course of the promotion defendants' customers have used their scheme for its intended purpose — (1) underpaying taxes, (2) stopping the filing of income tax returns, and (3) obstructing IRS collection and examination.³¹

20. The IRS conservatively estimates that defendants' scheme has cost the United States Treasury \$4,806,537 for processing substitutes for returns for those customers that did not file returns.

21. This cost does not include the hours that IRS Revenue Officers will have to devote attempting to collect from defendants' customers who refuse to pay the amounts assessed by the IRS.³²

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³⁰Schulz Decl. #2(2) ¶¶ 19-25, 50-57, & 80, Exh. H. *See also* Gordon Decl. Exhs. 2-3 (defendants also misrepresent other tax-fraud promoters as "tax experts."), & 19, 24-25.

³¹*Celauro v. United States*, 411 F. Supp. 2d 257 (E.D. N.Y. 2006); *Celauro v. United States*, 371 F. Supp. 2d 219 (E.D. N.Y. 2005) (taxpayer submitted altered withholding agreement *in lieu* of a Form W-4); *Karkabe v. Comm'r*, T.C. Memo. 2007-115; *Celauro* Decl. ¶¶ 4-17; *Deitz* Decl. ¶¶ 2-9; *Gordon* Decl. ¶¶ 35-40, Exhs. 26-28.

³²*Gordon* Decl. Exhs. ¶¶ 34-40, Exhs. 25-29; *Engel* Decl. ¶¶ 3-6; *Nelson* Decl. ¶¶ 3-5; *Weaver* Decl. ¶¶ 3-6.