

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT L. SCHULZ,)	
)	
Plaintiff)	
)	
-against-)	No.
)	
UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKI, Chairman of the United States Federal Reserve System, UNITED STATES DEPARTMENT OF THE TREASURY, HENRY M. PAULSON, JR., Secretary of the United States Department of the Treasury, and UNITED STATES)	
)	
Defendants)	

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY AND PRELIMINARY RELIEF**

In support of this motion, based on Plaintiff’s Declaration #1, and the prior pleadings, Plaintiff, who is *pro se*, states as follows:

RELIEF REQUESTED

Plaintiff respectfully requests an order:

- a) Preliminarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to its employees, agents and contractors, from giving or lending any public money or public credit to A.I.G., or to anyone acting on its behalf, including but not limited to its employees, agents, subsidiaries, partners and affiliates until this case is finally determined and any appeal thereof, and
- b) Temporarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to its employees, agents and contractors, from

giving or lending any public money or public credit to A.I.G., or to anyone acting on its behalf, including but not limited to its employees, agents, subsidiaries, partners and affiliates until the return date of this Show Cause Order, and

- c) Expediting these proceedings where this matter might be set for trial, and
- d) Granting any further relief that to the Court may seem just and proper.

THE URGENCY

This memorandum is in support of Plaintiff's proposed Show Cause Order to temporarily and preliminarily enjoin, prohibit and restrict Defendants from taking any action in pursuit of the Agreement they reached with A.I.G. on Tuesday, September 16, 2008, including but not limited to the execution of the agreement and giving or lending of any public money and public credit to A.I.G.

On information and belief, Defendant Treasury Department sold \$40 billion of special supplementary Treasury bills on Wednesday, September 17, 2008 and will sell \$60 billion more today, Thursday, September 18, 2008, and Defendants will immediately give or lend public funds and public credit to A.I.G.

FACTS

On Tuesday, September 16, 2008, Defendants agreed to an \$85 billion bailout of American International Group ("A.I.G.") that would give the Defendants control of the insurance company, a private corporation.

Under the Agreement, Defendants will lend or give public monies and public credit to A.I.G., amounting to approximately \$85 billion and, in return, will receive warrants that can be converted into common stock giving the United States approximately 79.9 percent ownership of A.I.G., contingent only upon the agreement of existing shareholders.

In effect, the agreement puts billions of dollars of federal taxpayer funds at risk to protect bad investments made by A.I.G. and other private institutions it does business with as providers of esoteric (*non-regulated*) financial insurance contracts to private investors who bought privately held debt securities. The agreement requires the United States' taxpayers, in effect, to cover losses suffered by the buyers in the event the securities default. It means the U.S. taxpayers are on the hook for billions of dollars' worth of private securities.

ARGUMENT

PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

This case arises from Defendants' decision to lend or give public money and public credit to A.I.G., a private corporation, without constitutional authority to do so, in violation of the letter, spirit and intent of the Constitution of the United States of America.

The Constitution must be construed in its entirety.

The *First Amendment* to the Constitution of the United States of America reads in part:

“Congress shall make no law...abridging ... the Right of the People peaceably to Assemble and to Petition the Government for Redress of Grievances.”

This lawsuit is a Petition for Redress (remedy) of a Constitutional tort. No act of Congress can, in equity or in law, bar this Court from determining the merits of Plaintiff's complaint and granting the requested relief.

The *Fifth Amendment* to the Constitution of the United States of America reads in part:

“No person shall be deprived of ...liberty, or property, without due process of law....”

Plaintiff is a payer of federal taxes. The Right not to have his money taken from him for illicit purposes is an unalienable Property Right of the Plaintiff. The unauthorized use of taxpayer funds infringes upon Plaintiff's individual, unalienable Right to Liberty and Property.

Plaintiff's Liberty and Property depend upon his vigilance and ability to defend against any act or threat by Defendants to diminish the value of his or her Right to retain his money property.

The *Ninth Amendment* reads:

“The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People.”

Plaintiff claims and is exercising his natural Right to challenge Defendants' cooperative decision to deny Plaintiff his constitutional Right to constitutional governance carried out in decency and good order and to a Government that does not act without the consent of the governed, and to do so in any one of the federal District Courts.

The *Tenth Amendment* to the Constitution of the United States of America reads:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.”

The power to give or lend A.I.G. public money and public credit is clearly reserved to the People, who have not expressly transferred that power to Defendants via the Constitution. The Agreement reached between Defendants and A.I.G. is a usurpation of the inherent power and vital interests of the free People of the United States of America.

Plaintiff, as a citizen of the United States, is to enjoy the privilege and Right of knowing that no official of the United States is acting without constitutional authority.

The Supreme Court and the Founder's opinions are clear, no department of the Government can violate Fundamental Rights possessed by the People, not even Congress.

“And the Constitution itself is in every real sense a law-the lawmakers being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not rationally possible. 'We the People of the United States,' it says, 'do ordain and establish this Constitution.' Ordain and establish! These are definite words of enactment, and without more would stamp what follows with the dignity and character of law. The framers of the Constitution, however, were not content to let the matter rest here, but provided explicitly-'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land.' (Const. art. 6, cl. 2.) The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior stat- [298 U.S. 238, 297] ute whenever the two conflict. In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, *Adkins v. Children's Hospital*, [261 U.S. 525, 544](#), 43 S.Ct. 394, 24 A.L.R. 1238; but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry. *Schechter Poultry Corp. v. United States*, [295 U.S. 495, 549](#), 550 S., 55 S.Ct. 837, 97 A.L.R. 947.” *Carter v. Carter Coal Co.*, [298 U.S. 238](#) (1936) .

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them”. *Miranda v. Arizona*, 384 U.S. 436 (1966)

“There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

“If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could

intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

**“Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.”
Hamilton, *Federalist No. 78***

Lacking any court ruling declaring the full contours of the meaning of the Petition Clause as it applies to ordinary natural citizens seeking Redress against their Government for a constitutional torts, and taking into account the plain language of and the Framers’ intent behind the words of the Petition Clause, the 791 years of history documenting the evolution of Liberty from Runnymede to Philadelphia, and the complete absence of any case law in opposition to Plaintiff’s interpretation of the Constitution, the ends of Justice and Liberty require that deference, and the presumption that those fundamental Rights exist as argued by Plaintiff must be secured for Plaintiff who, by this Petition, has claimed and is exercising those Rights.

The individual’s Right, through the Petition Clause of the First Amendment, to hold any branch of the government accountable to the Constitution, is the “capstone” Right, the period at the end of the sentence on Liberty’s evolution, for “law without it, is law without justice.”

Let the Government and other Defendants come forth to present evidence of their Constitutional and statutory authority to engage in this transaction.

IMMEDIATE AND IRREPARABLE HARM

Unless the Temporary and Preliminary Injunctions are issued, Plaintiff's harm will be immediate and irreparable. With no authority to do so, Defendants are about to give or lend a significant amount of public funds and public credit to A.I.G. for definitively private purposes. Beyond this, the planned transaction establishes a dangerous "Northwest Passage" precedent inviting virtually unlimited expansion into the use of public monies and public credit to bail out, and effectively nationalize, any and all private businesses and/or private property within the United States, subject only to the whim of the Executive and the limit to which the Defendants can create currency via fiat, i.e., *infinite*.

An important part of the immediate and irreparable injury finds its roots in the on-going abridgment by Defendants of Plaintiff's constitutional Rights as articulated above.

Plaintiff has an unalienable, individual Right to a Government that does not have its officials acting without Constitutional and congressional authority. Plaintiff's Rights must be upheld prior to enforcement if they are to be enjoyed at all. "The loss of ...freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Ellrod v. Burns (1976)* [427 U.S. 347](#), 373, 96 S.Ct. 2673, 2690.

BALANCING OF THE EQUITIES

If the injunction issues, no harm will come to A.I.G. If in fact A.I.G. is in any real danger of not being able to meet its financial commitments it can file for protection under Chapter 11. That's what the bankruptcy courts are there for.

On the other hand, if the injunction does not issue, Plaintiff's harm will be immediate and irreparable.

CONCLUSION

Based on the above, plaintiff respectfully requests an order:

- a) Preliminarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to its employees, agents and contractors from giving or lending any public money or public credit to A.I.G., and anyone acting on its behalf, including but not limited to its employees, agents, subsidiaries, partners and affiliates until this case is finally determined and any appeal thereof, and
- b) Temporarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to its employees, agents and contractors from giving or lending any public money or public credit to A.I.G., and anyone acting on its behalf, including but not limited to its employees, agents, subsidiaries, partners and affiliates until the return date of this Show Cause Order, and
- c) Expediting these proceedings where this matter might be set for trial, and
- d) Granting any further relief that to the Court may seem just and proper.

Respectfully submitted.

September 18, 2008

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