UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT L. SCHULZ,

Plaintiff-Appellant,

-against-

1:08-CV-991 (Lead)
(GLS-DRH)

UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, 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 the UNITED STATES

Defendants-Respondents

ROBERT L. SCHULZ,

Plaintiff-Appellant,

1:08-CV-1011 (Member)
(GLS-DRH)

-against-

UNITED STATES EXECUTIVE DEPARTMENT, GEORGE W. BUSH, President of the United States, HENRY M. PAULSON, JR., Secretary of the Treasury; UNITED STATES CONGRESS, NANCY PELOSI, Speaker of the House of Representatives, HARRY REID, Senate Majority Leader; UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, Chairman of the Board of the United States Federal Reserve System,

Defendants-Respondents

APPELLANT'S MEMORANDUM IN SUPPORT
OF EMERGENCY MOTION FOR INJUNCTIVE RELIEF

Appellant Robert L. Schulz, states as follows:

RELIEF REQUESTED

With respect to the Lead Case (the "AIG" case), Appellant requests an Order:

a) Temporarily enjoining and prohibiting Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors, from giving or lending any public money and public credit to the American International Group ("A.I.G."), and anyone acting on its behalf, including but not limited to its employees, agents, subsidiaries, partners and affiliates until this matter can be heard by the Court's motions panel, and

b) 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 and public credit to A.I.G., and anyone acting on its behalf, including but not limited to its employees, agents, subsidiaries, partners and affiliates pending a determination of the underlying constitutional challenge and any appeal there from, and

c) Granting any further relief that to the Court may seem just and proper.

With respect to the Member Case (the "$700 Billion Bailout" case), Appellant requests an Order:

a) Temporarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors, from using public, taxpayer funds to purchase or insure any financial assets from any private entity under Defendants' so-called $700 Billion Bailout plan, until this matter can be heard by the Court's motions panel, and

b) Preliminarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors from using public, taxpayer funds to purchase or insure any financial assets from any private entity under Defendants' so-called $700 Billion bailout plan, pending a determination of the underlying constitutional challenge and any appeal there from, and

c) Granting any further relief that to the Court may seem just and proper.

JURISDICTION

This Court's jurisdiction is provided by 28 USC Section 1292. Interlocutory decisions

(a) … the courts of appeals shall have jurisdiction of appeals from:
(1) Interlocutory orders of the district courts of the United States … granting, continuing, modifying, refusing or dissolving injunctions ….”

The Lead and Member cases arose under the Constitution of the United States of America. As argued before the lower Court, the District Court’s jurisdiction to declare the constitutionality of the challenged behavior is provided by Article III, Section 2 of the Constitution, which reads in relevant part: “The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States….”

In addition, as argued in the District Court, the District Court’s jurisdiction is also provided by 28 U.S.C. Sections 1331.

In addition, as argued in the District Court, the District Court’s jurisdiction to entertain the Show Cause Orders for injunctive relief is provided by the District Court’s rules L.R. 7.1(e) and (f).

REQUIREMENTS OF RULE 8

With respect to the AIG case, on September 18, 2008, Plaintiff moved in the district court for a temporary restraining order and a preliminary injunction. On September 23, the motion for the TRO was denied on the (erroneous) ground that Plaintiff had not cited the District Court’s jurisdiction. On September 26, 2008, the motion for a preliminary injunction was denied on the (erroneous) ground that Plaintiff had not cited the District Court’s jurisdiction.

With respect to the $700 Billion Bailout case, on September 24, 2008, Plaintiff moved in the district court for a temporary restraining order and a preliminary injunction. On September 26, the motion for the TRO was denied on the (erroneous) ground that Plaintiff had not cited the

District Court's jurisdiction. On September 26, 2008, the motion for a preliminary injunction was denied on the (erroneous) ground that Plaintiff had not cited the District Court's jurisdiction.

PROCEDURAL HISTORY: AIG CASE

On September 18, 2008, Schulz filed a Summons, Complaint and Show Cause Order for declaratory and injunctive relief (A 11- 44) seeking: 1) a declaration of the constitutionality of the Agreement between the Treasury Department and the American International Group ("AIG"), calling for Treasury to give or lend $85 billion of public money and credit to AIG, a private, for profit corporation, for a definitively private purpose[1]; and 2), a TRO and a preliminary injunction to prohibit Defendants from taking any further steps pursuant to the Agreement, until there was a determination of the underlying constitutional question. On September 23, 2008, without a hearing and before receiving any response from Defendants (other than a Notice of Appearance), the District Court issued a "Text Only Order" denying the TRO on the ground that Plaintiff Schulz had not cited the jurisdiction of the District Court. See A-4. On September 26, the District Court entered a Memorandum Decision and Order denying the application for a preliminary injunction on the ground that Schulz had not cited the jurisdiction of the District Court. See A-7.

PROCEDURAL HISTORY: $700 BILLION BAILOUT CASE

On September 24, 2008, Plaintiff Schulz filed a Summons, Complaint and Show Cause Order for declaratory and injunctive relief (A 65-87) seeking: 1) a declaration of the

[1] To help A.I.G. avoid Bankruptcy Court by giving it a chance to sell its assets in an orderly fashion, thereby helping its private trading partners, such as Goldman Sachs. See Exhibit F to Declaration by Schulz submitted herewith.

constitutionality of an imminent act of Congress that would authorize the use of $700 Billion of public, taxpayer funds to purchase real and personal property in the form of mortgage related assets, from unknown private entities for decidedly private purposes[2]; and 2), a TRO and a preliminary injunction to prohibit Defendants from using public, taxpayer funds to purchase private mortgage related assets from private domestic and foreign entities until there was a determination of the underlying constitutional question. On September 25, 2008, without a hearing and before receiving any response from Defendants, the District Court issued a Memorandum-Decision and Order, denying both the application for a TRO and the application for preliminary injunctive relief on the ground that Schulz had not cited the jurisdiction of the District Court. (A-61).

The September 25 Memorandum Decision and Order also consolidated the AIG and the $700 Billion Bailout cases on the ground that they "appeared to be related."[3]

THE URGENCY: AIG CASE

Without seeking or obtaining the approval of Congress, the Agreement between Treasury and AIG was reached and announced on September 16, 2008. See A-29.

Since then, there has been a news blackout about events taking place pursuant to the Agreement. It can be safely assumed that public, taxpayer funds have begun to flow to AIG, without any public or congressional oversight.

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[2] To remove bad debts (worthless or near worthless investments) from private balance sheets. See Exhibit G to the Declaration by Schulz submitted herewith.

[3] The two cases are not related. In the AIG case, the U.S. Treasury Department did NOT seek or obtain Congressional approval. In the $700 Billion Bailout Case, the Executive Department did seek and did obtain Congressional approval. In the AIG case, the Treasury Department has taken control of AIG until AIG pays back an $85 billion loan of taxpayer funds. In the $700 Billion Bailout case, the U.S. Treasury Department is purchasing outright $700 Billion in private mortgage related assets.

THE URGENCY: $700 BILLION BAILOUT CASE

On Monday, September 29, 2008, the House of Representatives voted 228 to 205 against the $700 Billion Bailout bill, now known as the Emergency Economic Stabilization Act of 2008 ("EESA"). The House leadership has announced their intention to continue to "move forward" on the Act, to seek a bi-partisan bill, and to vote again this week. According to today's New York Times, "The House leadership said Monday night that the House would reconvene at noon on Thursday …," and predictions are "that the administration would try to get another House vote before the end of the week, and with only 'tiny tweaks' to the package [EESA] given the relative closeness of the vote." Declaration, Exhibit A.

The Senate is also expected to vote on the measure this week. The President is expected to sign the Act immediately following its approval by Congress.

The core feature of the final Act is not expected to change from that of the Emergency Economic Stabilization Act of 2008 ("EESA") voted on today, which did not change from that of the original three page bill delivered to Congress on September 20, 2008 – that is, the final Act will authorize the Executive Branch to begin using $700 Billion of public, taxpayer funds to purchase or insure any financial asset from any private entity, domestic or foreign (e.g., worthless and near worthless bad debts and investments). For a copy of the original Act, see (A 74-76). For a summary of the EESA see the attached Schulz Declaration, Exhibit D. For a Section by Section breakdown of EESA see Exhibit E. For a copy of EESA, see Exhibit C.

STATEMENT OF FACTS: AIG CASE

The facts are included in the Record (A 29-44) and in Exhibit F to Schulz Declaration submitted herewith. In sum, without checking with the Constitution or the Congress, the

Treasury Department agreed to give or lend $85 Billion in public, taxpayer money and credit to AIG in exchange for warrants.

STATEMENT OF FACTS: $700 BILLION BAILOUT CASE

The facts are included in the Record (A 74-76), and in the Schulz Declaration submitted herewith at Exhibits A-E and G. In sum, the Executive Department, with congressional approval (not authorized by the Constitution) is expected to soon begin spending $700 Billion in public, taxpayer funds to purchase the bad debts and investments of private corporations, for private purposes.

ARGUMENT

A. THE DECISIONS BY THE DISTRICT COURT ARE CLEARLY IN ERROR

In both cases, the district court erroneously denied Plaintiff's applications for a TRO and a Preliminary Injunction on the ground that Plaintiff had failed to cite the District Court's jurisdiction.

In fact, in the AIG Case, Plaintiff correctly cited the District Court's jurisdiction to determine the underlying constitutional question (A-11) and the application for injunctive relief (A-50).

In the $700 Billion Bailout Case, Plaintiff correctly cited the District Court's jurisdiction to determine the underlying constitutional question (A-65) and the application for injunctive relief (A-77).

B. PLAINTIFF HAS A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

With respect to the AIG case, the Executive Department is not authorized, with or without the approval of Congress (Congress is not authorized to give approval), to *participate* in commerce by giving or lending public, taxpayer funds and credit to a private party for a definitively private purpose. This is true, regardless of any noble intent of the program. The Court's attention is invited to the fact that, even if Congress had such power under Article I, Section 8 of the Constitution (which it does not have) the Executive Branch did not seek and has not obtained the approval of Congress for the required appropriation of funds for such an expenditure or to enter into any legal Agreement with AIG.

With respect to the $700 Billion case, the Executive Department is not authorized by the Constitution, with or without the approval of Congress, to *participate* in commerce as a purchaser or insurer of real and personal property (mortgage related assets or otherwise) from private, for-profit entities for decidedly **private** purposes. This is true, regardless of any noble intent or perceived public benefit of such program. The Court's attention is invited to the fact that while the Congress and the Executive continue to negotiate the terms and conditions of the original three page bill, the core of the original proposal has not changed – that is, large sums of public, taxpayer funds are to be used to purchase, insure, or otherwise indemnify the real and personal property, financial investments or contracts of private entities for decidedly **private** purposes. See Exhibits A – E and G annexed to Schulz Declaration submitted herewith.

Given the facts and circumstances of this case, particularly Plaintiff's irreparable harm and a balancing of the public interests and hardships, the lesser "serious questions" standard

applies. Plaintiff has raised serious questions going to the merits to establish fair grounds for litigation.

The Constitution must be construed in its entirety.

There is no provision of the Constitution that permits or grants the Government of the United States of America the power to participate in commerce by giving or lending public funds and credit to a private party - even if such transaction results in an exchange for warrants, financial interest, and/or control of the private party, especially if such transaction is for a decidedly, definitively, **private** purpose.

Under Article I, Section 8 of the Constitution of the United States of America, the People have given Congress the power, **"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes,"**

Article I, Section 8 of the Constitution of the United States of America gives Congress the power to regulate commerce, not to *participate* in commerce as a giver or lender of public money and credit to private, for-profit entities.

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 the judiciary 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 federal Court.

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. or any other private entity 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's claims are aggravated further still by the potential of purchase or insuring of significant amounts of *foreign owned* impaired assets by the U.S. Treasury.

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

In *Carter v. Carter Coal Co.*, the Supreme Court said:

> "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).

In *Miranda v Arizona*, the Supreme Court said:

> "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)

In Federalist 78, Hamilton wrote:

> "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 constitutional torts, and taking into account the plain language of and the Framers' intent behind the words of the Petition Clause, as well as 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 these transactions.

C. IRREPARABLE HARM

The loss of U.S. Constitutional freedoms, even for minimal periods of time, constitutes irreparable injury. Plaintiff has a fundamental Right to constitutional governance carried out in decency and good order. Plaintiff has a fundamental Right to a government that does not violate the Constitution. Plaintiff has a fundamental Right to hold the Government accountable to the Constitution. Impairment of *constitutional* Rights can undoubtedly constitute irreparable injury. S*ee Elrod v. Burns, 427 U.S. 347, 373, 49 L. Ed. 2d 547, 96 S. Ct. 2673 (1976)* (plurality opinion)." *Time Warner v. Bloomberg, 118 F.3d 917, 924 (2d Cir. 1997).*

Plaintiff has standing to bring suit, even before the conspiracy has resulted in economic or tangible injury, as in the case of the $700 Billion Bailout. See *LeBlanc-Sternberg v. Fletcher, 67 F.3d 412 (2d Cir., 1995).*

Plaintiff has demonstrated that the injunctions applied for will prevent the feared deprivation of fundamental rights, and that he is thus entitled to the relief requested. See *Bennett v. Lucier, 2007 U.S. App. LEXIS 15937 (2d Cir., July 5, 2007).*

Violations of U.S. Constitutional Rights are commonly considered irreparable injuries for the purposes of preliminary injunctions. See *Bery v. City of New York, 97 F.3d 689, (2d Cir., 1996).*

Without the stay, Plaintiff, a federal taxpayer, will be irreparably injured by the addition of $700 billion to the national, taxpayer-supported debt.

Without the stay, Plaintiff, a purchaser of basic necessities, will be irreparably injured by a rise in prices, the result of the addition of $85 and $700 billion to the national debt and the corresponding devaluation of the dollar resulting from the collusion of the Federal Reserve and Treasury to create the funds for such transactions. It is common knowledge that the value of the dollar is inversely proportional to the amount of dollars in circulation and to the national debt, and that the amount of dollars in circulation is directly proportional to the cost of goods and services, including the necessities of food, clothing and shelter.

D. BALANCE OF HARDSHIPS AND PUBLIC INTERESTS TIPS DECIDEDLY IN PLAINTIFF'S FAVOR

There is absolutely no evidence before the Court that the injunctions applied for would actually cause any harm to the Defendants.

CONCLUSION

It is clear that the District Court erred in denying Plaintiff's motions for temporary and preliminary injunctive relief on the ground that Plaintiff had failed to cite the Court's jurisdiction.

In addition, it is clear that Plaintiff's constitutional interests are either imminently threatened or are in fact being impaired. The loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. See *New York Times Co. v. United States*, 403 U.S. 713 (1971).

Since such injury was both threatened and occurring at the time of Plaintiff's motions for a TRO, and since Plaintiff has sufficiently demonstrated a probability of success on the merits, the Court of Appeals might properly hold that the District Court abused its discretion

in denying temporary and preliminary injunctive relief. See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

The immediate harm to Plaintiff from the force of a denial of the injunctive relief is in fact far greater than any harm claimed thus far by the Government if the injunctive relief is granted.

The harm to Plaintiff without injunctive relief is actual, imminent harm. Plaintiff is under steady threat of significant injury.

The public interests being defended by Plaintiff include the preservation, protection and enhancement of self-government, due process, popular sovereignty, accountability in government, the Right to Petition Government for a Redress of constitutional torts, and the Right to Constitutional governance carried out in decency and good order.

The Record aligns Schulz, if only provisionally, on the side of the public interest and constitutes added weight in favor of precautionary relief.

Since the decision below was entered in error and without a hearing, the ordinary deference to the district judge's findings of fact is less appropriate. *Aetna Cas. & Sur. Co. v. Hunt, 486 F.2d 81, 84 (10th Cir. 1973)*; *Shumaker v. Groboski Industries, Inc., 352 F.2d 837, 840 (7th Cir. 1965).*

Plaintiff has made a sufficiently strong showing that he is likely to prevail on the merits in light of the disparity of probable harm as between the Plaintiff and the Defendants and the location of the public interest. Since the issues are grave, of significant importance to Plaintiff's individual Rights and to the national interest, and the balance of hardship substantially favors Plaintiff, the denial of the provisional relief in the district court should be reversed.

Plaintiff requests an order granting the motion for temporary and preliminary injunctive relief.

Respectfully submitted,

Dated: September 30, 2008

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