IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

WE THE PEOPLE FOUNDATION INC., et al.,	)	
Plaintiffs,	)	
v.	)	No. 1:04-cv-01211 EGS
UNITED STATES, et al.,	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTIONS FOR LEAVE TO FILE SURREPLY

This is an action to compel various agencies and officials of the federal government to "adequately respond" to certain questions regarding the constitutionality and legality of the federal income tax, the Federal Reserve Bank, and any other issues plaintiffs raise in certain "petitions" to these officials, and to enjoin the United States and certain of its agencies and officials from enforcing federal tax laws with regard to plaintiffs if they refuse to pay federal taxes until they receive an "adequate response" to the petitions. The federal defendants moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted because (1) no law requires that defendants "adequately respond" to plaintiffs' petitions, (2) plaintiffs have no legal right to fail to pay taxes until they receive an "adequate response" to the petitions, and (3) the Court may not enter an injunction against the collection of taxes and enforcement of federal tax laws under the circumstances presented by the complaint, as amended. The plaintiffs responded to the motion, and the defendants replied, presenting their positions on the points discussed above. Plaintiffs moved for leave to file a surreply brief to address a

point purportedly raised in a footnote to the reply brief. The defendants oppose plaintiffs' motions.

DISCUSSION

This is a simple case. It should be resolved by the Court as a matter of law, even assuming the allegations of the complaint are true. As a result, defendants have moved for dismissal.

In particular, this Court has been asked to decide the following:

- whether, in light of applicable Supreme Court precedent, see Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463, 465 (1979) and Minnesota State Board v. Knight, 465 U.S. 271, 283 (1984), federal agencies and employees have a First Amendment obligation to respond to every communication that the plaintiffs may denominate a petition (Defs' Reply Supp. Mot. Dismiss 2-6);
- whether plaintiffs have a First Amendment right to withhold money owing to the Government, and receive immunity from civil and criminal enforcement of tax laws, until an "adequate response" to petitions is received (Defs' Reply Supp. Mot. Dismiss 6-8); and
- whether an injunction against the enforcement of our nation's civil and criminal tax laws against over 1,600 plaintiffs is specifically barred by the Anti-Injunction Act, 26 U.S.C. § 7421 (Defs' Reply Supp. Mot. Dismiss 8-9).

The defendants' contentions that there is no First Amendment obligation to respond to plaintiffs' "petitions," or a corresponding right to immunity from civil or criminal tax

liability while awaiting an "adequate response" to the petitions, are set forth in the motion to dismiss. (Defs' Br. Supp. Mot. Dismiss 15-19). That the relief plaintiffs seek is barred by the Anti-Injunction Act was likewise raised in the motion to dismiss. (Br. Supp. Mot. Dismiss 20-21). Defendants' reply brief, therefore, raises no new issues.

Plaintiffs have moved for leave of court to file a surreply brief. Surreplies, generally, are disfavored. Alaron Trading Comm'n v. CFTC, 1999 U.S. App. LEXIS 11044 (D.C. Cir. 1999); see also Lacher v. West, 147 F.Supp.2d 538, 539 ("Surreplies . . . are highly disfavored, as they usually are a strategic effort by the nonmovant to have the last word on a matter. The court has found that surreplies usually are not that helpful in resolving pending matters[.]"). Leave to file a surreply will only be granted to address new matters raised in a reply, to which a party would otherwise be unable to respond. United States ex rel. Pogue v. Diabetes Treatment Ctrs. of America, 238 F.Supp.2d 270, 276-77 (D.D.C. 2002). The matter must be "truly new," and not involve simply an alleged mischaracterization. Id., citing Lewis v. Rumsfeld, 154 F.Supp.2d 56, 61 (D.D.C. 2001). If a new matter is introduced in a reply brief, the decision whether to grant leave of court for a surreply is within the court's discretion. Surreplies are most appropriate where the new matter introduced is factual, as in the context of a motion for summary judgment. Cf. Alexander v. FBI, 186 F.R.D. 71, 74 (D.D.C. 1998).

In this case, plaintiffs seek to respond to an assertion made in a footnote to defendants' reply brief. In that footnote, defendants asserted that the government has responded to other anti-tax arguments "identical" to those raised by plaintiffs. (Defs' Reply Supp. Mot. Dismiss 5 n.4). Plaintiffs' motions should be denied for several

reasons.[1]

First, whether or not official publications and relevant case law set forth responses to "identical" anti-tax arguments may be independently verified by the Court without the need for additional advocacy. Second, the assertion is peripheral to the motion to dismiss. Its relation to the motion is underscored by its location in a footnote. Third, it is offered not to refute plaintiffs' allegation that the government has not responded to their petitions, (Am. Compl. ¶ 10), because for the purpose of this motion to dismiss, the factual allegations of the complaint are presumed to be true (Defs' Br. Supp. Mot. Dismiss 14). Instead, it is offered to notify the Court of that which it is likely already aware -- that those who contend that the income tax is unconstitutional, etc., will find adequate guidance in official publications and court opinions as to the government's position on such contentions. Under the circumstances of this case, then, there is little policy-based reason for requiring the President of the United States, the United States Congress, the Attorney General, and others to individually debunk these contentions made in plaintiffs' "petitions." This policy argument is not new. (See Defs' Br. Supp. Mot. Dismiss at 16-17.) Therefore, a surreply is unwarranted.

Moreover, the Court need not resort to the policy argument in footnote 4 to the reply brief in deciding to dismiss this case. As discussed in the original motion and

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[1]Plaintiff Robert Schultz raises an additional concern, namely, that the government's citation to an IRS publication, "The Truth About Frivolous Tax Arguments," is incorrect. The footnote cited to Pub. No. 2105. Schultz correctly notes that Pub. No. 2105 is entitled "Why Do I Have to Pay Taxes?" That publication refers the reader to the IRS website at which "The Truth About Frivolous Tax Arguments" is published, http://www.irs.gov/pub/irs-utl/friv_tax.pdf (last accessed Jan. 24, 2005).

the reply brief, dismissal is mandated by applicable Supreme Court precedent. As a result, plaintiffs' proposed surreplies will be of no assistance to the Court.

Plaintiffs have already filed several boxes full of pleadings, documents, and other media in this case. The legal issues are well-defined and fully briefed, and there is no reason to depart from the Court's motion practice[2] and delay the resolution of this case by permitting the plaintiffs to file even more. Accordingly, plaintiffs' motions for leave to file a surreply brief should be denied.

CONCLUSION

For the foregoing reasons, the defendants respectfully submit that the motions for leave to file a surreply brief should be denied.

Dated: January 24, 2005

Respectfully submitted,

/s/ Ivan C. Dale
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[2]Alternatively, if the motion for leave is granted, the Court should likewise schedule an opportunity for the defendants to file a reply to the surreplies.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTIONS FOR LEAVE TO FILE SURREPLY was caused to be served upon the plaintiffs on the 24th day of January, 2005, by depositing a copy thereof in the United States mail, postage prepaid, addressed as follows:

MARK LANE
272 Tindall Island Road
Greenwich, New Jersey 08323

ROBERT L. SCHULTZ
2458 Ridge Road
Queensbury, NY 12804

/s/ Ivan C. Dale
IVAN C. DALE