Appellate No. 07-1156

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff/Appellee.

v.

JOHN BAPTIST KOTMAIR, JR.,
and SAVE-A-PATRIOT FELLOWSHIP,
Defendants/Appellants.

Appeal from the United States District Court for the District of Maryland
Judge William M. Nickerson

PETITION FOR REHEARING EN BANC OF APPELLANT SAVE-A-PATRIOT FELLOWSHIP

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STATEMENT OF COUNSEL PURSUANT TO CIRCUIT RULE 35(b)

Based on my professional judgment, I believe the panel's decision to affirm the lower court's grant of summary judgment to the United States of America is contrary to the following decisions of this Court and the Supreme Court: *Davis v. Zahradnick*, 600 F.2d 458 (4th Cir. 1979); *Charbonnages de France v. Smith*, 597 F.2d 406 (4th Cir.1979); *CPC International, Inc. v. Skippy Inc.*, 214 F.3d 456 (4th Cir. 2000); *Schmidt v. Lessard*, 414 U.S. 473 (1974); *Adventure Communications, Inc. v. Kentucky Registry of Election Finance*, 191 F.3d 429, 441 (4th Cir., 1999); *U.S. v. Oregon State Medical Society*, 343 U.S. 326, at 333 (1952); *Marshall v. Stevens People and Friends for Freedom*, 669 F.2d (4th Cir. 1981); *Elfbrandt v. Russell*, 384 U.S. 11 (1966).

George E. Harp

GEORGE E. HARP

Attorney for Save-A-Patriot Fellowship

INTRODUCTION

By adopting the reasons given by the court below for its injunction order, the Appellate panel reached unprecedented conclusions: that the right to a trial is ***not*** protected when disputed issues of material fact exist, that injunctions may be issued in violation of the specificity required by Rule 65(d), that the commercial speech doctrine can be invoked to restrain dissenting speech about the internal revenue laws, and that the right to freedom and privacy of association can be abrogated on suspicion of 'guilt by association.' All of these conclusions are contrary to established precedents of this Court and the Supreme Court, and for this reason, the full Court should vacate the panel's order affirming the permanent injunction order issued on summary judgment motion by the lower court.

BACKGROUND

Since 1984, Save-A-Patriot Fellowship (SAPF), an unincorporated association, has published opinions regarding the internal revenue laws. SAPF members have joined together to exercise their free speech and due process rights with respect to the IRS and the courts. A55. The Fellowship's status as a membership organization that advocates views unpopular with the government was recognized in *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996). A54,

A510, A518–519.[1]

In 2005, after 21 years of SAPF political advocacy with respect to tax laws, the government sought a permanent injunction[2] against SAPF's dissenting political speech, contending that SAPF can be enjoined under statutes penalizing false statements made with respect to abusive tax shelters and aiding or abetting the making of an understatement of liability. The government also alleged that SAPF letters and court filings obstruct IRS administration and enforcement and cause irreparable harm. A17 ¶¶42–43.

During discovery, the government refused to identify for deposition any witnesses other than two IRS Agents, one of which, Agent Rowe, had no first-hand knowledge of the IRS investigation which brought about the complaint. A341–355. On summary judgment motion, however, the government introduced Agent Rowe and five ***surprise*** witnesses via affidavit. A68–81, A241-255. Rowe's declaration was riddled with conclusory statements, and the government conceded that much of it should be disregarded.[3] Mr. Kotmair and others timely introduced countering affidavits and material. A55–57, A337–340. SAPF raised the disputed issues of material fact to the court's attention and objected to the use of previously

[1] As Judge Garbis stated in the trial record in 1996, while the government may disagree with Mr. Kotmair, SAPF's fiduciary (A55)'s legal opinions, no one "can deny [Kotmair's] sincerity." A52.
[2] The government invoked 26 USC § 6700, § 6701, § 7408, and § 7402(a).
[3] See District Docket 62-1, p. 7, FN 21.

undisclosed witnesseses' testimony relative to FRCP 37(c)(1).[4] A323–329.

SAPF speech introduced on by the government on summary judgment motion included just one page of a book, six pages of a website, a handful of newsletters dating from 1990 to 1999, a membership handbook, and several types of letters to the IRS, written by SAPF in response to IRS notices. A82–235.

Despite objections and disputed issues requiring a trial, the district judge granted summary judgment to the government. A478. Further, with only a ***tiny sample*** of SAPF's speech and no hearing, the judge found that "much" of SAPF's speech was commercial, and that its representations about the tax laws and the "efficacy of [its] products" were fraudulent. A496. On the basis of one unauthenticated document (A228), the judge further found that the IRS suffered irreparable harm "in the form of expenditures of time and money" required to respond to SAPF letters.[5] A495.

SAPF is broadly enjoined from assisting anyone in any IRS matter, including preparing letters or court filings, advising anyone they are not required to file returns, distributing any publications containing "false commercial speech," and engaging in "similar conduct that substantially interferes" with the administration of the federal tax laws. A473–477. Although the district judge

[4] Rule 37(c)(1) provides that any witness not disclosed pursuant to the discovery rule ***cannot*** be used on a motion.

contemplated holding a hearing to assist in determining the ***precise*** speech and actions enjoined, he ultimately refused SAPF's request for specification pursuant to F.R.C.P. 65(d). A504.

SAPF is also ordered to produce to the government "a list identifying by name, address, e-mail address, telephone number, and Social Security number, all SAPF members" (A476), based on an unprecedented decision that this list is "an appropriate means" to alleviate past harm judged caused by SAPF.

ARGUMENT

A. The panel's ruling conflicts with governing precedents that summary judgment cannot resolve disputed issues of fact

Summary judgment under F.R.C.P. 56 may not be invoked where affidavits present conflicting versions of the facts which require credibility determinations. *Davis v. Zahradnick*, 600 F.2d 458, at 460 (4th Cir. 1979). By adopting the district judge's reasons for granting summary judgment, the panel has reached the ***opposite*** conclusion, that summary judgment is ***proper*** where affidavits present conflicting versions of material facts.

Since the credibility of the government's witnesses was disputed by countering affidavits and materials from SAPF, the panel's failure to remand for trial also conflicts with *Stevens v. Howard D. Johnson Co.*, 181 F.2d 390 (4th Cir.

[5] Approximately 15–30 letters a month reach the IRS, according to Agent Rowe.

1950), which emphasizes that trials of disputed questions of fact are "guaranteed by the Constitution." The purpose of summary judgment is ***not*** to "cut litigants off" from this right, as even questions of law are better decided when facts are more fully before the court than possible upon affidavits.

Because the district judge enjoined SAPF upon a resolution of the factual issues rather than a determination whether any genuine issues existed, numerous facts remain disputed,[6] *inter alia*: (a) whether SAPF advised any individual that they are not required to file or pay federal taxes (alleged at A70, ¶16, denied at A56,¶9, A339), (b) whether SAPF represented that any of its publications can legally reduce taxes or remove members from the obligation to file or pay federal taxes, (alleged at A77, A248¶5, denied at A337–339), (c) whether SAPF caused irreparable harm to the IRS by writing letters (alleged at A79, in violation of Rule 56(e)); (d) whether SAPF prepared court filings which obstructed IRS examinations or collections (alleged at A78, denied at A338); (e) whether SAPF prepared documents ***which it knew*** would be used to understate the taxes due on a return (alleged at A397, denied at district docket 64, Ex. 2).

This Court has consistently held such disputed factual issues cannot be resolved by summary judgment, and that the non-movant is entitled "to have the credibility of his evidence as forecast assumed, his version of all that is in dispute

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A75–76, ¶¶ 44–49.

accepted, all internal conflicts in it resolved favorably to him, the most favorable of possible alternative inferences from it drawn in his behalf; and finally, to be given the benefit of all favorable legal theories invoked by the evidence as considered." *Charbonnages de France v. Smith*, 597 F.2d 406, at 414 (4th Cir.1979). Contrary to that precedent, the panel affirmed the lower court in the face of evidence that the district judge accepted the ***government's*** version of the dispute, rather than SAPF's. As one example: without any testimony or evidence, the government claimed SAPF represents that certain documents can revoke the legal obligation to file or pay taxes. SAPF introduced materials which repudiate this claim, yet the judge credited the government's unsupported version and enjoined SAPF from "organizing or selling any document purporting to enable the customer to discontinue payment of federal tax."

The penalty statutes invoked against SAPF contain "state of mind" elements, *e.g.*, "knows or has reason to know is false or fraudulent" (§ 6700). Under *Charbonnages*, the "state of mind" issue requires a factual determination that has been consistently held to be ***outside*** the province of summary judgment. *Charbonnages*, at 414, cites *Poller v. Columbia Broadcasting System, Inc.*, 368

[6] None of the citations to the record are exhaustive; they are provided as examples.

U.S. 464 (1962) in holding that summary judgment is seldom appropriate when particular states of mind are decisive as elements of claim or defense.[7]

In conflict with *Orsi v. Kirkwood*, 999 F.2d 86 (4th Cir., 1993), the panel's ruling allows a factual finding of irreparable harm to the IRS based on a single unauthenticated document (purporting to show IRS costs in dealing with SAPF activities), *supra*. Under *Orsi*, unsworn, unauthenticated documents ***cannot*** be considered on a motion for summary judgment: "documents must be authenticated by and attached to an affidavit that meets the requirements of Rule 56(e)."

To prevent the misuse of summary judgment in conflict with Rule 56 and its own binding precedents, the Court en banc should vacate and remand the injunction order for trial.

B. The panel's ruling conflicts with governing precedents that recognize the specificity required by 65(d) is indispensable to justice

F.R.C.P. 65(d) mandates that "every" order granting an injunction "shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail … the [] acts sought to be restrained." The rule applies here because the district judge's order grants an injunction. In *CPC International, Inc.*

[7] See also: *Gordon v. Kidd*, 971 F.2d 1087 (4th Cir. 1992) ("Where states of mind are decisive as elements of claim or defense, summary judgment ordinarily will not lie."); *Overstreet v. Kentucky Cent. Life Ins. Co.*, 950 F.2d 931 (4th Cir. 1991) ("Summary judgment ordinarily will not lie where states of mind are decisive as elements of a claim or defense."); Also *Miller v. Federal Deposit Ins. Corp.*, 906 F.2d 972 (4th Cir. 1990)

v. Skippy Inc., 214 F.3d 456, at 459 (4th Cir. 2000), this Court observed, quoting *Thomas v. Brock*, 810 F.2d 448, 450 (4th Cir. 1987), that the terms of this rule "are mandatory and must be observed in every instance."

The panel's decision ***not*** to vacate and remand the district judge's vague and overbroad injunction order conflicts with both the Supreme Court and this Court's concurring precedents. In *CPC*, this Court stated, congruent with *Schmidt v. Lessard*, 414 U.S. 473, at 476 (1974), that the specificity provisions of Rule 65(d) are no mere technical requirements; rather, "[t]he Rule was designed to prevent uncertainty and confusion on the part of those faced with injunction orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." This Court also recognized a second purpose for the rule, agreeing with *Schmidt* that "without specificity, appellate review of an injunctive order is 'greatly complicated, if not made impossible.' " *CPC* at 459.

In *CPC*, this Court ***vacated*** an injunction order as violative of the particularity requirement because, while the specific sections of materials[8] to be removed from a website were clearly specified, "the reason for redacting these materials [was] not." *CPC* at 459. The governing precedent is that an injunction orders must not only specify its terms, but also the ***findings*** and ***reasons*** for its

[8] *E.g.*, "Defendants shall permanently remove the highlighted passages and titles shown on the attached Schedule A from anywhere in the Skippy.com Internet website …", *CPC* at 459.

issuance. *Id.*, at 456. The panel's ruling squarely conflicts with its decision in *CPC*, in that the injunction order against SAPF ***specifies neither*** the specific sections of materials to be redacted, nor the findings and reasons for redacting those materials.

In contrast to the *CPC* injunction, which included a highlighted list of the exact speech prohibited, the district judge's order enjoins "false commercial speech regarding the internal revenue laws" and "speech *likely to* aid or abet others in violating the internal revenue code," categories so vague and ill-defined they are incapable of being objectively determined, and thus provide no actual notice of ***what*** speech may bring a contempt citation and deprive SAPF members of their liberty. The Supreme Court rejects decrees framed in such vague terms. See *International Longshoremen's Assn. Local 1291 v. Philadelphia Marine Trade Assn.*, 389 U.S. 64 (1967).

In *International Longshoremen*, the Supreme Court held the district court's steadfast refusal to specify the terms or explain the meaning of its order, despite counsel's repeated requests, a "serious and decisive error." *Id.*, at 76. The panel's ruling echoes this "serious and decisive error" by refusing SAPF's request for specification. By following the lower court decision, the panel ***acknowledges*** SAPF's professed confusion, but dismisses it as "self-induced" (A504) rather than vacating and remanding for the specificity required by Rule 65(d). This decision contravenes the Supreme Court's warning that the contempt power is deadly if

founded on a vague decree. That Court has determined that Rule 65(d) is the safeguard against such abuse of power:

> Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid. … ***The most fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension***. *Id.*, at 76 (emphasis added).

As this Court decided in *CPC*, a proper injunction under Rule 65(d) must identify specific passages and explain ***how*** they violate the decree at issue. *Id*., at 461. In contravention of this precedent, the panel's present ruling lets stand an injunction order which neither identifies specific passages or actions, nor explains ***how*** those passages or actions violate the statutes at issue. *E.g.*, although determining that "false commercial speech" could be enjoined, the district judge failed to explain how such speech violates the provisions of 26 USC §7408 or § 7402(a), the jurisdictional statutes invoked by the government.

The panel's ruling also violates the second aspect of particularity required by *CPC* in that no ***findings*** or ***reasons*** have been given for the injunctive commands forbidding "assisting in the preparation of court filings related to the assessment or collection of income taxes" and "assisting any other person before the IRS in connection with any matter, including … the preparation of correspondence to the IRS." A474. Absent an explanation of ***how*** the mere acts of preparing correspondence or court filings violate any law, the panel's ruling conflicts with

this Court's holding in *CPC* that "[i]njunctions must be narrowly tailored and should prohibit only ***unlawful*** conduct" (emphasis added), *Id.*, at 461, as well as the precedent it follows under *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, at 924 n. 67 (1982) (injunction must "restrain only unlawful conduct").

If the injunction order is not vacated and remanded for the specification required by Rule 65(d), SAPF is at risk of the abusive contempt power forbidden by *International Longshoreman.* The full Court should reject the grant of such abusive power, and vacate and remand for specificity pursuant to Rule 65(d).

C. The panel's ruling conflicts with governing precedents distinguishing commercial from non-commercial speech

Speech is commercial in nature if it does no more than propose a commercial transaction. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 at 762 (1976). The panel's decision to affirm the order enjoining the distribution or sale of SAPF publications "containing false commercial speech regarding the internal revenue laws" (A475) conflicts with that definition of commercial speech and this Court's decision in *CPC International, Inc. v. Skippy, Inc.*, 214 F.3d 456 (4th Cir. 2000).

First Amendment interests are at stake here because, like the Skippy website in *CPC*, SAPF's website and publications serve a primarily ***informational*** purpose, containing SAPF's 'side of the story' with respect to its opinions, beliefs, and commentary on the tax laws of this nation. The district judge dismissed SAPF's

argument that this information is protected, finding that "much of the speech" is commercial because it "relates to the sale of SAPF products and services." The specific categories of commercial speech suggested by the judge as fraudulent (and therefore enjoinable) were (1) SAPF's representations about the tax laws, and (2) representations about the "efficacy of [SAPF] products." Nevertheless, the injunction order does ***not*** identify any actual ***statements*** in either category. A496, A475-476.

"*Relating*" to the sale of products or services does not meet the exacting "propose a commercial transaction" standard. Nor has the panel articulated how "representations about the tax laws" could meet this standard. Clearly, ***representations*** about statutes Congress has passed are purely editorial and therefore protected by the First Amendment, regardless of truthfulness, and the panel has not shown how any opposite result can be obtained. Indeed, this Court holds that any injunction meant to curtail commercial speech, which instead redacts purely editorial and historical comments, engages in a "wholesale suppression of speech" which the "Constitution will not tolerate." *Id.,* at 462.

Under *CPC,* the fact that speech criticizes or even vexes another is also not sufficient reason to enjoin it. *Id.,* at 462. SAPF's representations about the tax laws dissent from the ***government's*** representations and undoubtedly vex the government, but this is not sufficient reason, according to *CPC*, to enjoin.

In deciding ***not*** to vacate and remand this order so that any fraudulent commercial passages can be identified and analyzed, the panel also conflicts with its analysis of the commercial speech issue in *Adventure Communications, Inc. v. Kentucky Registry of Election Finance*, 191 F.3d 429, 441 (4th Cir., 1999). There, the panel recognized it is "difficult to discern" between commercial elements and political commentary, and that the line can only be determined by 'the nature of the speech taken as a whole,' quoting the Supreme Court in *Riley v. National Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781, at 796 (1988). Consideration of the full context is ***critical*** in deciding whether or not a communication, ***at bottom***, merely proposes a commercial transaction. *Adventure Communications*, at 439.

Viewed in its total context, SAPF's speech is protected speech of the nature discussed in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and approved by this Court in *Adventure Communications*, that is, it communicates information, expresses opinion, recites grievances, protests claimed abuses, and seeks support " 'on behalf of a movement whose existence and objectives are matters of the highest public interest and concern.'" *Id*., at 441.

By allowing mere "representations about the tax laws" to be accounted commercial speech, the panel's ruling threatens to erase the distinction between commercial and non-commercial speech. The Court *en banc* should reject such

revision of the commercial speech doctrine in order to preserve First Amendment rights with respect to matters of public interest.

D. The panel's ruling conflicts with binding precedents that recognize the right to privacy in association and the proper bounds for injunctive relief

In affirming the district judge's order to produce detailed lists of all SAPF members, both full and associate,[9] the panel's ruling that such production is an "appropriate means" to provide reparations for past harm conflicts with the Supreme Court in *U.S. v. Oregon State Medical Society*, 343 U.S. 326, at 333 (1952), that the "sole function of an action for injunction is to forestall future violations. It is so unrelated to punishment or reparations for those past that its pendency or decision does not prevent concurrent or later remedy for past violations by indictment or action for damages … ." In *Belk v. Charlotte-Mecklenburg Board of Education*, 269 F.3d 305 (4th Cir., 2001), this Court also held that an injunction may not be used for punishment or reparations. *Id.,* at 347.

The panel's ruling also violates SAPF members' First Amendment rights of both freedom and privacy of association, in conflict with binding precedents of the Supreme Court under *NAACP v. Alabama*, 357 U.S. 449 (1958), and this Circuit in *Marshall v. Stevens People and Friends for Freedom*, 669 F.2d 171 (4th Cir. 1981): "that compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association." *Id*., at 176.

In *U.S. v. Hammoud*, 381 F. 3d 316 (4th Cir. 2004), this en banc Court recognized the right to freedom and privacy in one's associations exists even in the face of some unlawful activity of the group: "It is a violation of the First Amendment to punish an individual for ***mere membership*** in an organization that has legal and illegal goals" (emphasis added). *Id.*, at 328. Similarly, in *Elfbrandt v. Russell*, 384 U.S. 11 (1966), the Supreme Court held that a decree that rests on 'guilt by association' "infringes unnecessarily on protected freedoms." *Id*., at 19.

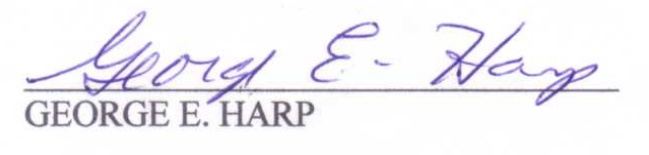
This panel's ruling now accomplishes what the Circuit said three years ago would ***violate*** the right to freedom of association by stripping ***all*** SAPF members of privacy in association, ***without*** a showing of individual intent to further "illegal aims." The full Court should vacate this stifling of personal liberties based on 'guilt by association.'

[9] Associate members do not use SAPF correspondence or court filings.

CONCLUSION

For the reasons set forth hereinabove, the petition for rehearing or rehearing en banc should be granted.

Respectfully submitted this 10th day of September, 2007.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a printed copy of the "PETITION FOR REHEARING EN BANC OF APPELLANT SAVE-A-PATRIOT FELLOWSHIP" was sent to counsel for the Appellee, Carol A. Barthell, Attorney, Appellate Section, U.S. Department of Justice, Post Office Box 502, Washington, DC, 20044, and to Defendant/Appellant John B. Kotmair, Jr., Post Office Box 91, Westminster, MD 21158, by facsimile and U.S. mail, with sufficient postage affixed, this 10th day of September, 2007.

GEORGE E. HARP

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1156

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHN B. KOTMAIR, JR., d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee; SAVE-A-PATRIOT FELLOWSHIP, an unincorporated association,

Defendants - Appellants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. William M. Nickerson, Senior District Judge. (1:05-cv-01297-WMN)

Submitted: July 24, 2007 Decided: July 26, 2007

Before WILKINSON, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

John B. Kotmair, Jr., Appellant Pro Se; George E. Harp, Shreveport, Louisiana, for Appellant SAVE-A-PATRIOT FELLOWSHIP, an unincorporated association. Richard Farber, Carol Ann Barthel, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John B. Kotmair, Jr., and Save-A-Patriot Fellowship appeal from the district court's orders granting summary judgment in favor of the United States and issuing a permanent injunction against them based on their activities in promoting a tax evasion scheme, and denying their motions for a new trial and for modification of the injunction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. United States v. Kotmair, No. 1:05-cv-01297-WMN (D. Md. Nov. 29, 2006; Feb. 7, 2007). We deny Save-A-Patriot's motion to strike portions of the brief filed by the United States, and we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
	:	
V.	:	Civil No. WMN-05-1297
	:	
JOHN BAPTIST KOTMAIR et al.	:	

PERMANENT INJUNCTION ORDER

This Court has found that Defendants John Baptist Kotmair and Save-A-Patriot Fellowship have engaged in conduct subject to penalty under IRC §§ 6700 and 6701 in connection with their fraudulent promotion of the "U.S.-Sources" or "Section 861" argument. This argument has no basis in law and has been consistently rejected by the courts. This Court has further found that Defendants have engaged in conduct that interfered with the enforcement of the internal revenue laws and, absent an order restraining their activity, Defendants will continue said interference and conduct in violation of the Internal Revenue Code. Accordingly and pursuant to IRC § 7402 and 7408, IT IS this 29th day of November, 2006, by the United States District Court for the District of Maryland, ORDERED:

1) That Defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them are hereby permanently enjoined from directly or indirectly:

a) Engaging in activity subject to penalty under IRC § 6700,

including organizing or participating in the sale of a plan or arrangement and making a statement regarding the securing of any tax benefit that they know or have reason to know is false and fraudulent as to any material matter;

b) Engaging in activity subject to penalty under § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will, if used, result in an understatement of tax liability;

c) Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter;

d) Engaging in any other activity subject to penalty under IRC §§ 6700 or 6701 or other penalty provision of the Internal Revenue Code;

e) Representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any person;

f) Preparing or assisting in the preparation of court filings related to the assessment or collection of income taxes on behalf of any other person;

g) Obstructing or advising or assisting anyone to obstruct

IRS examinations, collections, or other IRS proceedings;

h) Advising anyone that they are not required to file federal tax returns or pay federal taxes;

i) Instructing, advising, or assisting anyone to stop the withholding of federal employment taxes from wages;

j) Providing aid or assistance, financial or otherwise, either directly or through the Member Assistance Program, the Victory Express, the Patriot Defense Fund, or any other plan or arrangement, for others to violate the internal revenue laws;

k) Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to aid or abet others in violating the internal revenue code;

l) Organizing or selling any document purporting to enable the customer to discontinue payment of federal tax;

m) Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws;

2) That Defendants, at their own expense, shall notify all SAPF members (both associate and full members) and all individuals who have purchased defendants' tax plans, arrangements, materials and services of the entry of this permanent injunction against Defendants and shall provide them

with a copy of this permanent injunction;

3) That Defendants shall produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all SAPF members (both associate and full members) and all persons and entities who have purchased Defendants' tax-fraud plans, arrangements, services, products or materials;

4) That Defendants shall remove from their website, www.save-a-patriot.org, and any other website over which they have control all tax-fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to aid or abet others in violating the internal revenue laws;

5) That Defendants shall display prominently on the first page of their website, www.save-a-patriot.org, and any other website over which they have control a complete copy of this permanent injunction, and will maintain those websites for one year with a complete copy of this permanent injunction so displayed throughout that time;

6) That Defendants shall complete the requirements of paragraphs 2 through 5, supra, within 21 days of the date of this Order and shall file a certification of compliance with those requirements, under penalty of perjury, within 22 days of the date of this Order;

7) That the United States shall be permitted to conduct post-judgment discovery to ensure and verify Defendants' compliance with the terms of this permanent injunction; and

8) That the Clerk of Court shall transmit copies of this Permanent Injunctive Order to all counsel of record.

/s/
William M. Nickerson
Senior United States District Judge