

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
2006 MAY 24 P 2:11

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

JOHN BAPTIST KOTMAIR, JR., )

and SAVE-A-PATRIOT FELLOWSHIP, )

Defendants. )

CLERK'S OFFICE  
AT BALTIMORE  
BY \_\_\_\_\_ DEPUTY

Civil No. **WMN05CV1297**

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NOTICE OF OBJECTION/APPEAL TO ORDER OF MAGISTRATE  
JUDGE

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COME NOW, Defendants John Baptist Kotmair Jr., defendant pro se, and Save-A-Patriot Fellowship, represented by its counsel, George Harp, who jointly object to the ORDER of Magistrate Bredar enforcing a motion to compel discovery filed by the Plaintiff in this action. Said ORDER was filed and entered on May 16, 2006. This motion is made pursuant to Rule 60 of the Federal Rules of Civil Procedure, and Local Rule 105.10. A motion for a stay of the ORDER objected to, has been concurrently filed with this court.

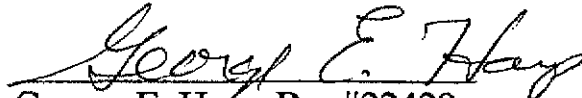
James K. Bredar, a Magistrate, was assigned to decide matters pertaining to discovery. Defendants John B. Kotmair, Jr. and SAPF were served interrogatories and request for documents, and Defendants objected. Magistrate Bredar denied nearly all the objections in favor of Plaintiff. Defendants now jointly file this objection/appeal of Magistrate Bredar's order.

Defendants' "MEMORANDUM IN SUPPORT OF NOTICE OF OBJECTION/APPEAL TO ORDER OF MAGISTRATE JUDGE" is incorporated herein by reference thereto.

WHEREFORE, for the reasons set forth herein, and in Defendants' Memorandum in Support of Notice of Objection/Appeal to Order of Magistrate Judge, Defendants SAPF and Kotmair hereby object to Magistrate Bredar's Order concerning Plaintiff's requests for discovery. Defendants further respectfully request that this court hold a hearing on the issues raised in this Notice of Objection and Memorandum in support thereof, and reverse all parts of Magistrate Bredar's Order which compel them to respond to Plaintiff's discovery requests.

Respectfully submitted on this 24<sup>th</sup> day of May, 2006.

  
John B. Kotmair, Jr. *pro se*

  
George E. Harp, Bar #22429

610 Marshall St., Ste. 619  
Shreveport, Louisiana 71101  
Phone (318)424-2003  
Fax (318)424-2060

CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing "Notice of Objection/Appeal of Order of Magistrate Judge" was sent to counsel for the plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 24<sup>th</sup> day of May, 2006.

  
John B. Kotmair, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND  
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FOR THE COURT  
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 and SAVE-A-PATRIOT FELLOWSHIP, )  
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MEMORANDUM IN SUPPORT OF NOTICE OF OBJECTION/APPEAL  
TO ORDER OF MAGISTRATE JUDGE

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James K. Bredar, a Magistrate, was assigned to decide matters pertaining to discovery. Defendants John B. Kotmair, Jr. and SAPF were served an interrogatory and request for documents, and Defendants objected. Magistrate Bredar denied nearly all the objections in favor of Plaintiff. Defendants now jointly file this objection/appeal of Magistrate Bredar's order.

### **General Objections to Magistrate's Order**

1. The first general objection to Magistrate Bredar's order is with respect to his erroneous classification of SAPF as a business. Relying solely upon comments made by the court in *Save-A-Patriot Fellowship v. United States*, 962 F.Supp. 695 (D. Md. 1996), he erroneously concluded that SAPF was a business, merely for the fact that it made certain items and services available for sale. However, profit motive is the determining factor of a business, not the mere sale of things. Membership organizations of all types—National Rifle Association, National Association for the Advancement of Colored People, Parent-Teacher Associations, among others, for example—raise operating funds by selling things; yet this does not make them businesses. In fact, it is hard to imagine how any advocacy group could fund their operations except by way of donations or sales of some sort. The fact is, Save-A-Patriot

Fellowship is a *political* advocacy organization. It does not exist for the purpose of turning a profit. SAPF must rely on both sales and donations to fund its advocacy and educational activities. Thus, like the groups mentioned above, SAPF is not a business, despite Magistrate Bredar's determination to the contrary.

The fact that SAPF sells books, publications and services does not make it a "business" and is therefore insufficient to render its activities "commercial speech." See *Helfron v. International Society for Krishna Consciousness*, 452 U.S. 640, 647 (1981); *Gaudiya Vaishnava Society of City of San Francisco*, 952 F.2d 1059, 1063 (9<sup>th</sup> Cir. 1990). Indeed, Black's Law Dictionary (6<sup>th</sup> ed.) defines "commercial speech doctrine" thusly:

*Commercial speech doctrine. Speech that was categorized as "commercial" in nature (i.e. speech that advertised a product or service for profit or for business purposes) was formerly not afforded First Amendment freedom of speech protection, and as such, could be freely regulated by statutes and ordinances. Valentine v. Chrestensen, 316 U.S. 52, 62.*

This definition goes on to state:

*This doctrine, however, has been essentially abrogated. Pittsburg Press Co. v. Pittsburg Comm. On Human Rights, 413 U.S. 376; Bigelow v. Virginia, 421 U.S. 809; Virginia State Bd. Of Pharmacy v. Virginia Citizen Council, 425 U.S. 748.*

Indeed, in *Valentine v. Chrestensen* (supra), the court recognized “commercial speech” as being nothing more than false advertising:

*We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising.” Valentine v. Chrestensen, 316 U.S. 52 (1942).*

Black’s 7<sup>th</sup> edition adds this:

*Commercial Speech. Communication (such as advertising and marketing) that involves only the commercial interests of the speaker and the audience, and is therefore afforded lesser First Amendment protection than social, political, or religious speech.*

Looking into Black’s Law Dictionary (4<sup>th</sup> ed.), we see “political” defined (in part) thusly:

*Pertaining or related to the policy or the administration of government, state or national. People v. Morgan, 90 Ill. 558. Pertaining to, or incidental to, the exercise of the functions of government; relating to the management of affairs of state; as political theories; of or pertaining to the to exercise of rights and privileges or the influence to which individuals of a state seek to determine or control its public policy.*

Moreover, “The constitutional protection does not turn upon ‘the truth, popularity or social utility of the ideas and beliefs which are offered.’” Quoting *NAACP v. Button*, 371 U.S. 415.

2. The second general objection to Magistrate Bredar’s order is to the implications which arise because of his incorrect determination that SAPF is a business. Throughout the order, Magistrate Bredar disregards

Defendants’ constitutional objections to Plaintiff’s requests for information. He claims that Defendants have failed to distinguish the cases Plaintiff cited to support its claim that “businesses” have no *constitutional protection of their “customer lists.”* However, Defendants did indeed distinguish their circumstance—on the basis that SAPF is not a business, and so, does enjoy full constitutional protection of its rights to free speech and association. It is because of the mischaracterization of SAPF as a business that Magistrate Bredar improperly fails to acknowledge Defendants’ constitutional claims. This problem manifests itself in the following discovery requests: Kotmair Interrogatories Nos. 7(a), 9, and 12; SAPF Interrogatories Nos. 6, 21, 22, and 24; and SAPF Request for Production No. 16. In each of the above, Magistrate Bredar improperly overruled Defendants’ constitutional objections for failing to distinguish the case precedents cited by Plaintiff.

3. The third general objection is that Magistrate Bredar, in ordering Defendant Kotmair to comply with Plaintiff’s discovery requests, also disregards his claim that, in his personal capacity, he has no control over the records of SAPF. This objection manifests itself in the following discovery requests: Kotmair Interrogatories Nos. 7(a), 9, 10, and 12; and Kotmair Request for Production No. 7.



4. The fourth general objection is to Magistrate Bredar's overruling of Defendants' objections on grounds of being unduly burdensome. SAPF can not possibly comply with the all Plaintiff's discovery requests, neither in terms of cost nor man-hours. Even for those few requests that SAPF is directed to only make available to the government for copying at the government's expense, the time and expense of sorting and segregating whatever documents Plaintiff is entitled to copy would divert Defendant's few resources away from preparing a defense against the false allegations of the present injunction suit.

#### **Specific Objections to Magistrate's Order**

The specific items of the order are discussed below. Defendants also incorporate by reference thereto each Defendant's separate "Response to United States Motion to Compel Defendants' Discovery Responses."

1. Regarding Kotmair Interrogatory 3: Kotmair has already fully responded to this interrogatory. As stated in his Response to Plaintiff's Motion to Compel, "With respect to income from SAPF, Kotmair doesn't know the amounts of any such income, and no records exist pertaining to such matters. Therefore, there is no information which Kotmair can provide in response to this interrogatory. See Kotmair's second amended answer." This has not changed. Kotmair still has no records and no information

which is responsive to this interrogatory, and ordering him to provide such will not change this fact either.

2. Regarding Kotmair Interrogatory No. 7(a): The identity, by name, Social Security account number, e-mail addresses, etc. are not only irrelevant to violation of Title 26 U.S.C. §§ 6700 and 6701, but violate the right of the members to free political speech and association. The magistrate never addressed the issue of what kind of speech SAPF and Kotmair engage in. His order is contingent upon his erroneous belief that SAPF is a business engaged in commercial speech. The magistrate's assertion that Defendants never attempted to distinguish the cases it cited in Defendants brief in opposition to Plaintiff's Motion to Compel, is false. See also General Objections, at items 2 and 3, supra.
3. Regarding Kotmair Interrogatory No. 9: again, as stated in item 2 above, turning over the names of all the members Kotmair prepared letters for would be a denial of the First Amendment protections, and tends to chill the political speech of those members, contrary to the guarantees of the First Amendment and reported case law. This order does not take into account that the Defendants are a political organization engaging in free speech. See also General Objections, at items 2 and 3, supra.

4. Regarding Kotmair Interrogatory No 10: see the objections stated in numbers 2 and 3 under Specific Objections above.
5. Regarding Kotmair Interrogatory 12: The names, taxpayer identification numbers, e-mail addresses, etc. that Kotmair has represented before the IRS is irrelevant to §§ 6700 and 6701. See also, objections stated in numbers 2 and 3 under Specific Objections above.
6. Regarding Kotmair Request for production of Documents No. 7: Compelling production of said documents violates the First Amendment rights of citizens, as shown in numbers 2 and 3 under Specific Objections above.
7. Regarding SAPF Request for production of Documents No. 6: The names, taxpayer identification numbers, e-mail addresses, etc. of all the members is a violation of the members right to political speech and association. Moreover, Associate members have no access to casework or paralegal work, so there is nothing to enjoin, insofar as this injunction suit is concerned. The violation of the First Amendment rights of these members is especially egregious. See also, the statements set forth in numbers 2 and 3 under Specific Objections above.
8. Regarding SAPF Interrogatory 9(a): The amount paid to the SAPF staff for services has absolutely no bearing on Plaintiff's allegations of

violations of §§ 6700 and 6701 of the Internal Revenue Code, and could not possibly lead to any discoverable information. As such, this requested information is not even discoverable under FRCP 26.

9. Regarding SAPF Interrogatory 9(b): The names, taxpayer identification numbers, e-mail addresses, etc. for those members SAPF drafted letters for, is tantamount to making SAPF turn over its membership list. This violates the First Amendment right to free political speech and association. See also, the objections stated in numbers 2 and 3 under Specific Objections above.

10. Regarding SAPF Interrogatory 10: It is difficult to respond to a request when the definition of terms are vague, such as the term “tax-related service.” The Plaintiff or this court should have defined that term, so this objection could be argued fully.

11. Regarding SAPF Interrogatory 11: A list of all the names of members who availed themselves of the assistance of the Fellowship, when going to court, serves no legitimate purpose. This is totally irrelevant to §§ 6700 and 6701 of the Internal Revenue Code. Moreover, our courts can be deemed sufficiently competent to see that no violations are occurring that run afoul of §§ 6700 and 6701 of the Internal Revenue Code. this request virtually the same as compelling SAPF’s membership list be

turned over, which runs afoul of the members' right of association and free political speech. See also, the statements set forth in numbers 2 and 3 under Specific Objections above.

12. Regarding SAPF Interrogatory 21: It is requested that the names of all those that participate in the Membership Assistance Program. This order virtually the same as compelling SAPF's membership list be turned over, which runs afoul of the members' right of association and free political speech. See also, the statements set forth in numbers 2 and 3 under Specific Objections above.

13. Regarding SAPF Interrogatory 24: While the identities of many of the members that participate in the Victory Express and Patriot member Assistance Program might be known, it is unknown how much money they received when they put in a claim. All claims rely upon members sending money directly to the damaged member. And there is no "Patriot Defense Fund." This order runs afoul of the members' right of association, making charitable contributions to damaged members, and the right to free political speech. See also, the statements set forth in numbers 2 and 3 under Specific Objections above.

14. Regarding SAPF Request for production of Documents No. 7: It is still virtually impossible to go through every document fitting the description

of any document prepared that was sent to the IRS. The amount of labor to segregate documents responsive to this request just doesn't exist. And it is improper for the court to allow government officials to rummage through all the Fellowship's records, in order to comply with this order. Moreover, this order is virtually the same as compelling SAPF's membership list be turned over, which runs afoul of the members' right of association and free political speech. See also, the statements set forth in numbers 2 and 3 under Specific Objections above.

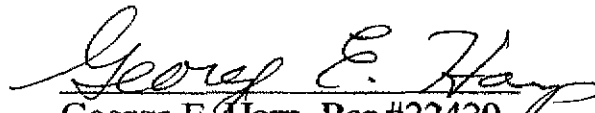
15. Regarding SAPF Request for production of Documents No. 10: While it is true that matters concerning preparation of bankruptcy petitions is totally irrelevant to §§ 6700 and 6701 of the Internal Revenue Code, no documents exist that are relevant to this request. The staff of SAPF never prepared bankruptcy petitions during the years 2000 to the present.

16. Since the membership agreements are kept by the members, there are no documents responsive to this request, as the Plaintiff has been informed.

WHEREFORE, Defendants SAPF and Kotmair respectfully request that this Court: hold a hearing on this matter; and reverse all parts of Magistrate Bredar's Order which compel them to respond to Plaintiff's discovery requests.

Respectfully submitted on this 24<sup>th</sup> day of May, 2006.

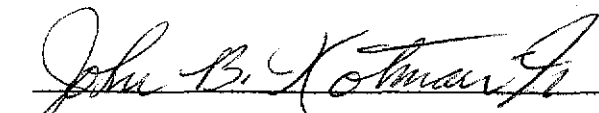
  
John B. Kotmair, Jr. *pro se*

  
George E. Harp, Bar #22429

610 Marshall St., Ste. 619  
Shreveport, Louisiana 71101  
Phone (318)424-2003  
Fax (318)424-2060

CERTIFICATE

*Memorandum* The undersigned hereby certifies that a printed copy of the foregoing "~~Notice~~ of Objection/Appeal of Order of Magistrate Judge" was sent to counsel for the plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 24<sup>th</sup> day of May, 2006.

  
John B. Kotmair, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND  
DISTRICT OF MARYLAND

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DISTRICT COURT  
DISTRICT OF MARYLAND

2006 MAY 24 P 2:12

UNITED STATES OF AMERICA, )  
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Plaintiff, )  
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v. )  
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JOHN BAPTIST KOTMAIR, JR., )  
et al., )  
)  
Defendants. )

CLERK'S OFFICE  
AT BALTIMORE  
BY \_\_\_\_\_ DEPUTY

Civil No. WMN05CV1297

AFFIDAVIT OF JOHN B. KOTMAIR, JR., IN SUPPORT OF DEFENDANTS  
SAPF AND KOTMAIR'S NOTICE OF OBJECTION/APPEAL OF AN ORDER  
OF A MAGISTRATE JUDGE;  
and in support of  
MOTION FOR STAY PENDING DETERMINATION OF THE DISTRICT  
JUDGE TO HEAR AN OBJECTION OF AN ORDER OF A MAGISTRATE  
JUDGE

I, John Baptist Kotmair, Jr., do hereby declare as follows:

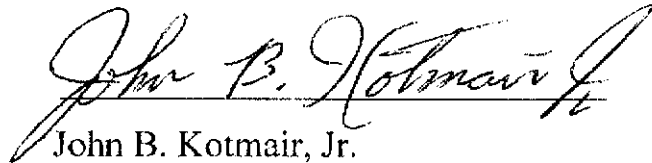
1. I am a citizen of Maryland and a defendant in the above captioned action.
2. The Save-A-Patriot Fellowship is a first-amendment, unincorporated association, of which I am the Fiduciary of its day-to-day operations.
3. The Save-A-Patriot Fellowship is not a for-profit organization. It turns no profit, and was never intended to do so, and often needs to solicit donations.




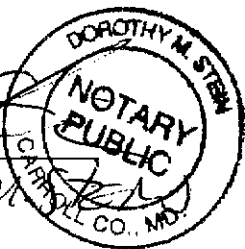
4. When writing to employers and other third parties, Save-A-Patriot Fellowship uses the title “National Workers’ Rights Committee” as a letterhead.
5. The National Workers’ Rights Committee (“NWRC”) is simply a division of Save-A-Patriot Fellowship, and not a separate entity. Its sole function is to serve only Save-A-Patriot Fellowship members.
6. I have adopted the title “Director” for the purposes of NWRC. I am “Director” of NWRC solely by virtue of being the Fiduciary of Save-A-Patriot Fellowship. It is not a position separate and distinct from the Fiduciary of Save-A-Patriot Fellowship.
7. I have never done business as the Save-A-Patriot Fellowship, nor as the National Worker’s Rights Committee.
8. Since the time this court decided, in *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996), that Save-A-Patriot was an unincorporated association, and that it was not a “sole proprietorship” of me, SAPF has made no organizational changes, nor does it, to this day, operate any differently than it did in 1996. It continues to be a first-amendment, unincorporated association, engaging in constitutionally protected speech.

I hereby declare that the foregoing is correct and true to the best of my knowledge, information and belief.

Dated this 23<sup>rd</sup> day of May, 2006.

  
John B. Kotmair, Jr.

Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Carroll, this 23<sup>rd</sup> day of May, 2006, that the above named person did appear before me and was identified to be the person executing this document.

  
Notary Public Dorothy M. Stem  


My Commission Expires On: October 7<sup>th</sup> 2009