

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. **WMN05CV1297**
)
JOHN BAPTIST KOTMAIR, JR.,)
et al.,)
)
Defendants.)

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER
LIFTING THE STAY PENDING APPEAL**

On November 29, 2006, this Court issued a permanent injunction order against Defendants Save-A-Patriot Fellowship and John Baptist Kotmair, Jr. On February 22, 2007, this Court granted Defendants a stay of that injunction during the pendency of their appeal in the Fourth Circuit Court of Appeals. On July 26, 2007, the Circuit Court affirmed the decision of this Court; it is the intention of both Defendants' to file petitions for rehearing (and/or rehearing *en banc*).

On August 3, 2007, Plaintiff moved this court to lift the stay pending appeal granted by this Court, claiming that said appeal "is no longer pending" based upon the July 26th issuance of the Circuit Court's judgment. However, Plaintiff's request is premature, since the judgment specifically says that it does not take effect until the issuance of the mandate from the Circuit Court. Defendants' appeal is still pending until the mandate issues.

According to Federal Rules of Appellate Procedure (F.R.A.P.) 41(b):

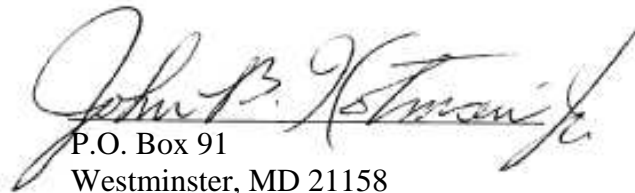
"The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing *en banc*, or motion for stay of mandate, whichever is later. The court may shorten or extend the time."

According to F.R.A.P. 40, “in a civil case, if the United States ... is a party, the time within which any party may seek rehearing is 45 days after entry of judgment.” F.R.A.P. 41(d)(1) further stays the issuance of the mandate pending the Circuit Court’s disposition of a timely petition for rehearing.

The conditions which existed when this Court granted the stay continue to exist, and Plaintiff gave no reasons to justify a change in this *status quo ante*. Such an unwarranted change in the *status quo* of the parties, so late in the appeal process, would create an obvious injustice. Indeed, lifting the stay now, and thus requiring Defendant SAPF to, *inter alia*, produce a list of its members, would even moot some of the issues raised in the appeal.

Wherefore, Defendants pray that this Court deny Plaintiff’s Motion for an Order Lifting the Stay Pending Appeal, and let the normal appeals process run its course.

Respectfully submitted on this 17th day of August, 2007.



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CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing “Defendants’ Opposition to Plaintiff’s Motion For An Order Lifting The Stay Pending Appeal” 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 18th day of August, 2007.

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