

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’ MOTION TO EXTEND
OR REINSTITUTE STAY PENDING APPEAL**

Defendants Save-A-Patriot Fellowship and John Baptist Kotmair, Jr., for the reasons set forth below, move this Court to extend or reinstitute the stay of its permanent injunction order pending the resolution of Defendants’ appeal of that order to the Supreme Court.

Defendants seek an extension of the stay from the District Court with respect to Rule 23(3) of the Rules of the Supreme Court of the United States, in that “an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof.”

BACKGROUND

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 (Docket 83). On July 26, 2007, the Circuit Court affirmed the decision of this Court, and on October 1, 2007, that Court denied Defendants’

petitions for rehearing *en banc*. On October 5, 2007, Defendants filed a motion with the Circuit Court to stay the mandate, which was denied on November 27, 2007.

Defendants intend to file a petition for writ of certiorari with the Supreme Court, and have 90 days from the date of the Circuit Court's denial of their motion for rehearing *en banc* to do so; the deadline is December 31, 2007.

Currently pending in this Court is Plaintiff's motion to lift the stay, filed on August 3, 2007 (Docket 86), in which Plaintiff argues that Defendants' appeal is no longer pending. However, as stated above, Defendants intend to pursue their appeal of the injunction order to the Supreme Court.

ARGUMENT

This Court has twice deemed the issuance of a stay warranted (Dockets 74, 83), and circumstances remain identical to those existing on December 14, 2006, when Defendants first requested a stay. As Defendants' argued in their motion to stay pending appeal (Docket 78), incorporated herewith by reference thereto, the potential immediate harm to Defendants that this Court has repeatedly recognized will, absent a continuation of the stay, become an immediate harm irreparable on many levels. Those harms include (1) the steady threat of significant injury from probable inadvertent violations of the vague elements of the injunction order, and (2) a prior restraint on First Amendment-protected speech, *i.e.*, the communication of SAPF's political message to nonmembers in order to persuade them to join the Fellowship and its education outreach.

Similarly, absent a stay, immediate harm would ensue to members of the public who were not named in the present suit, and have never been afforded any due process. Those harms include: (1) a prior restraint on their reciprocal First-Amendment rights to acquire and read dissenting political views, (2) a prior restraint on obtaining assistance in exercising their First Amendment right to petition the IRS

for redress, (3) a prior restraint on obtaining assistance in exercising their First Amendment right to correspond with other members of the public, and (4) their right to be notified of persons in need of charity and assistance, so that they might exercise the corresponding right to donate to such persons.

Finally, the permanent injunction order requires that Defendants turn over SAPF's membership list, notwithstanding the fact that SAPF is a political organization. For SAPF to turn over its membership list would, at the very least, permanently and irreparably damage the existence of the Fellowship, as discussed extensively in Defendants' motion to stay of December 14, 2006 (Docket 73). Lifting the stay before Defendants have the opportunity to present their appeal to the Supreme Court would not only moot that issue, but the compelled disclosure of the private personal information of Save-A-Patriot Fellowship members will cause irreparable harm to those members.

Any prior restraint, or other deprivation of fundamental constitutional rights, is injurious to Defendants, to Fellowship members, and to the public generally. “ ‘When an alleged deprivation of a constitutional right is involved, most courts hold that *no further showing of irreparable injury* is necessary.’ 11 C. Wright & A. Miller, Federal Practice and Procedure, § 2948, at 440 (1973).” [emphasis added] *Mitchell v. Cuomo*, 748 F.2d 804 (App. 2nd Cir., 1984), at p. 806.

In granting the stay pending appeal, this Court recognized that the “potential immediate impact from enforcement of the injunction on Defendants outweighs the harm to Plaintiff occasioned by a brief delay in enforcement.” (Docket 83). Due to the expeditious handling of this matter by the Fourth Circuit, and its denial of any oral argument, the delay has indeed been brief so far — a mere nine months.

Further, while this Court, in its earlier grant of stay pending appeal, found “no likelihood of Defendants prevailing on the substance of the claims against them,” it also found that “[a]s to the precise permissible scope of the injunctive relief, however, ... there are issues raised that are sufficiently

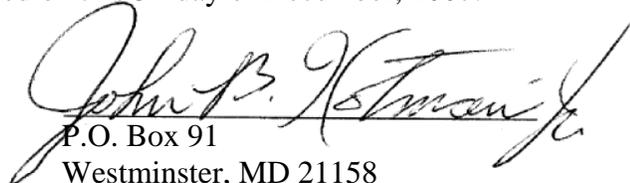
‘serious, substantial, difficult and doubtful, as to make them fair ground for litigation.’ (Docket 83.) Since the Circuit Court never addressed them, these same serious and substantial issues still exist, and Defendants must now depend on the Supreme Court for resolution.

At the same time, the Circuit Court refused to address the conflicts between its decision to uphold the injunction and the standing precedents of this Circuit and the Supreme Court. Defendants submit that these conflicts strengthen the likelihood that Defendants will be granted a writ of certiorari by the Supreme Court. Several of the most glaring conflicts with prior decisions were argued in Defendant SAPF’s petition for rehearing *en banc*, incorporated herein by reference thereto, and attached as Exhibit 1.

As noted above, the conditions which existed when this Court granted the stay continue to exist, and Plaintiff has not given any reasons to date to justify a change in the *status quo*. An unwarranted change in the *status quo* of the parties, so late in the appeal process, would create an obvious injustice.

For these reasons, Defendants respectfully move this Court to extend its stay of the injunction until the Supreme Court rules on their petition for writ of certiorari, or, if the stay of February 22, 2007 has been lifted before consideration of this motion, to grant another such stay.

Respectfully submitted on this 3rd day of December, 2007.


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CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing “Defendants’ Motion to Extend or Reinstitute 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 4th day of December, 2007.

/s/ George E. Harp
GEORGE E. HARP