

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 04C 7403
	)	
Plaintiff,	)	Judge Filip
	)	
v.	)	Magistrate Judge Keys
	)	
WILLIAM J. BENSON,	)	
	)	
Defendant.	)	
_____	)	

**BENSON’S REPLY TO THE GOVERNMENT’S BRIEF IN OPPOSITION  
TO DEFENDANT’S MOTION TO STRIKE AND MOTION TO HAVE  
FACTS DEEMED ADMITTED**

Comes now Defendant, William J. Benson (“Benson”), by and through his counsel of record, Jeffrey A. Dickstein, and respectfully submits his reply to the government’s brief in opposition to Defendant’s motion to strike and motion to have facts deemed admitted.

The government has accused Benson of penalty conduct for falsely telling people the Sixteenth Amendment to the United States Constitution was not ratified. The government further alleges Benson knew, or should have known, that what he was telling people was false. As one might expect from any man of integrity accused of being a liar and a cheat, Benson decided to defend his reputation and honor by establishing that he in fact is telling the truth. The government’s pleadings show they are not at all interested in the facts showing Benson’s speech is not false.

The standard for the determination of the issue whether the Sixteenth Amendment was or was not ratified is contained within the Supreme Law itself--Article V of the United States Constitution. If in fact Congress proposed the Sixteenth Amendment, and if in fact thirty-six of the forty-eight states then in the union voted to ratify the Sixteenth Amendment, as a matter of

law it is a part of the United States Constitution. If in fact thirty-six states failed to ratify the Sixteenth Amendment, as a matter of law it is not a part of the Constitution.

In accordance with long established procedure in summary judgment proceedings and the local rules of this Court, Benson alleged the facts and the law upon which the truth or falsity of his complained of statements could be determined. The established protocol for the government is to deny the facts or suffer the consequences of failing to do so, namely, having the facts propounded deemed admitted.

The facts, of course, are unassailable. As one example, the facts propounded by Benson unequivocally show that Oklahoma intentionally amended what the United States Congress had proposed, and voted to ratify the Oklahoma version rather than the Congressional version. Every legal scholar, in every legal treatise, indeed even the Solicitor of the United States, has declared such action to be outside of the power of the legislatures of the various states. Such action does not constitute ratification.

The government is wholly unable to refute the underlying facts propounded by Benson. Instead, the government willfully asserts frivolous legal theories contumacious of the law of this case and asks this court to sanction the wholesale denial of Benson's rights to due process. The government's conduct contravenes traditional notions of fair play and substantial justice.

At the commencement of this case, Benson relied upon numerous court cases to argue that the issue of the ratification of the Sixteenth Amendment is "beyond review." Benson further argued that because the issue was "beyond review," he was saddled with an unrebuttable presumption of ratification which, according to the United States Supreme Court, violates the due process clause of the United States Constitution. In order not to deny Benson due process, the case had to be dismissed.

The court, however, decided it did have jurisdiction to proceed and refused Benson's motion to dismiss. This ruling had the absolute effect of allowing Benson to defend on the merits; anything else would run afoul of the Supreme Court's rulings in *Sandstrom v. Montana*, 442 U.S. 510, 521-523 (1979) and *Stanley v. Illinois*, 405 U.S. 645, 654-657 (1972).

The court has made it clear in its rulings that Benson, if nothing else, is to be afforded an opportunity to present evidence that he did not know, or shouldn't have known, that what he was telling people was false. What evidence then, is relevant to that inquiry? There is absolutely no question that facts which establish that an insufficient number of states actually voted to ratify the Sixteenth Amendment are directly relevant to the inquiry. The government argues to the contrary that such facts are not relevant. Why? The Government asserts that the ratification and validity of the Sixteenth Amendment constitute a nonjusticiable political question, and therefore, the facts are beyond review. Dkt. 57, p. 2-4.

The government is now fully adopting Benson's argument made in his motion to dismiss – an argument this Court rejected in denying Benson's motion. In so doing, the government is not only contumaciously ignoring the law of this case, but controlling Supreme Court precedent as well. *Sandstrom, supra*, and *Stanley, supra*.

Pleadings filed in this case demonstrate that prior case law regarding the Sixteenth Amendment ratification issue is wrong. Those cases relied on numerous faulty premises, for example: that Benson only discovered what Secretary of State Knox already knew. What Knox only knew was that he had certificates of ratification. Unfortunately, these certificates were legally and factually problematic. Knox did not investigate the source documents to resolve the problematic certificates, but rather used a series of presumptions to resolve these grave issues. Benson went directly to the source and discovered the presumptions relied upon by Knox were

false. Benson also raised issues regarding the constitutionality of the “enrolled bill rule” to the extent it directly controverts Article V. The enrolled bill rule, as applied here, allows a proposed amendment to become a part of the Constitution despite the fact that thirty-six states did not vote to ratify it.

The government continues its frivolity by arguing that the facts propounded by Benson – facts that preclude the issuance of the injunction – are impertinent and scandalous. They are neither.

Impertinent factual allegations, the government asserts, are factual allegations that are not responsive or are irrelevant to the issues that arise in the action and which are inadmissible as evidence. The facts propounded by Benson are certainly responsive to the allegations leveled against him. They are certainly relevant because they are responsive. And not only are the facts admissible in evidence, being un-rebutted, by local rule they are deemed admitted.

Scandalous factual allegations, the government asserts, generally refer to any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the court. Benson’s propounded facts do neither.

First, the government misstates the facts propounded by Benson:

Portions of the ‘facts’ in controversy here are also scandalous because they improperly reflect on the moral character of former U.S. Secretary of State Philander C. Knox by claiming (in paragraph 39) that he falsely and fraudulent certified that the requisite number of states had ratified the Sixteenth Amendment.

Dkt. 57, p. 4.

The actual facts propounded are:

39. If Knox knew that Oklahoma, Missouri and Washington intentionally amended the proposed Sixteenth Amendment and nonetheless relied upon the presumption, his certification was false and fraudulent.

40. If Knox did not know that Oklahoma, Missouri and Washington intentionally amended the proposed Sixteenth Amendment, then Benson discovered something Knox didn't know, and the Seventh Circuit was wrong in *United States v. Benson*, 941 F.2d at 607.

Dkt. 53, pp. 5-6.

Both propositions are absolutely correct. Correct facts – facts that go to the very heart of the issues raised from the government's complaint – are neither irrelevant, impertinent, nor scandalous and there is certainly nothing “repulsive” in any document Benson has filed to date.

This case is quite similar to the case against Galileo. In 1616 Galileo wrote a letter in which he expressed his opinion that the Sun was located at the centre of the revolutions of the heavenly orbs and did not change place, and that the Earth rotated on itself and moved around the Sun. Galileo confirmed this view not only by refuting Ptolemy's and Aristotle's arguments, but also by producing many for the other side, especially some pertaining to physical effects whose causes perhaps cannot be determined in any other way, and other astronomical discoveries. See <http://www-groups.dcs.st-and.ac.uk/~history/Mathematicians/Galileo.html>.

Thereafter Galileo wrote and published his Dialogue Concerning the Two Chief Systems of the World – Ptolemaic and Copernican. The Inquisition banned its sale and ordered Galileo to appear in Rome before them. Galileo's accusation at the trial which followed was that he had breached the conditions laid down by the Inquisition in 1616. The truth of the Copernican theory was not an issue, because it was taken as a fact at the trial that this theory was false. This was logical, of course, since the judgment of 1616 had declared it totally false. Found guilty, Galileo was condemned to lifelong imprisonment. *Id.*

Just as it is a fact that the earth does indeed rotate on itself and moves around the Sun, so too it is a fact that thirty-six states did not vote to ratify the proposed Sixteenth Amendment. Just as Galileo's truth interfered with the power and politics of the religious hierarchy – and

consequently, he was denied any defense and found guilty – so too the government would resort to inquisitional procedure and tactics to deny Benson a defense and condemn him. The facts, however, will not change, and those facts conclusively establish that the government is not entitled to an injunction.

Wherefore, Benson moves this court for an order striking those portions of the government's recent pleadings, under the authority of Fed.R.Civ.P. 12(f), that fail to present a sufficient defense. Benson further moves this court for an order, pursuant to the provisions of Local Rule 56.1, deeming as admitted the facts contained in paragraphs 31 through 51 of Benson's Local Rule 56.1 Statement of Material Facts.

Dated: January 19, 2005.

The Law Offices of Robert G. Bernhoft, S.C.

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