IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. ***WMN 05 CV 1297***
	)	
JOHN BAPTIST KOTMAIR, JR., and SAVE-A-PATRIOT FELLOWSHIP,	)	
	)	
Defendants.	)	

NOTICE OF SERVICE OF OPPOSITION TO MOTION TO COMPEL DISCOVERY

Pursuant to Local Rule 104.8.a, the undersigned hereby certifies that on January 27, 2006, a motion in opposition to a motion to compel discovery and a brief in support thereof were served on behalf of defendant SAVE-A-PARTIOT FELLOWSHIP on plaintiff, UNITED STATES OF AMERICA, through its attorney, Thomas M. Newman, Trial Attorney, Tax Division, U. S. Department of Justice, P. O. Box 7238, Washington, D. C., 20044, by U. S. Mail with sufficient postage affixed and by e-mail at thomas.m. newman @ usdoj.gov

/s/ George E. Harp
GEORGE E. HARP, Bar #22429
610 Marshall St., Ste. 619
Shreveport, Louisiana 71101
318 424 2003
Attorney for Respondent,
SAVE-A-PATRIOT FELLOWSHIP

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing Notice of Service of Opposition to Motion to Compel Discovery has been sent to Thomas M. Newman, Trial Attorney, Tax Division, U. S. Department of Justice, P. O. Box 7238, Washington, D.C. 20044, by e-mail to thomas.m.newman @ usdoj.gov and sent to John Baptist Kotmair, Jr., pro se, P. O. Box 91, 2911 Groves Mill Road, Westminster, Maryland 21158, by United States Mail with sufficient postage attached thereto, this 27 day of January, 2006.

/s/ George E. Harp

Of Counsel

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	
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v.	)	Civil No. **WMN 05 CV 1297**
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JOHN BAPTIST KOTMAIR, JR.,	)	
and SAVE-A-PATRIOT FELLOWSHIP,	)	
	)	
Defendants.	)	

OPPOSITION TO MOTION

TO COMPEL DISCOVERY

NOW INTO COURT, through undersigned counsel, comes Respondent, SAVE-A-PATRIOT FELLOWSHIP, who with respect shows:

1.

For the reasons set forth more fully in the attached Memorandum in Support of Opposition to Motion to Compel Discovery, Respondent opposes the Motion to Compel Discovery filed herein by Plaintiff.

WHEREFORE, Resondent prays that after due proceedings that *Plaintiff's Motion* to Compel Discovery be dismissed.

Dated January 27, 2006.

/s/George E. Harp
George E. Harp, Bar #22429
610 Marshall St., Ste. 619
Shreveport, Louisiana 71101
318 424 2003
Attorney for Respondent,
SAVE-A-PATRIOT FELLOWSHIP

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing Opposition to Motion to Compel Discovery and attached Memorandum has been sent to John Baptist Kotmair, Jr., pro se, P. O. Box 91, 2911 Groves Mill Road, Westminster, Maryland 21158, and Thomas M. Newman, Trial Attorney, Tax Division, U. S. Department of Justice, P. O. Box 7238, Washington, D.C. 20044, by United States Mail with sufficient postage attached thereto, and by e-mail to thomas.m.newman @ usdoj.gov. this 27 day of January, 2006.

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	)	
Defendants.	)	

MEMORANDUM IN OPPOSITION TO UNITED STATES MOTION TO COMPEL DEFENDANTS' DISCOVERY RESPONSES

The United States seeks to compel Save-A-Patriot Fellowship ("SAPF"), a defendant in this action, to produce sundry items of information and documents which it cannot, or will not, disclose, for the reasons indicated in its Answers to the government's interrogatories. In response to the United States' Motion to Compel, Defendant SAPF states as follows:

Legitimate scope of the government's action to enjoin Defendant SAPF.

The stated purpose of the government in enjoining SAPF, a political organization, is to enjoin "abusive tax shelters" and "abusive tax schemes." The complaint is against John B. Kotmair, Jr. and SAPF, and not its members individually. However, judging from the interrogatories and Complaint, it appears that the real purpose of this action, is to conduct a fishing expedition of other persons that are not properly parties to this action. It is apparent that the government wishes to obtain information about SAPF Members (both Full and Associate), and the workers at Fellowship Headquarters, not only for the furtherance of enjoining the activities of SAPF, but to potentially bring civil and/or criminal actions against said members and workers. If this is true, it is an abuse of civil process.

Background

SAPF is a *bona fide* fellowship with members, and not a business having "customers."

This very court found, **ten** years ago, in *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996) that SAPF was indeed a Fellowship with members — in contradistinction to a business with customers. The Court stated:

> "*The Government contends, at the threshold, that the SAP Fellowship is not an organization at all, but is solely a name used by Kotmair for his own 'sole proprietorship' operation. The Court does not agree, even through it is readily apparent that Kotmair is the major figure in the Fellowship. As noted above, the evidence established that there is an organization and not simply an operation by Kotmair personally. The SAP Fellowship, and not Kotmair personally, leased the Office. There are members, other than Kotmair, who engage in Fellowship activities. This Court observes, also, that the I.R.S. itself, quite appropriately, returned to the Office the operating assets seized from, the Office.... In sum, the Court finds as a fact that the SAP Fellowship is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair), has members, and does thing through persons in addition to Kotmair.*"

Since this court has previously determined that Kotmair and SAPF are separate and distinct entities, it is a matter of well established law that SAPF should be treated accordingly — that is, as a Fellowship with *members* and weekly meetings; *it is not a business, with customers* — as established by the doctrine of *res judicata*. Moreover, SAPF should not be vexed twice for the same matter.

Our courts are uniform in their recognition and application of the doctrine of *res judicata*. The United States Supreme Court stated, in *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299, 37 S.Ct. 506, 507, 61 L.Ed. 1148:

> " *[The] doctrine of res judicata is not a mere matter of practice or procedure .... It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts ....*"

The Fellowship's operation and character has not changed over the years, so as to make this doctrine fully applicable, here. See Affidavit of John B. Kotmair, Jr., Exhibit 3. Therefore, the fellowship character and political speech enjoyed by SAPF should not be enjoined; and

should not be chilled by any order to turn over a list of its members. See *National Association for the Advancement of Colored People v. Alabama,* 357 US 449, 2 L.Ed. 2d 1488, 78 S.Ct. 1163

Since SAPF consists solely of members, according to the court, then it can only be concluded SAPF has no customers; and calling the members customers — even repeatedly —does not make them so.

Relevance, and Rule 26(b)(1)

Federal Rule of Civil Procedure Rule 26(b)(1) states in part:

> "In General. Parties may obtain discovery regarding any matter, not privileged, **that is relevant to the claim or defense of any party**.... The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *[Emphasis added]*

While true that the scope of interrogatories is quite broad, there is a limit to what may be asked, hence the availability of objection. It has been held that discovery requests may be relevant if there is only a "possibility" that the requested information may be "generally relevant" to the subject matter of the litigation. See *Marker v. Union Fidelity Life Insurance Company,* 125 F.R.D. 121 (M.D.N.C. 1989); *Heathman v. United States District Court for Central District,* 503 F.2d 1032 (9th Cir. 1974). The party seeking discovery must demonstrate more than "mere curiosity" or a "vague groping" for clues. See *Jemberg Forgings Co. v. United States,* 598 F.Supp 390 (1984).

While the Plaintiff seems to be of the belief that there is a liberal policy favoring a broad scope for their discovery, it should be recognized that this policy was repealed by the Amendments to Rule 26 Advisory Committee (language in bold above).

The intention of the drafters was to limit discovery to the pleadings. The Advisory Committee Notes for the 2000 Amendments to Rule 26(b)(1) state, in part:

> "*The committee intends that the parties and the court focus on the actual claims and defenses involved in the action. The dividing line between information relevant to*

*the claims and defenses and that relevant only to the subject matter of the action cannot be defined with precision. A variety of types of information not directly pertinent to the incident in suit could be relevant to the claims or defenses raised in a given action. * * * [T]he determination whether such information is discoverable because it is relevant to the claims or defenses depends on the circumstances of the pending action. The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings. In general, it is hoped that reasonable lawyers can cooperate to manage discovery without the need for judicial intervention. When judicial intervention is invoked, the actual scope of discovery should be determined according to the reasonable needs of the action....*

Even though fishing expeditions are sometimes permitted, the plaintiff should nevertheless be required to state or show a minimal basis for his cause of action before requiring that defendant to submit to discovery. See *Commercial Drapery Contractors v. U.S.*, 133 F.3d 1 (1998); *Kaylor v. Fields*, 661 F.2d 1177 (8th Cir. 1981). And such discovery may not be used as a fishing expedition that would impose unreasonable expenses on the opposing party. See *Martin v. Budd Co*, 713 N.E.2d 1128.

I
The government's interrogatories, and SAPF's rebuttal to objections to its answers thereto.

Regarding Interrogatory 6 (page 12):

6. Identify, by name, taxpayer identification number (i.e., Social Security or employer identification number) address, telephone number, and e-mail address all members (both associate and full) of SAPF from January 1, 2000 to the present.

The identity and personal information of the Members of SAPF is protected by the First Amendment of the United States Constitution. The requested information is not generally relevant to the subject matter of the litigation. Moreover, any information regarding Associate Members has no relevance to this action, because SAPF provides no services to Associate Members, such as preparing letters, discussing tax matters with SAPF staff, etc. Compelling the production of this information to the Government would have a chilling effect on members and persons seeking to join

SAPF, and further, providing this information could only serve the purpose of harassing SAPF members merely for associating with like-minded individuals and engaging in political speech of which the government disapproves.

Regarding government interrogatory 9(a) (p. 17):

> *9 (a). For each person identified in response to the two preceding interrogatories, state the nature of the position held, the nature of the services performed, the dates of performance, and the amounts (if any) paid for such services.*

SAPF furnished all of the requested information but objected to furnishing the amounts paid to such individuals. Plaintiff claims that this information is relevant because it may shed light on: (1) the amounts received by SAPF; (2) where those amounts go; (3) whether defendants are engaged in any other abusive tax schemes; and (4) how much money defendants are making from their abusive tax schemes. However, none of these reasons are relevant to the present suit.

Rule 401 of the Federal Rules of Evidence defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." In the present injunction suit, Plaintiff has alleged no fact in the complaint which could be made more or less probable by this information. Rather, the facts of consequence in the determination of the suit concern the actions of the Fellowship in offering membership, corresponding with the IRS on behalf of its members, and its sales of various items. Other than the mischaracterization by the government of the nature and mechanics of these actions, SAPF has admitted that it does these things; the question before the court is whether or not such actions violate the provisions of IRC §§ 6700 or 6701 as alleged in the complaint. Where the amounts SAPF receives go, and whether or how much its staff gets paid is irrelevant and immaterial to the determination of that question. Therefore, the information requested is not relevant within the meaning of Rule 26(b)(1).

Regarding government interrogatory 9(b) (p. 17):

> *9 (b). Identify, by name, taxpayer identification number (i.e., Social Security or employer identification number), address, telephone number and e-mail address all persons for whom you have drafted letters to be sent to the IRS at any time from January 1, 2000, to the present.*

The government already has this information, and it is through no fault of SAPF that the IRS is a large bureaucracy, making it inconvenient to produce said information which is already in its possession. The Government provided, as part of its discovery response, copies of hundreds of letters written by SAPF on behalf of its members. Yet Plaintiff is trying to claim that it needs the identity of *every* person for whom letters were drafted, even though the identities of any as yet unidentified persons are not necessary to the determination of the issues in the present suit. More copies of the same letters already in the possession of Plaintiff (which are representative of those SAPF preparers) could have no consequence to the determination of whether or not an injunction should be issued. As such, this information is also not relevant.

This is nothing more than another way to obtain SAPF's membership list, which is protected by the 1st Amendment, as argued further hereinafter. Moreover, it is vague groping, and would impose unreasonable expenses upon SAPF. See *Martin v. Budd Co*, 713 N.E.2d 1128. The small staff could not possibly search all of SAPF's files for documents prepared over the last six years, even if it suspended all other labors. This is most certainly burdensome and unreasonable under the circumstances.

Regarding government interrogatory 10 (p. 18):

> *10. Identify, by name, taxpayer identification number (i.e., Social Security or employer identification number), address, telephone number and e-mail address all persons for whom you have provided any tax-related services from January 1, 2000 to the present.*

The problem with the undefined, vague, and ambiguous term "tax-related services" is

exemplified in Plaintiff's Motion to Compel, where it is claimed that offering books and videos containing political speech is one such "tax-related service". For this reason, SAPF is unable to determine with any certainty the information being requested. Of course, insofar as it would pertain to members, the information would be protected by the First Amendment to the United States Constitution.

Regarding government interrogatory 11 (p. 18):

This information is not relevant to the present suit. Although Plaintiff claims that it is, based on its allegation that SAPF "interfere[s] with the administration of the internal revenue laws by, *inter alia*, drafting or assisting in the drafting of court filings," the complaint cites no statute which proscribes any such as being "interference with the administration of the internal revenue laws." Rather, they cited only the general jurisdiction of the district courts (IRC § 7402(a)) as the basis for that count of the complaint. Since that section empowers the court to issue injunctions "necessary or appropriate for the enforcement of the internal revenue laws," it presupposes a law to enforce, but that underlying law has not been identified. It is noted that IRC § 7212 prohibits impeding the administration of the tax laws by force or threats of force, but no such force has been alleged in the complaint. Certainly, nothing in that section refers to impeding by "drafting court filings."

Regarding government interrogatory 21, 22 and 24 (pp. 19 and 20), the foregoing arguments, supra, are reiterated.

Request for Production of Documents

Regarding Request for Production 7 (p. 20):

7. Produce copies of all correspondence to the IRS on behalf of any person that SAPF or anyone working with SAPF has drafted or assisted in drafting at any time since January 1, 2000.

In addition to the arguments aforesaid, this request is unduly burdensome and duplicative.

SAPF could not possibly duplicate all of the correspondence it has sent in the last five years. As noted above, Plaintiff has informed defendants by discovery response that it already has approximately 8,000 pages of such correspondence in its discovery. It would be excessively burdensome to require SAPF to sort through and copy all of this correspondence, and require the entire staff to devote all of its labor to the task.

Regarding Request for Production 8 (p. 20):

> *8. Produce copies of all files or other records, including records kept in electronic format, pertaining to all SAPF members (both associate and full) and other persons who have purchased SAPF's products or services at any time since January 1, 2000.*

In addition to the Answer already provided, this is merely another variation of the request for the membership list. This is discussed below. Also, the previous reference to "records pertaining to letters" are the letters themselves and the receipts from mailing them by Certified Mail; there are no other records in SAPF's possession of said letters.

Regarding Request for Production 10 (p. 21):

> *10. Produce copies of all bankruptcy petitions and other court filings that SAPF or anyone working with SAPF has drafted or assisted in drafting.*

There are no copies of bankruptcy petitions to provide, because SAPF does not prepare any. With respect to any court pleadings or filings, they are not relevant to the present suit. As noted above, Plaintiff has cited no statute to support its allegations that such filings are interfering with the administration of the tax laws.

Congress has provided the citizens of this country with certain remedies at law for obtaining justice and due process in their dealings with the IRS. For Plaintiff to claim that citizens who avail themselves of such due process are interfering with the administration of the tax laws, is to say that such tax administration depends on citizens not being able to enforce their right to due process.

Insofar as any courts may determine that any pleadings were filed by anyone for the purpose of impeding tax administration, they are quite competent in dealing with such matters within the confines of that particular lawsuit; and the Government would have had ample avenues for sanctions at the time such suit was filed.

Regarding Request for Production 16 (p. 21):

> *16. Produce a copy of all contracts or agreements with SAPF members (both full and associate) and other persons regarding the Member Assistance Program, the Victory Express, and the Patriot Defense Fund.*

SAPF has already responded to this request. All membership agreements that have been filled out are retained by the Members, not SAPF. Furthermore, no photocopies of any "contracts or agreements" are maintained by SAPF. SAPF has produced a blank membership agreements, in compliance with the rules to discovery. Moreover, there is no "Patriot Defense Fund."

II.

Save-A-Patriot Fellowship is not a business, nor does it have "customers" as does a business: it is a fellowship.

On page 7 of the Motion to Compel, after insisting that SAPF is a business (which, again the courts have ruled otherwise), the government then cites numerous published judicial decisions. In the first case, *IDK inc. v. County of Clark,* 836 F.2d 1185, the court determined that an escort service was a business, and therefore enjoyed less protection of the right of association under the First Amendment. SAPF is a fellowship — an unincorporated association — and not a corporation, and has nothing in common with an escort service.

The government then goes on to cite *In re PHE, Inc.*, 790 F.S. 1310, 1317, a case dealing with a corporation selling "sexually candid" magazines and films. The fact that PHE was a corporation makes this case inapplicable as well. Moreover, the subpoena at issue in the case

only sought disclosure of 'all letters of complaint and responses thereto during the period...." The court found this request did not infringe upon customer's right to receive materials distributed by PHE. Again, SAPF is not a corporation or business, and does not sell pornographic materials.

Finally, in its attempt to equate SAPF Fellowship with a corporation or business, the government cites *In re Grand Jury Subpoena Served Upon Crown Video Unlimited, Inc.*, 630 F. Supp. 614, 619. The court stated:

> *"The court is unable to discern a first amendment associational right belonging to the corporations' customers which would mandate the quashing of the subpoenas at issue in this case. The corporations* ****619*** *contend that requiring the stores to disclose the names of persons supplying and buying sexually explicit videotapes would chill its customers first amendment associational rights. However, no "association" exists in this case. The relationship between the corporations and their clients cannot be equated with other relationships which have been granted first amendment protections under the right of association. See, e.g., NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958); In re Grand Jury Subpoena to First National Bank, Englewood, Colorado, 701 F.2d 115 (10th Cir.1983) (National Commodity & Barter Association and National Unconstitutional Tax Strike Committee found to have first amendment associational rights); Ealy v. Littlejohn, 569 F.2d 219 (5th Cir.1978) (officers and members of black citizens association which organized and supervised boycotts found to have first amendment protection)."*

The Government cannot equate the situation in *United States v. Thurston Paul Bell*, 414 F.3d 474, with SAPF. The *Bell* court stated:

> *"Thurston Paul Bell is a professional tax protester who ran a business and a website selling bogus strategies to clients endeavoring to avoid paying taxes. * * * **Bell charged for advice and services in preparing various tax filings**. Bell subsequently founded another group * * * with the mission of providing "income tax help, solutions and strategies that work for Citizens of the United states to legally declare their gross income to be Zero." * * * Still,* ***several of Bell's clients obtained unwarranted tax refunds by filing returns according to his methods***."
> [Emphasis added]

The court recognized that Bell's preparation of tax returns placed him into a category of

regulated persons, required to keep records of those for whom he prepared such returns. These records were deemed not to be protected by the First Amendment. SAPF does not give advice, never helps individuals prepare returns, and in fact, discourages people from attempting to obtain unwarranted tax refunds of any kind by filing returns.

Again, Bell had a business, and part of his business was assisting his customers to file tax returns. In all SAPF history, neither the Fiduciary nor any of the staff, to the best of their recollection, have assisted any member file an income tax return. Therefore, this precedent is inapplicable to SAPF.

In *Kerr v. US*, 801 F.2d 1162, 1164, the IRS issued summonses upon banks for accounts over which Thomas Kerr had control. The IRS was investigating Kerr's individual tax liability. Because one or more of the accounts involved a church which he established and of which he was trustee and/or beneficiary, the court ruled that disclosure of the names of church members did not violate the right of association. In that case, there was substantial evidence of fraud to warrant an investigation, and not to enjoin anyone pursuant to the provisions of IRC § 6700, or invoke the provisions of § 6701. In the Complaint against SAPF, no specific allegations of tax evasion or unsatisfied tax liabilities were made upon any of the defendants. It should also be pointed out that in summons cases, as per *United States v. Powell*, 379 U.S. 48, 85 S. Ct. 248, 13 L. Ed. 2d 112 (1964), any documents already in the possession of the IRS could not be legitimately summoned. Therefore, *Kerr* is also inapplicable, except to the extent that the *Powell* standard might apply.

Another summons case the government cited, *St. German of Alaska v. U.S.* 840 F.2d 1087, 1094, involved a case of tax evasion, and in determining there was sufficient evidence of such, enforced the summons, even though the identities of church members would be revealed.

However, the court did go on to acknowledge:

> *Petitioners' free association claim fares no better. In general, the first amendment shields a person's freedom "to engage in association for the advancement of beliefs and ideas.... whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters." NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488 (1958).* ***Governmental action which may operate to restrict the freedom to associate is subject to exacting scrutiny.*** *Id. at 460-61, 78 S.Ct. at 1170-71; Buckley v. Valeo, 424 U.S. 1, 64-65, 96 S.Ct. 612, 656-57, 46 L.Ed.2d 659 (1976); Local 1814, Int'l Longshoremen's Assoc. v. Waterfront Comm'n, 667 F.2d 267, 270 (2d Cir.1981). Enforcement of the IRS summonses involved here, which the government concedes could cause disclosure of contributors' names, should not be ordered unless it is substantially related to a compelling governmental interest. Buckley v. Valeo, 424 U.S. at 64, 96 S.Ct. at 656.*

And, of course, in the present case, the government has failed to come up with any evidence of crime or fraud, other than raising naked allegations using terms that have yet to be defined (e.g., "tax scheme," "abusive trust," etc.) This case too, is inapplicable, for the purposes of a legitimate compelling government interest, so as to warrant disclosure of the names, Social Security numbers, etc. of the SAPF membership.

III.

Since SAPF engages in political speech, and not commercial speech, it is protected by the First Amendment.

In recent years, our courts have made a distinction between freedom of personal speech, and commercial speech. Having judicially established in 1996, supra, that SAPF is a Fellowship, and not a business, it is clear that SAPF does not engage in commercial speech. Though it can be deemed that the individual free speech of SAPF's members gives rise to individual free speech on a collective scale, it can also be said that SAPF engages in *political* speech, which also enjoys the full protection of the First Amendment.

Evidence that SAPF is a political organization engaging in political speech is evidenced by SAPF's Mission Statement, which has been displayed in the foyer of SAPF headquarters for

about fifteen years. It has also appeared in its publications, from time to time, over the years. Excerpts from this Mission Statement include:

> **"S.A.P. IS NOT A TAX PROTEST ORGANIZATION!**
>
> "The S.A.P. Fellowship is a 1st amendment association dedicated to seeing that IRS and other government personnel obey the law. Our association recognizes the necessity of taxation (raising of revenues) but we also recognize that this necessity has provisions in the law, and that government, in meeting its exigencies, may not extend its activities beyond the law.
> "The Fellowship actively promotes the study of the law and the assertion of one's rights in accordance with the law. It does not "protest" or "object" to any tax, income or otherwise, and is NOT a "tax protest" organization. * * *
> "The Fellowship does not advocate or condone unlawful resistance, protest, or other like actions." (Emphasis in original)

So clearly, SAPF is a political organization — an orthodox one, at that — that engages in political speech, and consists of *members* who share similar political sentiments and beliefs.

That SAPF charges for the literature (e.g., Internal Revenue Code), videos and cassette tapes it makes available, does not mean that it enjoys less protection of its free speech. In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976), the Court stated:

> "Indeed, it is clear that speech does not lose its First Amendment protection because money is spent to project it, as in a paid advertisement of one form or another. Buckley v. Valeo, 424 U.S. 1, 35-59, 96 S.Ct. 612, 642-654, 46 L.Ed.2d 659 (1976); Pittsburgh Press Co. v. Human Relations Comm'n, 413 U.S., at 384, 93 S.Ct., at 2558, 37 L.Ed.2d, at 676; New York Times Co. v. Sullivan, 376 U.S., at 266, 84 S.Ct., at 718-719, 11 L.Ed.2d, at 698. Speech likewise is protected even though it is carried in a form that is "sold" for profit, Smith v. California, 361 U.S. 147, 150, 80 S.Ct. 215, 217, 4 L.Ed.2d 205, 209 (1959) (books); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501, 72 S.Ct. 777, 780, 96 L.Ed. 1098, 1105-1106 (1952) (motion pictures); Murdock v. Pennsylvania, 319 U.S., at 111, 63 S.Ct., at 874, 87 L.Ed., at 1297-1298 (religious literature), and even though it may involve a solicitation to purchase or otherwise pay or contribute money. New York Times Co. v. Sullivan, supra; NAACP v. Button, 371 U.S. 415, 429, 83 S.Ct. 328, 335-336, 9 L.Ed.2d 405, 415-416 (1963); Jamison v. Texas, 318 U.S., at 417, 63 S.Ct., at 672, 87 L.Ed., at 873; Cantwell v. Connecticut, 310 U.S. 296, 306-307, 60 S.Ct. 900, 904-905, 84 L.Ed. 1213, 1219-1220 (1940). *If there is a kind of commercial speech that lacks all First Amendment protection, therefore, it*

must be distinguished by its content. Yet the speech whose content deprives it of protection cannot simply be speech on a commercial subject. No one would contend that our pharmacist may be prevented from being heard on [425 U.S. 762] the subject of whether, in general, pharmaceutical prices should be regulated, or their advertisement forbidden. Nor can it be dispositive that a commercial advertisement is noneditorial, and merely reports a fact. Purely factual matter of public interest may claim protection. Bigelow v. Virginia, 421 U.S., at 822, S.Ct., at 2232-2233, 44 L.Ed.2d, at 612; Thornhill v. Alabama, 310 U.S. 88, 102, 60 S.Ct. 736, 744, 84 L.Ed. 1093, 1102 (1940)."

IV.

The Plaintiff is abusing civil process to conduct a fishing expedition.

Plaintiff admits on page 4 of its Motion to Compel that it needs SAPF's membership list so that it can investigate the schemes it alleges so that it might get the injunction it seeks. Thus, it is using the discovery process not to narrow the issues for trial, but as an investigative tool to make up for the lack of evidence necessary to support its allegations. According to the U.S. District Court, in Equal Employment Opportunity Commission v. Carter Carburetor, 76 F.R.D. 143 (1977), "The federal discovery rules are designed, *inter alia*, to enable a defendant to elicit the basis for a plaintiff's allegations and to prepare his defenses to the charges made. They are not designed to permit a plaintiff to make broad-based allegations, without any basis for a belief in those allegations, and then to invade the defendant's records in an attempt to determine whether or not a cause of action exists." See also Tottenham v. Trans World Gaming Corp., No. 00 Civ. 7697, 2002 WL 1967023, (S.D.N.Y. 2002)"Discovery, however, is not intended to be a fishing expedition, but rather is meant to allow the parties to flesh out allegations for which they initially have at least a modicum of objective support."

Plaintiff also claims on page 4 of its Motion to Compel that it needs the membership list to investigate the extent to which the members have used the schemes it alleges, and the extent to which the members have evaded federal tax. These reasons show that it is trying to use this civil

discovery process as a criminal investigative tool for persons who are not even parties to this suit. Plaintiff's desire to investigate any alleged criminal actions by such persons does not make the information material to this action.

VI.

Right to avail oneself to due process and remedies within the judicial branch of government does not hinder IRS collection efforts.

The government demands, beginning on page 18 of its Motion to Compel:

> *"Identify by case name, court name, and docket number, all cases (bankruptcy or otherwise) in which SAPF or anyone working under its direction or supervision has drafted or assisted in the drafting of any court filings (including pleadings and other documents) from January 1, 2000 to the present."*

SAPF responded that that information is clearly irrelevant to the suit. Indeed, the judiciary is a branch of government which is separate and independent from the Executive—or the IRS — and the two functions shall not overlap.

If the IRS did obtain court pleadings of the members of SAPF, what would they propose to do with them? Punish the members for availing themselves of due process? Conduct an audit or initiate a criminal action, merely because the member went to court and sought the assistance of an SAPF paralegal in drafting federal court documents? This is not illegal.

Nobody can gain an advantage for an "abusive tax shelter" or gain an advantage in an "abusive tax scheme" by applying to our federal courts for justice. Our courts can be presumed to have judges sitting on the bench that know the law, are competent, and do not render decisions favoring "tax protesters." Therefore, it could not possibly serve any legitimate purpose to produce documents fitting this description. Indeed, it has a chilling effect upon the members seeking justice in our courts, which runs afoul of the due process clause of the Fifth Amendment of the United States Constitution.

WHEREFORE, Plaintiff's Motion to compel should be denied.

Respectfully submitted this 27 day of January, 2006.

/s/George E. Harp
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SAVE-A-PATRIOT FELLOWSHIP

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum in support of Opposition to Motion to Compel Discovery has been sent to John Baptist Kotmair, Jr., pro se, P. O. Box 91, 2911 Groves Mill Road, Westminster, Maryland 21158, and Thomas M. Newman, Trial Attorney, Tax Division, U. S. Department of Justice, P. O. Box 7238, Washington, D.C. 20044, by United States Mail with sufficient postage attached thereto, and by e-mail to thomas.m.newman @ usdoj.gov. this 27 day of January, 2006.

/s/George E. Harp
Of Counsel