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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, . 4:16-MC-02688
. HOUSTON, TEXAS
PETITIONER, . MARCH 27, 2017
VS. . 2:00 P.M.
JOHN B. TROWBRIDGE, .
. .
RESPONDENT. .
.....

TRANSCRIPT OF SHOW CAUSE HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE PETITIONER:

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FOR THE RESPONDENT:

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APPEARANCES - CONTINUED

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OFFICIAL COURT REPORTER:

Mayra Malone, CSR, RMR, CRR
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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

PROCEEDINGS

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THE COURT: Good afternoon and welcome to everybody. We are here on United States versus Trowbridge, and we will take appearances of counsel or parties, beginning with the plaintiff.

6

7

MR. BOOTH: Lewis Booth for the United States of America, Your Honor.

8

9

THE COURT: Can you spell your last name for me?

10

11

MR. BOOTH: B-O-O-T-H.

THE COURT: Okay. And for Mr. Trowbridge?

12

13

MR. TROWBRIDGE: John Trowbridge. Judge, I'm appearing specially and not generally in this matter.

14

15

THE COURT: Welcome to both of you.

16

17

We are here on a show cause matter.

Mr. Trowbridge filed a motion to dismiss.

18

19

Do you want to proceed first with your argument, Mr. Trowbridge, or do you have anything more to add what is in the papers? I think I understand what is in the papers.

20

21

MR. TROWBRIDGE: Judge, I have offered that for you to understand as clearly as I can make it, and that is --

22

23

THE COURT: That's it?

24

25

MR. TROWBRIDGE: That's it. Thank you.

THE COURT: Mr. Booth, do you wish to respond?

MR. BOOTH: I'm sorry, Your Honor?

THE COURT: Do you wish to respond to anything?

1 MR. BOOTH: Well, Your Honor, the government would
2 like to reiterate that the declaration completed by Kendria
3 Bruno does set forth that the Powell factors have been
4 satisfied in this case. Mr. Trowbridge has not presented an
5 adequate or a legal defense to enforcement of the summons;
6 therefore, it is the petitioner's position that the summons
7 should be enforced.

8 I also have a proposed order compelling
9 compliance -- may I approach -- in the event that the Court --

10 THE COURT: Yes. Give that to Ms. Saldana.

11 Do you have one for the other side?

12 MR. BOOTH: Yes.

13 THE COURT: Mr. Trowbridge, there is a lot about your
14 position that I agree with. I think our tax system is a
15 scandal. I'm not somebody who is going to defend it at all,
16 but I don't know that we can invalidate what the IRS has done
17 because of the religious test. I agree with you on that too
18 actually.

19 When we do our court cry in the morning, I never
20 say "so help me God." When we do our -- when we swear in new
21 witnesses, I never have the notation "so help you God." I
22 think God ought to be left out of these matters, but that is
23 quite a step to go from there to the conclusion that everything
24 that's done with such a sign-off is invalid. I guess that
25 would mean that President Trump's oath of office was invalid,

14:04 1 so anything he is doing is invalid?

2 MR. TROWBRIDGE: Well, Judge, I certainly understand
3 the way Mr. Booth has stated this in his response, and I make
4 no claim about anything that Ms. Bruno or Mr. Booth or anybody
14:04 5 does so long as it is within the constitutional bounds, and
6 those bounds are within the District of Columbia and the
7 territories and other properties of the United States, unless
8 the oath allows you to accede to the executive power of the
9 United States, in which case her oath does not allow that;
14:04 10 therefore, her activities that would be lawful elsewhere are
11 not then lawful in the union.

12 THE COURT: I'm not sure I follow that.

13 MR. TROWBRIDGE: In the union, sir, she must accede to
14 the executive power of the United States pursuant to Article 6,
15 Clause 3, and her oath fails to do so.
14:05

16 THE COURT: And what's the defect in it?

17 MR. TROWBRIDGE: It has a religious test at the end,
18 sir.

19 THE COURT: The oaths of public officials since the
14:05 20 country's founding have included that. As I say, I don't like
21 it, but it doesn't invalidate everything people do.

22 Are you saying that President Trump's oath was
23 invalid too?

24 MR. TROWBRIDGE: I have not addressed that issue. I
14:05 25 certainly am concerned that anyone who operates in the union

14:05 1 must have consistency with the Constitution. You know, this is
2 not a problem with the IRS or Mr. Booth or you or me. This is
3 a problem with the Congress. They specifically stated this
4 oath is the one to be done. Knowing that Article 6, Clause 3
14:06 5 prohibits someone taking such an oath to accede to the
6 executive or legislative or judicial power in the union itself.
7 And the problem is with Congress, not with you or me or any
8 agency.

9 THE COURT: No, I'm not personalizing it and I'm sure
14:06 10 the other side is not personalizing it either. But is there
11 any case law that supports your position?

12 MR. TROWBRIDGE: As I understand, the Constitution is
13 very clear. It says no oath or affirmation shall require a
14 religious test to accede to an office in the general government
14:06 15 with that power.

16 THE COURT: If that were the law, there would be a lot
17 of cases that would have reached a holding with that reasoning,
18 and I don't know of any of them that do.

19 MR. TROWBRIDGE: Judge, I'm unclear that a case law
14:06 20 has to support the Constitution rather than the other way
21 around.

22 THE COURT: But if this were such a fundamental flaw,
23 I would have thought that others would have taken advantage of
24 it in various contexts, and the fact that no one has makes me
14:07 25 concerned about whether it is a valid argument.

14:07 1 MR. TROWBRIDGE: Judge, I'm just going by what the
2 Constitution states. It's exceptionally clear -- Ms. Bruno's
3 oath is exceptionally clear and in contradistinction, and I
4 understand, therefore, that she cannot accede to the executive
14:07 5 power of the United States acting in the union. She can do it
6 everywhere else, just not in the union.

7 THE COURT: I guess the best thing I can do is hasten
8 this case to the Fifth Circuit, and they may understand your
9 argument better than I do or may accede to it more quickly than
14:08 10 I can. If they do -- if the Court does, I will certainly
11 enforce the mandate of the Court of Appeals, but --

12 MR. TROWBRIDGE: Judge, may I ask, have I
13 misunderstood Article 6.3?

14 THE COURT: I think so. I think so. You may want to
15 look at the case Nicholson versus Board of Commissioners of
16 Alabama State Bar Association. It rejected the requirement --
17 Alabama's requirement that every person requesting admission to
18 the Alabama Bar closed the oath with "so help me God." The
19 Court said, no, it doesn't impede freedom of religion. It
14:08 20 doesn't make the oath invalid.

21 The same thing when President Obama took the
22 oath. The case Newdow, N-E-W-D-O-W, versus Roberts found that
23 the citizen plaintiffs did not have standing to complain about
24 President Obama's use of "so help me God" in the oath.

14:09 25 So I think there is a question of whether you

14:09 1 have standing to make the argument you are making.

2 Again, I don't like making use of God. I really
3 think that courts and religion ought to be kept separate. I
4 don't like it when there are prayers at gatherings of lawyers
14:09 5 and judges. It seems to me that assumes a similarity of
6 viewpoint that is fiction, but I don't believe this oath is --
7 or anything else Ms. Bruno did is by itself sufficient to
8 defeat the IRS's motion.

9 MR. TROWBRIDGE: Judge?

14:10 10 THE COURT: Yes, sir.

11 MR. TROWBRIDGE: May I clarify that I have no concern
12 or complaint with regard to her appointment in the IRS, her
13 functions and such. The only question is whether she is
14 constrained by the Constitution within the bounds of the
15 District of Columbia territory and other properties or whether
14:10 16 the oath she has taken accedes to the executive power allowing
17 her to act thusly in the union. Otherwise, I'm not clear. Is
18 she considering me to be in the District of Columbia? I'm here
19 in this county.

14:11 20 THE COURT: No, I don't think that. She has taken an
21 oath, and her duties in her job description are not limited to
22 the District of Columbia. That would be an important holding,
23 if that were true. If the IRS officers could not operate
24 outside the District of Columbia, that would change our general
14:11 25 understanding of IRS enforcement power quite dramatically.

1 I think the best I can do is speed you on your
2 way to the Fifth Circuit and see if you will find a more
3 receptive audience there. And you might. You might.

4 I have this order compelling compliance.

5 Do you have dates before me?

6 MR. BOOTH: Yes. April 10th at 10:00, Your Honor.

7 THE COURT: Okay. I wish you luck if you litigate the
8 balance of this case.

9 MR. TROWBRIDGE: Judge, may I ask you a question,
10 please?

11 THE COURT: Yes.

12 MR. TROWBRIDGE: I came prepared with the 12(b)(6)
13 motion, which I had every expectation would be granted pursuant
14 to the constitutional provision, and I understand that I have
15 an opportunity to file now a written answer to the petition
16 entered by Mr. Booth. Is that correct?

17 MR. BOOTH: Your Honor, if I may, the order of show
18 cause requires petitioner -- respondent -- excuse me -- to file
19 his response within 20 days of the entry of the order.

20 If he would like to file something different,
21 that would be up to the Court whether to --

22 THE COURT: Twenty days?

23 MR. BOOTH: From the entry of your order to show cause
24 entered on -- one minute, Your Honor.

25 *(Pause)*

14:13 1 MR. BOOTH: January 15th.

2 THE COURT: So you are saying his filing is out of
3 time?

4 MR. BOOTH: Yes, Your Honor.

14:14 5 MR. TROWBRIDGE: Judge, I understood that the Federal
6 Rules of Civil Procedure suspend when a 12(b)(6) motion is
7 filed until it is resolved, and that would then begin the
8 tolling.

9 THE COURT: Tell me what you want. Do you want to
10 argue your motion to dismiss here today or do you want to file
11 something else in furtherance of your motion to dismiss?

12 MR. TROWBRIDGE: Judge, I would like to file. I'm not
13 prepared to argue that today.

14 THE COURT: Okay. I frankly thought the two stood
15 together, both the order to show cause and the motion to
16 dismiss. Your motion to dismiss argument is based on the same
17 theories that we have ventilated here today, that the oath
18 defeats Ms. Bruno's competence.

19 Is there something more you want to say?

14:14 20 MR. TROWBRIDGE: I would like an opportunity to
21 respond in writing, sir.

22 THE COURT: But you have submitted writings.

23 MR. TROWBRIDGE: I submitted a 12(b)(6) motion, sir.

14:15 24 THE COURT: But you also submitted a response, reply
25 to petitioner's response. You submitted a brief in chief.

14:15 1 Tell me what is different about what you now want
2 to file.

3 MR. TROWBRIDGE: Sir, I understand those are related
4 to the 12(b)(6) motion, their response and my response to their
14:15 5 response.

6 THE COURT: Mr. Booth, do you want to say anything
7 further?

8 MR. BOOTH: No, Your Honor. If the substance of
9 Mr. Trowbridge's arguments in his response to the show cause
14:15 10 order are identical to what is in the 12(b)(6) motion,
11 respondent would not dispute the Court treating the 12(b)(6)
12 motion also as his response to the show cause order.

13 THE COURT: You say you want to make another response,
14 I have no objection to your filing something else. I think we
14:16 15 ought to do it on an abbreviated schedule.

16 Can you do it in ten days?

17 MR. TROWBRIDGE: I would prefer the entire time, if
18 you would, sir.

19 THE COURT: Well, this case has already taken quite a
14:16 20 while and you have been involved in litigation with the IRS
21 for, what, ten years now?

22 MR. TROWBRIDGE: No, sir.

23 THE COURT: Let's see. How long have you been
24 involved in this litigation?

14:16 25 MR. TROWBRIDGE: Twenty-five years, sir.

1 THE COURT: Twenty-five years. Okay. So I would
2 think that there wouldn't be any convenience in being able to
3 adduce those arguments again without needing 20 days to do so.

4 MR. TROWBRIDGE: I have other job duties in addition
5 to responding, sir.

6 THE COURT: Well, we all do. We all do.

7 I think, given the status of this case and given
8 the length of time, that I should exercise my discretion to
9 shorten the response time to ten days. I will give you five
10 days to reply to that.

11 MR. BOOTH: Yes, sir.

12 MR. TROWBRIDGE: Judge?

13 THE COURT: Yes, sir.

14 MR. TROWBRIDGE: May I respectfully request 14 days so
15 I have the additional weekend to get it done?

16 THE COURT: Tell me what is going to take so much
17 time. Is it an argument you haven't made at any time
18 previously in your 25 years of litigation?

19 MR. TROWBRIDGE: Well, I have to put it in proper form
20 for you, and I have other commitments in the next ten days. So
21 I would appreciate just having that additional time to reflect
22 and confer. I did not come prepared to address the order to
23 show cause. I was here to address the 12(b)(6).

24 THE COURT: Your 20 days has already expired. Your
25 order to show cause was filed on January 17th. Your motion to

14:18 1 dismiss was not filed until February 9th, so you were out of
2 time already. Your 20 days has already come and gone.

3 MR. TROWBRIDGE: I don't recall that I received it
4 right then.

14:18 5 THE COURT: I think ten days is sufficient.

6 Thank you very much.

7 * * * *

8 I certify that the foregoing is a correct transcript from
9 the record of proceedings in the above-entitled cause.

10
11 Date: April 5, 2017

12 */s/ Mayra Malone*

13 -----
14 Mayra Malone, CSR, RMR, CRR
15 Official Court Reporter
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