OPINIONS AND ORDERS

REHEARING ORDER

OTHER DOCUMENTS

SUMMARY ORDER, U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT (DOC 80-1) (JUNE 24, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAUL S. ASTRUP,

Defendant-Appellant,

ROSEANNE B. ASTRUP, NEW YORK STATE COMMISSIONER OF TAXATION AND FINANCE, TOWN OF SOUTHAMPTON,

Defendants.

No. 23-847

Appeal from a judgment of the United States District Court for the Eastern District of New York (Brian M. Cogan, Judge; Lois Bloom, Magistrate Judge).

Before: Dennis JACOBS, Myrna PEREZ, Maria ARAUJO KAHN, Circuit Judges.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED.

On appeal, Defendant-Appellant Paul S. Astrup challenges the district court's grant of summary judgment and the magistrate judge's issuance of a protective order.

This action arose after the Government filed a complaint pursuant to 26 U.S.C. §§ 7401 and 7403 against Astrup and his wife (and other parties not relevant here): (1) to reduce to judgment unpaid federal tax liabilities and penalties for frivolous filings; and (2) to enforce a lien against real property in satisfaction of those tax liabilities.

During those proceedings, the Government moved for a protective order to prevent Astrup from deposing IRS Commissioner Charles P. Rettig regarding various constitutional and jurisdictional subject areas. A magistrate judge granted the motion, concluding that Astrup's arguments were a waste of court resources and improper topics for discovery, and denied reconsideration. The Government subsequently moved for summary judgment against Astrup. The district court granted the motion, concluding that the Government had satisfied its burden of showing the validity of the tax liabilities and penalties and discerning "no nonfrivolous basis for Astrup to challenge the tax liens placed against his jointly held Long Island residence." *United States v. Astrup,* No. 18-cv-1531 (BMC) (LB), 2023 WL 2574878, at *3-4 (E.D.N.Y. Mar. 20, 2023).

Astrup appealed the district court's judgment and raised objections to the protective order. While Astrup's appeal was pending before this Court, the district court entered a final sale order.[1] We assume

---

[1] Although neither party disputes subject-matter jurisdiction, we must consider it *sua sponte*. *See Marquez v. Silver,* 96 F.4th

the parties' familiarity with the remaining facts, the procedural history, and the issues on appeal.

I. Summary Judgment Decision

We review a district court's grant of summary judgment de novo, construing facts in the light most favorable to the non-moving party and resolving ambiguities and drawing all reasonable inferences against the moving party. *Kee v. City of New York,* 12 F.4th 150, 157-58 (2d Cir. 2021). Summary judgment is granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A. Astrup Failed to Present Any Genuine Dispute of Material Fact as to the Validity of the IRS's Tax Assessment.

On appeal, Astrup fails to present any genuine dispute of material fact sufficient to defeat summary judgment. He does not, for example, dispute the IRS's

---

579, 582 (2d Cir. 2024). Astrup's notice of appeal, filed before the district court's approval of the final order of sale, may have been premature; but "a premature notice of appeal from a nonfinal order may ripen into a valid notice of appeal if a final judgment has been entered by the time the appeal is heard and the appellee suffers no prejudice." *Cmty. Bank, NA. v. Riffle,* 617 F.3d 171, 173-74 (2d Cir. 2010) (per curiam) (citation omitted). "This rule applies even if the final judgment was not itself appealed." *Id.* at 174. Because the district court had already approved the sale by the time we heard this appeal, there is no issue of subject-matter jurisdiction. Moreover, we do not review Astrup's request for a stay of the sale of his property, as that issue has become moot, and it is no longer possible for us "to grant any effectual relief." *In re Chateaugay Corp.,* 10 F.3d 944, 949 (2d Cir. 1993) (internal quotation marks and citation omitted).

tax assessments, which enjoy the "presumption of correctness" unless the taxpayer proves otherwise by a preponderance of the evidence. *United States v. McCombs,* 30 F.3d 310, 318 (2d Cir. 1994); *In re WorldCom, Inc.,* 723 F.3d 346, 352 (2d Cir. 2013) ("[F]ederal tax assessments are presumed to be correct and constitute prima facie evidence of liability. The taxpayer bears the burden to prove that the assessment was incorrect."). Because a "pro se litigant abandons an issue by failing to address it in the appellate brief," Astrup has forfeited any challenge to the merits of the district court's decision. *Green v. Dep't of Educ.,* 16 F.4th 1070, 1074 (2d Cir. 2021) (per curiam) (citation omitted).

Moreover, Astrup's tax protestor arguments also fail to create a genuine dispute of material fact. The constitutionality of the United States tax system has been upheld numerous times against various theories of unconstitutionality, including the one raised by Astrup that the Sixteenth Amendment of the United States Constitution—which grants Congress the "power to lay and collect taxes on incomes," U.S. Const. amend. XVI—was not properly ratified. *See Brushaber v. Union Pac. R.R., Co.,* 240 U.S. 1, 12-19 (1916); *United States v. Sitka,* 845 F.2d 43, 45-47 (2d Cir. 1988).

And the Supreme Court has previously held that the Petition clause does not provide a right to a response or official consideration. *See Smith v. Ark Highway Emps.,* 441 U.S. 463, 465 (1979) ("[T]he First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it"); *Minn. State Bd. for Cmty. Coils. v. Knight,* 465 U.S. 271, 272 (1984) ("Nothing in the First Amend-

ment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communications on public issues."); *see also Futia v. United States,* No. 23-860, 2024 WL 2151115, at *2 (2d Cir. May 14, 2024) (rejecting similar arguments pertaining to the Petition Clause raised by another litigant).

Accordingly, we agree with the district court that there exists "no non-frivolous basis for Astrup to challenge the tax liens placed against his jointly held Long Island residence," *Astrup,* 2023 WL 2574878, at *3-4, and conclude that his tax-protestor arguments fail to create a genuine dispute of material fact sufficient to defeat summary judgment.

B. Astrup Was Not Entitled to a Jury Trial.

Astrup also was not entitled to a jury trial. A defendant's right to a jury trial does not prevent a district court from granting a motion for summary judgment "[w]here no genuine issue of material fact exists." *Shore v. Parklane Hosiery Co.,* 565 F.2d 815, 819 (2d Cir. 1977).

II. Protective Order

Moreover, Astrup forfeited review of his challenge to the protective order because he failed to seek review of it from the district court. *See* Fed. R. Civ. P. 72(a); *Caidor v. Onondaga County,* 517 F.3d 601, 605 (2d Cir. 2008) (concluding that a pro se litigant "who fails to object timely to a magistrate's order on a non-dispositive matter waives the right to appellate review of that order, even absent express notice from the

magistrate judge that failure to object within ten days will preclude appellate review").

Regardless, there are no exceptional circumstances justifying the deposition of high-ranking government officials, and it was within the magistrate judge's discretion to issue a protective order. *See* Fed. R. Civ. P. 26(c); *Lederman v. N.Y.C. Dep't of Parks & Recreation,* 731 F.3d 199, 203-04 (2d Cir. 2013) (concluding that district court did not abuse its discretion in issuing protective order barring depositions of high-ranking government officials where party seeking depositions failed to demonstrate exceptional circumstances).

* * *

We have considered Astrup's remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Clerk of Court
[SEAL]

NOTICE OF CASE MANAGER CHANGE, U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT (DOC 79) (JUNE 24, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
Chief Judge
Date: June 24, 2024
Docket#: 23-847cv
Short Title: United States of America v. Astrup

CATHERINE O'HAGAN WOLFE
Clerk of Court
DC Docket #: 18-cv-1531
DC Court: EDNY (CENTRAL ISLIP)
DC Judge: Cogan
DC Judge: Bloom

NOTICE OF CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-522.

MANDATE, U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT (DOC 83) (AUGUST 19, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAUL S. ASTRUP,

Defendant-Appellant,

ROSEANNE B. ASTRUP, NEW YORK STATE COMMISSIONER OF TAXATION AND FINANCE, TOWN OF SOUTHAMPTON,

Defendants.

No. 23-847

Appeal from a Judgment of the United States District Court for the Eastern District of New York (Brian M. Cogan, Judge; Lois Bloom, Magistrate Judge).

Before: Dennis JACOBS, Myrna PEREZ, Maria ARAUJO KAHN, Circuit Judges.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED.

On appeal, Defendant-Appellant Paul S. Astrup challenges the district court's grant of summary judgment and the magistrate judge's issuance of a protective order.

This action arose after the Government filed a complaint pursuant to 26 U.S.C. §§ 7401 and 7403 against Astrup and his wife (and other parties not relevant here): (1) to reduce to judgment unpaid federal tax liabilities and penalties for frivolous filings; and (2) to enforce a lien against real property in satisfaction of those tax liabilities.

During those proceedings, the Government moved for a protective order to prevent Astrup from deposing IRS Commissioner Charles P. Rettig regarding various constitutional and jurisdictional subject areas. A magistrate judge granted the motion, concluding that Astrup's arguments were a waste of court resources and improper topics for discovery, and denied reconsideration. The Government subsequently moved for summary judgment against Astrup. The district court granted the motion, concluding that the Government had satisfied its burden of showing the validity of the tax liabilities and penalties and discerning "no non-frivolous basis for Astrup to challenge the tax liens placed against his jointly held Long Island residence." *United States v. Astrup,* No. 18-cv-1531 (BMC) (LB), 2023 WL 2574878, at *3-4 (E.D.N.Y. Mar. 20, 2023).

Astrup appealed the district court's judgment and raised objections to the protective order. While Astrup's appeal was pending before this Court, the district court

entered a final sale order.[1] We assume the parties' familiarity with the remaining facts, the procedural history, and the issues on appeal.

I. Summary Judgment Decision

We review a district court's grant of summary judgment de novo, construing facts in the light most favorable to the non-moving party and resolving ambiguities and drawing all reasonable inferences against the moving party. *Kee v. City of New York,* 12 F.4th 150, 157-58 (2d Cir. 2021). Summary judgment is granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

---

[1] Although neither party disputes subject-matter jurisdiction, we must consider it *sua sponte*. *See Marquez v. Silver,* 96 F.4th 579, 582 (2d Cir. 2024). Astrup's notice of appeal, filed before the district court's approval of the final order of sale, may have been premature; but "a premature notice of appeal from a nonfinal order may ripen into a valid notice of appeal if a final judgment has been entered by the time the appeal is heard and the appellee suffers no prejudice." *Cmty. Bank, NA. v. Riffle,* 617 F.3d 171, 173-74 (2d Cir. 2010) (per curiam) (citation omitted). "This rule applies even if the final judgment was not itself appealed." *Id.* at 174. Because the district court had already approved the sale by the time we heard this appeal, there is no issue of subject-matter jurisdiction. Moreover, we do not review Astrup's request for a stay of the sale of his property, as that issue has become moot, and it is no longer possible for us "to grant any effectual relief." *In re Chateaugay Corp.,* 10 F.3d 944, 949 (2d Cir. 1993) (internal quotation marks and citation omitted).

A. Astrup Failed to Present Any Genuine Dispute of Material Fact as to the Validity of the IRS's Tax Assessment.

On appeal, Astrup fails to present any genuine dispute of material fact sufficient to defeat summary judgment. He does not, for example, dispute the IRS's tax assessments, which enjoy the "presumption of correctness" unless the taxpayer proves otherwise by a preponderance of the evidence. *United States v. McCombs,* 30 F.3d 310, 318 (2d Cir. 1994); *In re WorldCom, Inc.,* 723 F.3d 346, 352 (2d Cir. 2013) ("[F]ederal tax assessments are presumed to be correct and constitute prima facie evidence of liability. The taxpayer bears the burden to prove that the assessment was incorrect."). Because a "pro se litigant abandons an issue by failing to address it in the appellate brief," Astrup has forfeited any challenge to the merits of the district court's decision. *Green v. Dep't of Educ.,* 16 F.4th 1070, 1074 (2d Cir. 2021) (per curiam) (citation omitted).

Moreover, Astrup's tax protestor arguments also fail to create a genuine dispute of material fact. The constitutionality of the United States tax system has been upheld numerous times against various theories of unconstitutionality, including the one raised by Astrup that the Sixteenth Amendment of the United States Constitution—which grants Congress the "power to lay and collect taxes on incomes," U.S. Const. amend. XVI—was not properly ratified. *See Brushaber v. Union Pac. R.R., Co.,* 240 U.S. 1, 12-19 (1916); *United States v. Sitka,* 845 F.2d 43, 45-47 (2d Cir. 1988).

And the Supreme Court has previously held that the Petition clause does not provide a right to a response or official consideration. *See Smith v. Ark Highway*

Emps., 441 U.S. 463, 465 (1979) ("[T]he First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it"); *Minn. State Bd. for Cmty. Coils. v. Knight,* 465 U.S. 271, 272 (1984) ("Nothing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communications on public issues."); *see also Futia v. United States,* No. 23-860, 2024 WL 2151115, at *2 (2d Cir. May 14, 2024) (rejecting similar arguments pertaining to the Petition Clause raised by another litigant).

Accordingly, we agree with the district court that there exists "no non-frivolous basis for Astrup to challenge the tax liens placed against his jointly held Long Island residence," *Astrup,* 2023 WL 2574878, at *3-4, and conclude that his tax-protestor arguments fail to create a genuine dispute of material fact sufficient to defeat summary judgment.

B. Astrup Was Not Entitled to a Jury Trial.

Astrup also was not entitled to a jury trial. A defendant's right to a jury trial does not prevent a district court from granting a motion for summary judgment "[w]here no genuine issue of material fact exists." *Shore v. Parklane Hosiery Co.,* 565 F.2d 815, 819 (2d Cir. 1977).

II. Protective Order

Moreover, Astrup forfeited review of his challenge to the protective order because he failed to seek review of it from the district court. *See* Fed. R. Civ. P. 72(a);

Caidor v. Onondaga County, 517 F.3d 601, 605 (2d Cir. 2008) (concluding that a pro se litigant "who fails to object timely to a magistrate's order on a non-dispositive matter waives the right to appellate review of that order, even absent express notice from the magistrate judge that failure to object within ten days will preclude appellate review").

Regardless, there are no exceptional circumstances justifying the deposition of high-ranking government officials, and it was within the magistrate judge's discretion to issue a protective order. *See* Fed. R. Civ. P. 26(c); *Lederman v. N.Y.C. Dep't of Parks & Recreation,* 731 F.3d 199, 203-04 (2d Cir. 2013) (concluding that district court did not abuse its discretion in issuing protective order barring depositions of high-ranking government officials where party seeking depositions failed to demonstrate exceptional circumstances).

* * *

We have considered Astrup's remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Clerk of Court
[SEAL]

ORDER GRANTING MOTION TO WITHDRAW AS ATTORNEY U.S. DISTRICT COURT EASTERN DISTRICT OF NEW YORK (DOC 88) AND ENVELOPE USED TO MAIL THE NOTICE TO ASTRUP, POSTMARKED AUGUST 23, 2024, ADDRESSED TO ASTRUP AT VACATED EAST QUOGUE, N .Y. RESIDENCE AND FORWARDED TO ASTRUP AT HIS NEW ADDRESS IN RIVERHEAD, N.Y. ON AUGUST 29, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Notice of Electronic Filing

The following transaction was entered on 8/22/2024 at 2:51 PM EDT and filed on 8/22/2024

Case Name: United States of America v. Astrup et al

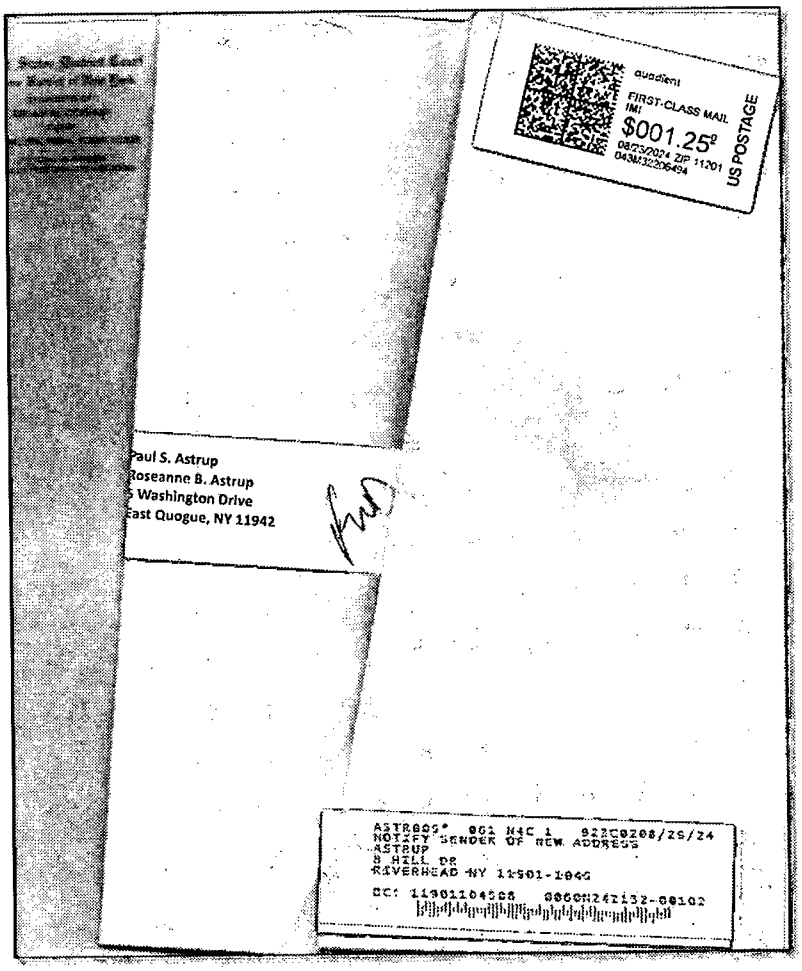
Case Number: 2:18-cv-01531-BMC-LB

Filer:

WARNING: CASE CLOSED on 04/25/2023
Document Number: No document attached

Docket Text:

ORDER granting [116] Motion to Withdraw as Attorney. Attorney Thelma A Lizama terminated. Ordered by Judge Brian M. Cogan on 8/22/2024. C/M (PW).



ENVELOPE USED TO MAIL THE NOTICE TO ASTRUP, POSTMARKED AUGUST 23, 2024, ADDRESSED TO ASTRUP AT VACATED EAST QUOGUE, N.Y. RESIDENCE AND FORWARDED TO ASTRUP AT HIS NEW ADDRESS IN RIVERHEAD, N.Y.

FINAL JUDGMENT, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK (APRIL 25, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAULS. ASTRUP, ROSEANNE B. ASTRUP, NEW YORK STATE COMMISSIONER OF TAXATION AND FINANCE, and TOWN OF SOUTHAMPTON,

Defendants.

Case No. 2:18-cv-01531-BMC-LB

Before: Brian M. COGAN, U.S. District Judge.

FINAL JUDGMENT

Consistent with (a) the United States' Motion for Entry of Final Judgment, (b) the Court's prior decision and order granting the United States' motion for summary judgment (ECF No. 91), and (c) the Stipulation as to Priorities in the Event of a Sale that was entered by this Court (ECF. NO. 52),

A. IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the United States shall recover of the defendant Paul S. Astrup, for unpaid frivolous filing penalties assessed against him pursuant to 26 U.S.C. § 6702, for the tax years 2001 2002, and 2003, the amount of $18,061.48, plus interest from and after February 6, 2023,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the United States shall recover of the defendant Paul S. Astrup, for unpaid income tax liabilities for tax years 2006 through 2012, the amount of $430,315.61, plus interest from and after February 6, 2023, pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c),

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the United States has valid and subsisting federal tax liens under 26 U.S.C. §§ 6321 and 6322 securing the liabilities described above on real property located 5 Washington Drive, East Quogue, New York 11942, owned by defendants Paul S. Astrup and Roseanne B. Astrup as tenants by the entirety, which shall be enforced against said property by a subsequent order of sale, pursuant to motion by the United States, including sale made by a receiver appointed by the Court if requested by the United States.

Digitally signed by Brian M. Cogan

/s/ Brian M. Cogan
U.S. District Judge

Dated: April 24, 2023

MEMORANDUM DECISION AND ORDER, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK (MARCH 18, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAULS. ASTRUP, ROSEANNE B. ASTRUP, NEW YORK STATE COMMISSIONER OF TAXATION AND FINANCE, and TOWN OF SOUTHAMPTON,

Defendants.

Case No. 18-cv-1531 (BMC) (LB)

Before: Brian M. COGAN, U.S. District Judge.

MEMORANDUM DECISION AND ORDER

COGAN, District Judge.

The United States (also referred to below as the "IRS"), brings this action to obtain a judgment for unpaid taxes and for recognition of the tax liens arising from those unpaid taxes. *Pro se* defendant Paul Astrup is a tax defier or protester who, since 1996, has either not filed tax returns or has filed joint tax returns with

his wife, defendant Roseanne B. Astrup, showing zero tax liability despite substantial income. The IRS has moved for summary judgment against Astrup (not Ms. Astrup), and the voluminous opposition that Astrup has submitted raises no legal or factual basis for denying the motion.[1] The IRS's motion is accordingly granted.

BACKGROUND

In response to the IRS's Local Rule 56.1 statement of undisputed facts, Astrup has submitted the usual panoply of tax protest defenses but has failed to controvert the factual averments and evidence. As a *pro se* litigant, he received notice of his obligation to do that both from the IRS and this Court. The undisputed facts are therefore deemed admitted, *see SEC v. Tecumseh Holdings Corp.*, 765 F.Supp.2d 340, 344 n.4 (S.D.N.Y. 2011), but that is of little moment because the straightforward facts set forth in the IRS's Rule 56.1 statement are fully supported by the evidence it has submitted and uncontradicted by any other evidence.

From 1998 through 2008, Astrup was employed as a senior technician, working at least 40 hours a week plus overtime, at a company called Aerospace Avionics. He was paid by check and received W-2 forms annually. He retired in 2008 at 58 years old and

---

[1] The volume of electronic data that Astrup has submitted made it practically impossible for the Clerk of the Court to docket every gigabyte. With the Court's permission, the Clerk has only docketed the cover page of some of the most voluminous exhibits, with the remainder staying on the media storage devices should the Court of Appeals request them.

worked part-time at a supermarket from 2008 through 2013.

Astrup filed a joint tax return (with his wife) in 2007 covering the years 1999, 2001, 2002, and 2003. He reported that he and his wife had zero wages despite his W-2s on the theory that income received from work at a private company is not subject to federal taxation, and he demanded a refund of amounts that his employer had withheld from his paychecks. The IRS demurred, and assessed frivolous filing penalties against Astrup and his wife of $18,061.48.[2]

From 2006-2012, Astrup earned wages, salary, pension distributions, retirement payments, and stock dividends. But he didn't file tax returns for those years. Based on data collected from third parties who had paid him, the IRS assessed unpaid income taxes, interest, and penalties of $430,315.61 as of February 6, 2023.

Under 26 U.S.C. § 6321, the unpaid taxes and penalties gave rise to a lien on the Astrups' residential property on Long Island, which the IRS seeks to enforce.

DISCUSSION

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477

---

[2] The Court assumes that the reason the IRS is not pursuing taxes and interest instead of just the frivolousness penalty for the 2001-2003 period is because of the statute of limitations for collecting taxes, which presumably does not apply to the penalty.

U.S. 317, 322-323 (1986). The burden is on the moving party to identify those portions of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits that it believes demonstrates the absence of a genuine issue of material fact. *Celotex Corp., supra,* at 323. All ambiguities must be resolved, and all inferences drawn, in favor of the nonmoving party. *Aurecchione v. Schoolman Transp. Sys., Inc.*, 426 F.3d 635, 638 (2d Cir. 2005). The judge's role in reviewing a motion for summary judgment is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

Once the moving party has carried its burden, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts. . . . [T]he nonmoving party must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(e)) (emphasis in original) (citations omitted). Moreover, "[w]hen the moving party has pointed to the absence of evidence to support an essential element on which the party opposing summary judgment has the burden of proof, the opposing party, in order to avoid summary judgment, must show the presence of a genuine issue by coming forward with evidence that would be sufficient, if all reasonable inferences were drawn in his favor, to establish the existence of that element at trial." *United States v. Rem*, 38 F.3d 634, 643 (2d Cir. 1994).

The presumption of correctness applicable to tax assessments is sufficient to sustain the IRS's burden here. It issued Certificates of Assessments and Pay-

ments and Deficiency Notices which prove that a tax assessment has been made for each of the subject years. As the Second Circuit recently reaffirmed in *In re Waters*, No. 21-1219, 2022 WL 17086310, at *3, 130 A.F.T.R.2d 2022-6522 (2d Cir. Nov. 21, 2022), "[f]ederal tax assessments are presumed to be correct and constitute *prima facie* evidence of liability, . . . [and] a taxpayer who wishes to challenge the validity of the assessment . . . bears the burdens both of production and of persuasion," *id.* (quoting *IRS v. WorldCom, Inc. (In re WorldCom, Inc.)*, 723 F.3d 346, 352 (2d Cir. 2013), and *United States v. McCombs*, 30 F.3d 310, 318 (2d Cir. 1994)). There is no challenge before this Court as to the historical facts creating the tax liability nor to the mathematical computation of that tax liability.

The legal basis for the assessment of a frivolous filing penalty for the years 2001-2003 is statutory. Section 6702(a) of the Internal Revenue Code provides for the penalty when a taxpayer knowingly submits "what purports to be a return of a tax" which "does not contain information on which the substantial correctness of the self-assessment may be judged" or "contains information that on its face indicates that the self-assessment is substantially incorrect." Here, the IRS has identified the Astrups' cover letter and 1040 forms submitted for the years 1999, 2001, 2002, and 2003 as frivolous. The cover letter stated that Astrup and his wife "are a private-sector citizen [sic] employed by a private-sector company as defined in 3401(c)(d). We are not employed in a 'trade or business' nor are we an 'officer of a corporation.'" The enclosed 1040 forms represented that they had zero wages, zero tax due, and claimed a refund of withheld wages.

These documents plainly contained false and frivolous statements and were substantially incorrect on their face. Astrup was a paid employee of Aerospace Avionics throughout the entire period. And his assertion that employees of private businesses do not have to pay taxes was frivolous under any definition. Every case addressing this boilerplate tax defier argument has so held. *See e.g., Cipolla v. I.R.S.*, No. 02-cv-2063, 2003 WL 22952617, at *4 (E.D.N.Y. Nov. 5, 2003); *accord, Meuli v. Commissioner of IRS*, No. 13-cv-1114, 2013 WL 6480692, at *3 (D. Kan. Dec. 10, 2013); *United States v. Howard*, No. 07-cv-620, 2008 WL 4471333, at *11 (D. Ariz. June 25, 2008).

As to the 2006-2012 period, Astrup filed no tax returns at all. He received notices of deficiency for every year. And in his deposition, he admitted earning income throughout that period. He has not challenged any of the data that the IRS collected from third parties to compute the amount of tax owed, and on which additional penalties and interest are based.[3]

Instead, Astrup raises the formulaic defenses that individuals who believe they shouldn't have to pay any taxes consistently raise, and which the courts have just as consistently rejected. *See Schiff v. Comm'r*, 751 F.2d 116, 117 (2d Cir. 1984) (argument that the tax on wage income is unconstitutional is "wholly lacking in merit, is without any logical basis, and has been rejected countless times by the [Second Circuit] and others"); *see also Banat v. Comm'r*, 80 F. App'x 705, 707 (2d Cir. 2003) ("[T]he payment of income taxes is

---

[3] The IRS has not been able to locate Astrup's 2010 filing, and therefore has withdrawn any claims relating to the frivolous filing of that return.

not optional."). Astrup's defenses are the tax defier's smorgasbord, pulling out every possible phrase from the Constitution he can think of: the Sixteenth Amendment was not properly ratified and is therefore unenforceable; imposition of tax violates the Thirteenth Amendment's prohibition of slavery; it violates the Fifth Amendment's privilege against self-incrimination to make individuals sign and file tax returns; the IRS cannot "seize" assets under the Fourth Amendment without a court order; and something about how assessment of taxes violates Article I by creating "class warfare."

Astrup complains that despite numerous "petitions" raising these issues, they need to be seriously evaluated. They do not. They are frivolous arguments that have been repeated *ad nauseam* by many holding a belief, sincere or not, that it is unconstitutional to require them to pay taxes. The arguments are so well traveled that they even have their own Wikipedia entry.[4] Courts will refuse to provide an analysis of legal arguments that are so palpably spurious, and have been rejected judicially in detailed opinions so many times previously, *see e.g., United States v. Thomas*, 788 F.2d 1250, 1254-55 (7th Cir. 1986), that to do so would be a waste of limited judicial resources. "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit. The constitutionality of our income tax system – including the role played within that system by the Internal

---

[4] "Tax protester Sixteenth Amendment arguments," available at https://en.wikipedia.org/wiki/Tax_protester_Sixteenth_Amendment_arguments#cite_note-12. The article is a pretty good summary of the case law in this area.

Revenue Service and the Tax Court – has long been established." *Crain v. C.I.R.*, 737 F.2d 1417, 1417-18 (5th Cir. 1984).

This decision having upheld the validity of the penalties, tax, and interest against Astrup, there is no non-frivolous basis for Astrup to challenge the tax liens placed against his jointly held Long Island residence. *See* 26 U.S.C. § 6321. The liens may be enforced according to law upon entry of final judgment.

The IRS asserts that judgment should be entered against Astrup concurrently with or immediately after entry of this decision. But it has made no showing for a separate judgment under Federal Rule of Civil Procedure Rule 54(b) and it appears from the docket that there are other parties, including Roseanne B. Astrup, who remain defendants in this action. (The Court has reviewed the stipulation between the IRS and the New York State Division of Taxation and Finance, which may be enough to allow entry of judgment against the State, but it appears that Ms. Astrup and the Town of Southampton are unresolved parties.) Final judgment is therefore deferred, although the Court expects the IRS to close out this case in short order.

CONCLUSION

The motion of the United States for summary judgment is granted. Entry of judgment is deferred pending further proceedings.

SO ORDERED.

/s/ Brian M. Cogan
U.S. District Judge

Dated: Brooklyn, New York
March 18, 2023

ORDER DENYING MOTION TO RECALL THE MANDATE AND THE MOTION TO FILE LATE PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT (OCTOBER 23, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAUL S. ASTRUP,

Defendant-Appellant,

ROSEANNE B. ASTRUP, NEW YORK STATE COMMISSIONER OF TAXATION AND FINANCE, TOWN OF SOUTHAMPTON,

Defendants.

Docket No. 23-847

Before: Dennis JACOBS, Myrna PEREZ, Maria ARAUJO KAHN, Circuit Judges.

Appellant, proceeding pro se, moves to recall the mandate and for leave to file a late petition for rehearing.

IT IS HEREBY ORDERED that the motions are DENIED.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Clerk of Court
[SEAL]

ASTRUP'S MOTION TO RECALL MANDATE (DOC 90) (SERVED SEPTEMBER 27, 2024, DOCKETED OCTOBER 1, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007

UNITED STATES

v.

PAUL S. ASTRUP

Docket No. 23-847

Motion for: recall mandate

Set forth below precise, complete statement of relief sought:

Appellant Astrup requests: 1) he not be denied his right to file a motion for panel rehearing to the Court's Summery Order; 2) the court's 8-19-24 mandate be recalled; 3) his motion for panel rehearing filed 9-1 0-24 be accepted.

MOVING PARTY: Paul Astrup, Pro se

OPPOSING ATTORNEY: Bethany B. Hauser
P.O. Box 502, Ben Franklin Station, Suite 4333
Washington, DC 20044

Court-Judge/Agency appealed from: US Court of Appeals Second Circuit

Has movant notified Opposing counsel (required by Local Rule 27.1):

☑ Yes

Opposing counsel's position on motion:

☑ Don't Know

Does Opposing counsel intend to file a response:

☑ Don't Know

Is the oral argument on motion requested?

☑ No (requests for oral argument will not necessarily be granted)

Signature of Moving Attorney

/s/ Paul Astrup
Pro Se

Date: 9-27-2024

EXPLANATION OF REASON

See Appellant Astrup's Motion for panel rehearing filed September 10, 2024, copy Attached.

In sum: the court did not send its June 24, 2024 Summary Order to Astrup before August 27, 2024, and the court did not send its August 19, 2024 Mandate to Astrup before August 27, 2024, Both were Received by Astrup from the court on or about August 30, 2024.

Failure to recall the mandate and to accept Astrup's September 10, 2024 motion For panel rehearing under these circumstances would be to deny Astrup his right To timely file a motion for rehearing of the court's Summary Order.

ASTRUP'S MOTION TO FILE LATE PETITION FOR REHEARING (DOC 91) (SERVED SEPTEMBER 27, 2024, DOCKETED OCTOBER 1, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007

UNITED STATES

v.

PAUL S. ASTRUP

Docket No. 23-847

Motion for: permission to file a late petition for panel rehearing

Set forth below precise, complete statement of relief sought:

Appellant Astrup requests: 1) he not be denied his right to file a mot ion for panel rehearing in response to the Court's Summary Order; 2) his motion for panel rehearing filed 9-10-24, well after the 6-24-24 date of the Summary Order be accepted as timely as the time lapse was the fault of the court not Astrup

MOVING PARTY: Paul Astrup, Pro se

OPPOSING ATTORNEY: Bethany B. Hauser

P.O. Box 502, Ben Franklin Station, Suite 4333
Washington, DC 20044

Court-Judge/Agency appealed from: US Court of Appeals Second Circuit

Has movant notified Opposing counsel (required by Local Rule 27.1):

☑ Yes

Opposing counsel's position on motion:

☑ Don't Know

Does Opposing counsel intend to file a response:

☑ Don't Know

Is the oral argument on motion requested?

☑ No (requests for oral argument will not necessarily be granted)

Signature of Moving Attorney

/s/ Paul Astrup
Pro Se

Date: 9-27-2024

EXPLANATION OF REASON

See Appellant Astrup's Motion for rehearing filed September 10, 2024, copy attached.

In sum: the court did not send its June 24,2024 Summary Order to Astrup before August 27,2024, and the court did not send its August 19,2024 Mandate to Astrup before August 27,2024. Both were received by Astrup from the court on or about August 30,2024.

Failure to accept Astrup's September 10, 2024 motion for panel rehearing under These circumstances would be a denial of Astrup his right to timely file a motion For rehearing of the court's Summary Order.

NOTICE OF DEFECTIVE FILING (DOC 89) DIRECTING ASTRUP TO FILE BOTH A MOTION TO RECALL THE MANDATE AND A MOTION FOR PERMISSION TO FILE A LATE PETITION FOR PANEL REHEARING (SEPTEMBER 16, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
Chief Judge
Date: September 16, 2024
Docket#: 23-847cv
Short Title: United States of America v. Astrup

CATHERINE O'HAGAN WOLFE
Clerk of Court
DC Docket #: 18-cv-1531
DC Court: EDNY (CENTRAL ISLIP)
DC Judge: Cogan
DC Judge: Bloom

NOTICE OF DEFECTIVE FILING

On September 12, 2024, the motion for panel rehearing, on behalf of the appellant Paul S. Astrup, was submitted in the above referenced case, The document does not comply with the FRAP or the Court's Local Rules for the following reason(s):

☒ Untimely filing

☒ Incorrect Filing Event

☒ Other: The court issued the mandate on 08/19/2024, therefore a motion to recall the mandate is required, That motion must include the enclosed Motion Information Statement form, your explanation of reason(s) and the enclosed Certificate of Service form. A separate motion for permission to file a late petition for panel rehearing is also required, Fill out the enclosed forms for permission to file a late petition.

Please cure the defect(s) and resubmit the document, with the required copies if necessary, no later than 10/07/2024. The resubmitted documents, if compliant with FRAP and the Local Rules, will be deemed timely filed,

Failure to cure the defect(s) by the date set forth above will result in the document being stricken, An appellant's failure to cure a defective filing may result in the dismissal of the appeal.

Inquiries regarding this case may be directed to 212-857-8522.

LETTER FROM ASTRUP TO COURT OF APPEALS (DOC 6) REQUESTING COPIES OF SUMMARY JUDGMENT AND MANDATE SAYING ASTRUP WAS NEVER PERSONALLY NOTIFIED OR OTHERWISE SERVED WITH EITHER THE SUMMARY JUDGMENT OR THE MANDATE (SIGNED AUGUST 27, 2024, DOCKETED AUGUST 29 , 2024)

PAUL S. ASTRUP
8 Hill Drive
Riverhead, New York 11901
(631) 728-0299

Catherine O'Hagen Wolfe
Clerk of Court
United States Court of Appeals, 2nd Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: United States v. Paul S. Astrup, Case No. 23-847

Dear Ms. Wolfe,

Confirming my phone conversation today with Mrs. Jenni, approximately at2:45 of your office:

On April 2, 2024, I properly filed and served my Reply Brief. Since then, I have not heard from the Court or the Department of Justice.

Yesterday, I learned from a third party that on June 24, 2024 the Court issued a Summary Judgment in the case and on August 19, 2024 the Court issued

its Mandate. To be clear, I was never personally notified or otherwise served with either the Summary Judgment or the Mandate.

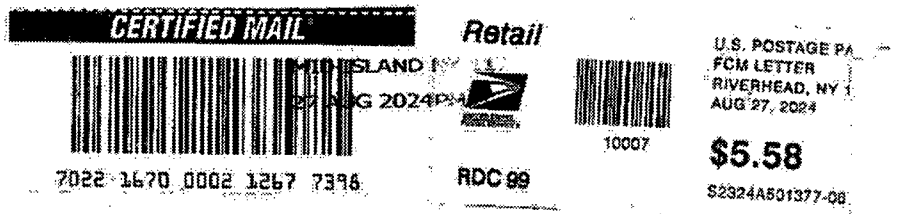
Respectfully, I request the Court officially mail a copy of the Summary Judgment to me at the address above, which as the Court knows, is the home where my wife and I have been residing since the Court forced us to vacate our home in East Quoque, N.Y., and from which we mailed our Brief and Reply Brief.

Once I receive the Summary Judgment from the Court I will promptly act accordingly,

Respectfully submitted,

/s/ Paul S. Astrup

Cc: Bethany H. Hauser
U.S. Department of Justice
Tax Division, Appellate Section
P.O. Box 502
Washington, D.C. 20044



Paul Astrup
8 Hill Drive
Riverhead, NY 11901

Catherine O'Hagen Wolfe
Clerk of Court
United States Court of Appeals, 2nd Circuit
Thurgood Marshall United States Courthouse
40 Foley Square

ASTRUP'S MOTION FOR PANEL REHEARING, (DOC 88) (SERVED SEPTEMBER 10, 2024, DOCKETED SEPTEMBER 16 , 2024)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PAUL S. ASTRUP,

Defendant-Appellant.

No. 23-847

Case No. 18-cv-1531
Eastern District Court

MOTION FOR PANEL REHEARING

Defendant-Appellant ("Astrup") submits this petition for panel rehearing and hearing en banc in response to the Court's Summary Order dated June 24, 2024 *which was not served on Astrup until August 27, 2024, eighty-five days after Astrup filed his Reply Brief on April 3, 2024, and after Astrup's phone call to the Clerk of Court.*[1] Under these circumstances

[1] *See* Astrup's 8-27-24 letter to the Court and proof of service. Exhibit A attached hereto.

the Court's August 19, 2024 Mandate appears not to have any legal consequence.

ARGUMENT

I. Shameful Judicial Conduct

While the Courts have been slowly working this case along, Astrup and his wife have been handicapped as they have been judicially forced out of their home, forced to move in with their son and his family, and fearful they will have no home to return to after prevailing in Court.

The Court took 87 days, until June 24, 2024, to enter its Summary Order following Astrup's Reply Brief which was entered on April 3, 2024,

In addition, the Court did not serve, or otherwise inform Astrup that it had entered its Summary Order on June 24, 2024,

In addition, on July 2, 2024, the Court approved the sale of the home and property the Court had previously ordered Astrup to vacate.[2]

In addition, the Court took another fifty-six days — until August 19, 2024, to enter its Mandate.

In addition, the Court did not serve, or otherwise inform Astrup that it had entered a Mandate on August 19, 2024.

In addition, only after Astrup a) learned from a third party on August 27, 2024that the Court had entered said Summary Order and Mandate, and b)

---

[2] *See* Exhibit B attached: Amended Order approving sale of Astrup's home.

telephoned the Court on August 27, 2024 to verify the accuracy of what he had learned and c) informed the Court during said phone call that he had not been served with either the Summary Order or the Mandate, did the Court finally serve Astrup – on August 27, 2024, with a copy of the Summary Order and the Mandate,

II. Dishonorable Judicial Conduct

Astrup Did Not Fail to Present "Any Genuine Dispute Of Material Fact as to the Validity of the IRS's Tax Assessment"

Ignoring Astrup's on-point, thoroughly professional, detailed Legal Briefs and Appendix which included an abundance of genuine, material facts, which have never been ruled upon by any Court, with each material fact itself supported with genuine factual evidence, all demonstrating that Astrup's propositions regarding the unlawful nature of the IRS's tax assessments are clearly m*ore likely true than not,*[3] the Court issued its Summary Order which, *without addressing any of Astrup's genuine material facts, dishonestly, unjustly and immorally asserted Astrup failed to present any genuine dispute of material facts as to the validity of the IRS's tax assessment.*

---

[3] *See* Astrup's Legal Brief to this Court, dated December 9, 2023, pages 19-22, and Astrup's Reply Brief to this Court, dated April 2, 2024, pages 1-15.The one, non-tax assessment material fact Plaintiff attempted but failed to genuinely and effectively dispute was the fact that Plaintiff is obligated to respond to proper petitions for redress of its violation the rights secured by the U.S. Constitution.

Contrary to the Court's assertion, the record shows Astrup has presented numerous, genuine, material facts that he has relied on in concluding that there is no law under Subtitle A of the Internal Revenue Code or elsewhere that requires him to sign and file an individual income tax return and to pay the tax. NOTE: See new evidence discussed below under "New Decisive Evidence."

The record shows Plaintiff has not responded, much less disputed Astrup's declaration of material facts, failing to refute, deny, reject, contradict, or otherwise address any of them.

As Astrup has argued, Plaintiff's silence equates to an admission to the truth of those facts. The inference to be drawn from Plaintiffs silence is material. Plaintiff's silence qualifies as an admission because:

a. Plaintiff obviously received and understood Astrup's material facts, and

b. Plaintiff was at liberty to deny Astrup's declaration of facts, and

c. Astrup's declaration of facts affected Plaintiff's rights, to which Plaintiff had an interest and which naturally called for its response, and

d. The facts were within Plaintiffs' knowledge.

In sum, Astrup has proven the IRS's tax assessment is incorrect by a *preponderance of evidence,* evidence Plaintiff has admitted is true by its silence.

Instead of addressing Astrup's material facts, Plaintiff has merely presented facts that are *immaterial as they are simply tax enforcement related facts.*[4]

Plaintiffs facts merely attest to actions Plaintiff has taken to force Astrup to pay what Astrup has genuinely shown to be an unconstitutional federal individual income tax that violates rights secured to Astrup by the U,S, Constitution including Articles I and V and the 5th, 7th, 9th and 14th Amendments, *as well as rights secured to him by the Petition Clause of the First Amendment to the US. Constitution which include Astrup's* right *to a meaningful response from Plaintiff to his proper petitions for redress of those tax assessment grievances and his Right of enforcement should Plaintiff refuse to provide a meaningful response.*

Plaintiff's *tax enforcement related facts* are immaterial unless and until Astrup's facts disputing the legitimacy of the tax are fairly addressed by the Judiciary and found to be immaterial. Thus far, *no court has ever addressed much less ruled on any of the material facts relied on by Astrup.*

The Genuine Dispute In This Case Remains

The Court's Summary Order, void of adequate. official support is not warranted, It is unjustified as Plaintiff has not shown that "there is no genuine dispute as to any material fact and it is entitled to judgment as a matter of law."

In our Constitutional Republic, Plaintiffs general tax enforcement rights do not trump specific rights

---

[4] *See* Plaintiff's Response Brief, pages 4-7 for a summary of the tax-enforcement actions Plaintiff has taken against Astrup.

secured to Astrup by the U.S, Constitution including, most importantly, the Petition Clause of its First Amendment.

This Court's Summary Order violates Federal Rules of Civil Procedure 56(a) as Plaintiff did indeed fail in its legal obligation to show it is entitled to judgment as a matter of law.

III. Astrup's 16th Amendment Related Facts Have Never Been Denied by Plaintiff or Any Court

Among the 460 genuine material facts presented by Astrup in this case, 119 are directly related to the ratification of the 16th Amendment to the U,S. Constitution.[5]

As Astrup has argued, *not one of 119 material facts has ever been specifically refuted, denied, contradicted or otherwise addressed* by Plaintiff or any Court.

Notably, in his Legal Brief to this Court, Astrup reduced those 119 questions down to one overriding question: "What thirty-six State Legislatures approved the Sixteenth Amendment as proposed by Congress and in compliance with their State Constitutions, as required by Article V of the U.S. Constitution?"[6]

That question was ignored by Plaintiff and the Court and has never, ever been answered by Plaintiff or by any Court.

---

[5] *See* page 20 of Astrup's Legal Brief to this Court.

[6] *See* Astrup's Legal Brief, page 3.

However. Astrup provided Plaintiff and the Court with numerous, genuine, material, facts sufficient to prove 36 States did not approve the 16th Amendment cis required by the Constitution. facts never addressed by Plaintiff or any Court.[7]

IV. The Court Has Misapprehended The Petition Clause of the First Amendment

As argued by Astrup, a fundamental issue in this case is the Rights secured to Astrup by the First and Ninth Amendments to the U.S. Constitution which read, respectively:

> "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances."

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Cruelly and dishonestly, Plaintiff and the Courts ignored — did not respond much less deny any aspect of Astrup's thorough, historical record of the meaning of the Petition clause, which record not only proves government is obligated to respond to a proper petition for redress of its violation of the Constitution, it also proves the people have the right of enforcement should the government decide not to provide a meaningful response.[8]

---

[7] *See* Astrup's Legal Brief, page 9, Appendix V pages 1428-1451

[8] *See* for instance, pages 22-25 of Astrup's response to Plaintiff's Motion for summary judgment in the District Court, and Astrup's Reply Brief, pages 8-12.

On page 4 of its Summary Order, the Court cites two totally inapplicable cases in holding the Petition clause does not provide a right to a response from the government to a proper Petition for Redress of its violations of the Constitution: *Smith v. Ark. Highway Emps.,* 441 U.S. 463 (1979) and *Minn. State Bd. for Cmty. Colls. v. Knight,* 465 U,S. 271 (1984). The Court ignored, as it did not respond, much less deny any aspect of Astrup's fact-and-law-based arguments proving that those two SCOTUS decisions were inapplicable — totally irrelevant and immaterial.[9]

Instead the Court simply stated on page 4 of its Summary Order, "[T]he Petition clause does not provide a right to a response or official consideration."

As Astrup has argued throughout this case, *no Court, including the Supreme Court, has ever declared the principal rights of the People and the principle obligations of the Government under the Petition Clause of the 1st Amendment!*

However, the thorough historical record of right to petition provided by Astrup proves Plaintiff was obligated to respond to Astrup's proper petition for redress of its violation of the subject provisions of the Constitution, and that should Plaintiff fail to provide a meaningful response, Astrup has the right of enforcement as by redress before taxes.[10]

In addition, Plaintiff, the District Court and this Court have ignored Astrup's argument that the *Smith*

---

[9] *See* for instance Astrup's Reply Brief, pages 8-12.

[10] *See* Astrup's Legal Brief at pagesl3 and 27 and Appendix Volume 5, pages 1381-1387. *See also* Astrup's Reply Brief, pages 9-10.

v Arkansas and *Minn. v Knight* cases are distinguishable and inapplicable here because:

1) unlike Astrup, who as a private citizen was petitioning the government for redress of its violation of provisions of the U.S. Constitution, the petitioners in said *Smith v Arkansas* and *Minn. v Knight* cases were petitioning their State government employers in their roles as State government employees in a quest for relief from their State government employers' internal, agency regulations and procedures, such as their grievance procedures, and the U.S. Supreme Court held those State government employers were not lawfully obligated to respond to their State employees' employment-related petitions, and

2) unlike Astrup's petition, the petitions in said *Smith v Arkansas* and *Minn. v Knight* cases *were clearly not seeking redress or relief from any violation of a constitutionally enumerated right(s),* and

3) in addition to said differences, a *record of the historic and fundamental principles that led to the enumeration of the right to petition in the First Amendment* was not before the Courts, including the Supreme Court when they decided said *Smith* and *Knight* cases,[11] However, a thorough historical record of the principles that led to the enumeration of the right to petition in the First Amendment has been before the Plaintiff and the Courts throughout the instant case, and

4) of critical importance, after said *Smith* (1979) and *Knight* (1984) decisions, but prior to the instant case, the U.S. Supreme Court held that to determine

---

[11] *See* Astrup's Reply Brief, page 9.

the proper scope and application of the Petition Clause, *"Some effort must be made to identify the historic and fundamental principles that led to the enumeration of the right to petition in the First Amendment, among other rights fundamental to liberty."*[12] and

5) throughout this case, Astrup has provided Plaintiff and the Courts with a thorough historical record of the principles that led to the enumeration of the right to petition in the First Amendment[13], and

6) said historical record proves Plaintiff was and remains obligated to respond to Astrup's Petition for redress of its enumerated constitution-oriented violations, and that as a consequence of its refusal to do so, Astrup had the right to exercise one of the principal rights of the People included in the Petition Clause, the "right of enforcement." Thus, Astrup chose "redress before taxes" until his grievances were redressed, and

7) most notably, neither Plaintiff nor the Court has acknowledged, much less refuted any part of said historical record of the Petition Clause provided by Astrup, and

8) neither the Plaintiff nor the Court has mentioned, much less refuted what the U.S. Supreme Court "tells us" in said *Guarnieri* case regarding the

---

[12] *See* Astrup's Reply Brief, page 10. *See also District of Columbia v. Heller* (554 U.S, 570, 579, 592) in 2008, and again in *Borough of Duryea v Guarnieri* (564 U.S. 379. 394-395) in 2011.

[13] *See* Astrup' Legal Brief at page 27 and Appendix Vol 5 at pages 1381-1387.

binding significance of the historical record of the Petition Clause in determining its meaning.[14]

In sum, as Astrup has earnestly, fully and fairly argued, said *Smith v. Arkansas* and *Minn. v Knight* cases are inapplicable given a) the meaningful, stark differences in the facts and circumstances of this case and those in said *Smith v, Arkansas* and *Minn. v Knight* cases, and b) given what the Supreme Court now "tells us" in *Borough of Duryea v. Guarnieri* and *District of Columbia v, Heller.*

V. The Court Overlooked Astrup's Right To Due Process

Due process is a requirement. that legal matters be resolved according to established law, rules and principles, and that individuals be treated fairly.

The Court ignored Astrup's due process Rights secured to him by the Fifth and Fourteenth Amendments.

Notably, in the interest of justice, Astrup reduced to seven concise questions the hundreds of genuine material facts referred to above and which lay at the heart of Astrup's/WTP's multi-year "Remonstrance" – the historic, highly professional and proper First Amendment, income-tax related petition process upon which this case is grounded.

Said seven questions were properly presented to Plaintiff and the Court.[15]

---

[14] *See* Astrup's Reply Brief, pages 5-8.

[15] *See* Astrup's Legal Brief at pages 3-4.

Plaintiff and the Judiciary have even ignored those seven summary questions.

In sum, the Court failed to require Plaintiff to respond to the questions included in the underlying First Amendment Petition which was properly served on Plaintiff on April 13, 2000[16], and or the questions that were included in the First Amendment Petition properly served on Plaintiff on March 16, 2002.[17]

The Court's Summary Order does not withstand constitutional scrutiny under the Constitution's Petition Clause and Due Process Clauses.

Petitioning the government for redress of violations of the Constitution and enforcing that Right by exercising the right of redress before taxes in the event of government's steadfast refusal to provide a meaningful response to a proper Petition is a fundamental, individual Right, *See* U. S Constitution, First and Ninth Amendments, Plaintiff's retaliatory tax-enforcement actions are impermissible,

The court's decision furthers the impermissible infringement of that Right.

In sum, Plaintiff's actions violated Astrup's Due Process and First Amendment Petition Clause Rights by:

1. failing to honor its obligation to provide a meaningful response to Astrup's/WTP's rightful Petition for Redress of Grievances

---

[16] *See* Astrup's Legal Brief at page 33 and Appendix Vol. 10, page 2640 — 2725.

[17] *See* Astrup's Legal Brief at page 36 and Appendix Vol. 11, pages 3005-3098.

that sought relief from Plaintiff's violation of Rights secured to him by the U.S. Constitution, and

2. preventing Astrup from rightfully enforcing said Rights by retaining his taxes, until his grievances were redressed.

As any Right that is not enforceable is not a Right, the Petition Clause includes the Right of enforcement in the event the Government ignores its obligation to provide a meaningful response to a proper Petition for Redress of its violation of the Constitution.

Astrup rightfully exercised his Right of enforcement by retaining his taxes until he received a meaningful response to his Petition.

Instead of honoring Astrup's right of enforcement Plaintiff violated that Right by seizing Astrup's personal property, including his residence.

Such is a clear violation not only of Astrup's First and Ninth Amendment Petition Clause Rights but also his Fifth and Fourteenth Amendment Due Process Right to have the matter at issue be resolved according to the law of the land and that he be treated fairly.

VI. The Court Misapprehended Astrup's Right to a Jury Trial

As a consequence of its misapprehension of the Petition Clause of the First Amendment, its misapprehension of the *Smith v. Arkansas* and *Minn. v. Knight* cases, and its misapprehension of due process the Court misapprehended Astrup's Right to a jury trial.

The Seventh Amendment to the United States Constitution reads:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . "

Under the circumstances of this case Astrup's right to a trial by jury is inviolate. The Right cannot be violated —it is free from any impairment.

The record shows Astrup repeatedly and professionally demanded a trial by

jury from the outset of this case, both in the District Court and in this Court.[18]

As argued, this case rests on the Constitution, giving the Court jurisdiction to have a jury decide this case under Article III, Section 2 of the Constitution, which mandates at Article III, Section 2 that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution." This case arose under the Constitution. It arose as a consequence of the Government's violation of principal rights secured to Astrup by the United States Constitution and the Government's violation of its principal obligations under the Petition Clause.

As argued, Astrup not only has a Right to a response from the Government to his Petition for Redress of the Government's violation of the subject clauses of the Constitution, the Petition Clause also grants him the natural, un-alienable right to injunctive relief — that is, the necessary, indispensable and

---

[18] *See* Astrup's Legal Brief, page 38 and Astrup's Reply Brief at 15-16.

unavoidable right to retain his taxes *and his home* until the [constitutional] grievance is redressed in the interest of preventing a future wrong. Without such injunctive relief, which is in the public interest, Astrup has continued to suffer irreparable injury outweighing any harm to the Government. Such injunctive relief was and remains in the public interest given its constitution-based cause and effect. As argued above, due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly.

Astrup respectfully requested "a trial by jury and a period for discovery questions of appropriate officials in the Department of the Treasury and the Department of Justice, based on the genuine, material facts laid out in Astrup's legal briefs and Appendix.

VII. The Court Misapprehended Astrup's Request For Discovery

In requesting discovery Astrup was and remains intent on disposing "high ranking government officials" *or their surrogates* most knowledgeable on the subject matter — the material facts at issue.

NEW, DECISIVE EVIDENCE

Astrup submits this combined petition for panel rehearing and petition for rehearing en Banc, following his initial and only receipt on August 29, 2024 of the Court's Summary Order, which was mailed by the Court on August 27, 2024 following an eighty-seven day delay in service of the Summary Order which is dated June 24, 2024.

Astrup's submission of this petition for rehearing also follows his receipt of a copy of an official response, dated August 1, 2024, from the Office of the State Comptroller of New York to a FOIL Request by Anthony Furtia, Jr.

On July 25, 2024, Anthony Futia, Jr. served a proper, lawful FOIL Request on the New York State Comptroller Thomas P. DiNapoli requesting, "a certified list of all statutes which create a specific liability for taxes imposed by Subtitle A of the Internal Revenue Code."[19]

On August 1, 2024, the Office of the State Comptroller responded to Futia's FOIL Request saying it was unable to locate any records that satisfied the request.[20]

To be clear, throughout this case, and the underlying multi-year Petition process, Plaintiff has failed to identify a law that makes Astrup liable to pay the federal and state income tax.

Now, Astrup's state government, the State of New York is on record saying it cannot find any such law, suggesting there is no such law.

Astrup argues said response is decisive evidence in the instant case, for it has the power of deciding this matter.

In the unlikely event the Court decides, in light of this new evidence, to disregard the fact that it did not serve its June 24, 2024 Summary Judgment or its

---

[19] Exhibit A attached hereto.

[20] Exhibit B attached hereto.

August 19, 2024 Mandate on Astrup until August 27, 2024, and thus decides that due to the Mandate the case is closed and the Court no longer has jurisdiction, Astrup respectfully reminds the Court that in extraordinary circumstances an appellate court, by motion or on its own, may recall a mandate that has issued. The U.S. Supreme Court has held that "the courts of appeals are recognized to have an inherent power to recall their mandates . . . to be held in reserve against grave, unforeseen contingencies." *Calderon v. Thompson,* 523 U.S. 538, 549 (1998).

Astrup's instant motion for rehearing follows such a grave, unforeseen contingency, giving rise to a profound jurisdictional issue not previously raised in the instant case — *i.e.*, an admission by the New York State Comptroller that there is no law that required Astrup to file a federal Form 1040 or to pay the federal income tax.

Surely, such a critical, serious admission, which goes to the very heart of Astrup's case, would make necessary recall of the Mandate, even if the Mandate followed the proper service of a Summary Judgment, in order to add instruction about a post judgment interest — to resolve a jurisdictional issue not previously raised and to make further arrangements so that the U.S. Supreme Court would not be called upon to confront an issue for the first time without the benefit of a prior ruling.

Astrup respectfully requests the Court reconsider and exercise its discretion to an end justified by the logic, facts and effect of the newly obtained, critically important, post mandate evidence.

RELIEF REQUESTED

Astrup respectfully requests an order, pending the final outcome of this case:

a. directing Plaintiff to return the monetary funds it took from Astrup, and

b. directing Astrup's home not be sold.

In addition, Astrup respectfully requests that the case be returned to the District Court for discovery and a trial by jury.

Respectfully submitted, September 10, 2024

/s/ Paul Astrup

Pro Se
8 Hill Drive
Riverhead, NY 11901
(631) 728-0299
Astrupaul@optonline.net

* This Petition for Rehearing contains 3853 words including caption and footnotes.

EXHIBIT A

ANTHONY J. FUTIA, JR.
34 CUSTIS AVENUE
NORTH WHITE PLAINS, NY 10603
914-906-7138

July 25, 2024

New York State Comptroller Thomas P. DiNapoli
Records Access Office
Communications, 15th Floor
Office of the State Comptroller
110 State Street
Albany, NY 12236-0001

Subject: FOIL Request

Dear Comptroller DiNapoli:

I am a sovereign citizen of the state of New York and a retired member of the New York State retirement system.

I am requesting a certified list of all statutes which create a specific liability for taxes imposed by Subtitle A of the Internal Revenue Code.

Sincerely,

/s/ Anthony J. Futia, Jr

cc: New York State Senator Shelly B. Mayer
United States Congressman Michael Lawler

Attachments

05/29/2019 Affidavit, Anthony *J.* Futia,

02124/2023 New York State Comptroller's Office communications

07/04/2024 Blue Folder tax information

EXHIBIT B

STATE OF NEW YORK.
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK. 12236

THOMAS P. DINAPOLI
STATE COMPTROLLER

PRESS OFFICE
Tel: (518) 474-4015
Fax: (518) 473-41940

August 10, 2024

Mr. Anthony J. Futia
34 Custis Avenue
White Plains, NY 10603

Re: FOIL Request #2024-0649

Dear Mr. Anthony J. Futia,

This is in reply to your fax/letter dated 07/25/2024, wherein, pursuant to the Freedom of Information Law (Public Officers Law, Article 6). you requested a certified list of all statutes which create a specific liability for taxes imposed by Subtitle A of the Internal Revenue Code.

Personnel have informed me that after a diligent search, they have been unable to locate any records that satisfy your request.

Sincerely

/s/ Jane Hall
Records Access Officer

BLANK PAGE