

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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WE THE PEOPLE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-1211
)	(EGS)
)	
UNITED STATES, <i>et al.</i> ,)	
)	
Defendants.)	
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OPINION & ORDER

Plaintiff We the People Foundation for Constitutional Education, Inc. and several individually-named plaintiffs, including *pro se* plaintiff Robert L. Schultz, bring this action against the United States of America, the U.S. Treasury Department, the Internal Revenue Service, and the U.S. Department of Justice. Plaintiffs' Complaint "arises from the failure of the President of the United States and his Attorney General and his Secretary of the Treasury and his Commissioner of the Internal Revenue Service, and the failure of the United States Congress, to properly respond to Plaintiffs' Petitions for Redress of Grievances against their government, namely: grievances relating to violations of the U.S. Constitution's war powers, taxing, money, and "privacy" clauses." See Plaintiffs' Amended Complaint ("Compl.") at 66. Plaintiffs also allege that the Executive Branch has retaliated against plaintiffs for petitioning the government and for "Peaceably Assembling and Associating with other individuals under the umbrella of the We the People Foundation for Constitutional Education and the We the

People Congress." Id.

Pending before the Court are defendants' Motion to Dismiss and plaintiffs' Motion to Amend the Complaint. Upon consideration of the motions, the oppositions thereto, and the replies in support thereof, and for the following reasons, it is hereby

ORDERED that the defendants' Motion to Dismiss is **GRANTED**.

It is further

ORDERED that the plaintiffs' Motion for Leave to File Amended Complaint is **DENIED**.

I. Motion to Dismiss

A. Standard of Review

A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) should be granted when it appears "beyond doubt" that there is no set of facts that plaintiffs can prove that will entitle them to relief. See *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1114 (D.C. Cir. 2000). "Accordingly, at this stage in the proceedings, the Court must accept as true all of the complaint's factual allegations." *Johnson v. District of Columbia*, 190 F. Supp. 2d 34, 39 (D.D.C. 2002).

B. Discussion

The First Amendment provides that "Congress shall make no law ... abridging ... the right of the people peaceably to

assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I. Plaintiffs contend that they therefore have a constitutional right to a response to the petitions they have filed with the various defendants, and that defendants have committed constitutional torts against plaintiffs in failing to respond to their petitions. See Pl. Opposition to Def. Motion to Dismiss ("Pl. Opp.") at 9-10. The Supreme Court, however, has held that "the 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." See *Smith v. Ark. State Highway Employees, Local 1315*, 441 U.S. 463, 465 (1979). Plaintiffs' claims that the defendants are obligated to "properly" respond to plaintiffs' petitions shall thus be dismissed for failure to state a claim upon which relief may be granted.

Plaintiffs' claims based on the "retaliatory actions" the defendants have allegedly taken against plaintiffs for exercising their First Amendment rights are similarly flawed. The governmental actions plaintiffs complain of include sending plaintiffs threatening letters, placing liens on their property, raiding plaintiffs' homes or offices, and forcing plaintiffs to appear before administrative or other tribunals. Compl. at ¶ 48. It appears that because plaintiffs have not received responses to their petitions, they have "decided to give further expression to their Rights under the First Amendment to Speech, Assembly and

Petition, by not withholding and turning over to government direct, un-apportioned taxes on Plaintiffs' labor - money earned in direct exchange for their labor (not to be confused with money "derived from" labor)." Pl. Opp. at 30-31.

Congress has provided methods for challenging the legality of such enforcement actions and to prevent governmental abuse. For example, taxpayers have the right to notice and a hearing before the federal government can file a notice of a tax lien or levy. 26 U.S.C. §§ 6320, 6330. Citizens have a right of action for wrongful levies or other collection actions and for wrongful failure to release liens. *Id.* at §§ 7426(a). And taxpayers may sue to recover money erroneously or illegally assessed or collected by the government. *Id.* at § 7422(a).

Plaintiffs do not, however, have a First Amendment right to withhold money owed to the government and to avoid governmental enforcement actions because they object to government policy.

See, e.g., Adams v. Comm'r, 170 F.3d 173, 182 (3d Cir.

1999) ("Plaintiffs engaging in civil disobedience through tax protests must pay the penalties incurred as a result of engaging in such disobedience."); *United States v. Rowlee*, 899 F.2d 1275, 1279 (2d Cir. 1990) ("The consensus of this and every other circuit is that liability for a false or fraudulent return cannot be avoided by evoking the First Amendment[.]") (citing cases); *United States v. Kelley*, 864 F.2d 569, 576-77 (7th Cir.), *cert. denied*, 493 U.S. 811 (1989) (actions that constitute more than

mere advocacy not protected by the First Amendment); *Welch v. United States*, 750 F.2d 1101, 1108 (1st Cir. 1985) (“[N]oncompliance with the federal tax laws is conduct that is afforded no protection under the First Amendment[.]”); *United States v. Ness*, 652 F.2d 890, 892 (9th Cir.), *cert. denied*, 454 U.S. 1126 (1981) (“Tax violations are not a protected form of political dissent.”); *United States v. Malinowski*, 472 F.2d 850, 857 (3d Cir. 1973) (“To urge that violating a federal law which has a direct or indirect bearing on the object of protest is conduct protected by the First Amendment is to endorse a concept having no precedent in any form of organized society where standards of societal conduct are promulgated by some authority.”).

Moreover, the injunctive relief that plaintiffs seek, that is, “a temporary injunction against the United States Internal Revenue Service and the Department of Justice and any other agency of the United States that arguably may act in this matter under color of law, from taking any further retaliatory actions against the named plaintiffs in this proceeding,” is clearly barred by the Anti-Injunction Act, 26 U.S.C. § 7421. *See, e.g., Foodservice & Lodging Institute, Inc. v. Regan*, 809 F.2d 842, 844 (D.C. Cir. 1987) (“The Anti-Injunction Act provides that ‘no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person.’ 26 U.S.C. § 7421(a) (1982). The Declaratory Judgement Act provides

that '[i]n a case of actual controversy within its jurisdiction, except with respect to Federal taxes ... any court of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.' 28 U.S.C. § 2201(a) (Supp. III 1985). By their terms, these statutes clearly bar the appellant's claims for injunctive and declaratory relief as to the [challenged IRS regulations].").

For the above cited reasons, plaintiffs' complaint must be dismissed for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6).

II. Motion for Leave to File Amended Complaint

In light of the preceding discussion and the Court's ruling granting the defendants' motion to dismiss the complaint, plaintiffs' motion for leave to amend their complaint to add additional defendants, including the President of the United States, the United States Congress, the Commissioner of the Internal Revenue Service and others, as well as adding 1,600 plaintiffs, shall be **DENIED** as futile. See *James Madison Ltd. v. Ludwig*, 82 F.3d 1085, 1099 ("Courts may deny a motion to amend a complaint as futile ... if the proposed claim would not survive a motion to dismiss.") (citations omitted); see also *Nat'l Wrestling Coaches Ass'n v. U.S. Dept. of Educ.*, 263 F. Supp. 2d 82, 103-04 (2003), *aff'd*, 366 F.3d 1047 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 2537 (2005) (citing and discussing cases supporting a

district court's discretion pursuant to Fed. R. Civ. P. 15(a) to deny a motion for leave to amend complaint on the grounds of futility).

III. Conclusion

For the reasons set forth herein, it is hereby **ORDERED** that the defendants' motion to dismiss the complaint is **GRANTED** and plaintiffs' motion for leave to amend their complaint is **DENIED**. An appropriate order accompanies this Opinion & Order.

Signed: EMMET G. SULLIVAN
U.S. District Judge
August 31, 2005