
UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS

SIDNEY A. FITZWATER, CHIEF JUDGE

TEXANS AGAINST GOVERNMENT WASTE AND UNCONSTITUTIONAL GOVERNMENT CONDUCT; MATTHEW E. KELLY in his official capacity as this groups Chairman, Fort Worth Texas.

Plaintiffs

VS.

UNITED STATES DEPARTMENT OF THE TREASURY: HENRY PAULSON, Secretary of the United States Treasury.

I. **INTRODUCTION**

On October 3rd, 2008 the United States Senate and United States House of Representatives having successfully and legally passed House Bill 1424, and said bill was signed into law by President George W. Bush, House Bill 1424 became the law of the United States, which we will refer to hereinafter as HR 1424. We do not in any way dispute the legality of HR 1424 as it has been properly signed into law. We do however vehemently oppose this bill's implementation in part, as it is being misused by Secretary of the Treasury Henry Paulson and others within the Executive branch of government. Specifically HR 1424 enabled the Executive Branch through Secretary of the Treasury Henry Paulson to enter into various expenditures and policies that only were legally voted by both Houses of the Legislative Branch to allocate taxpayers funds directly and/or indirectly to various financial institutions, and only financial institutions. The Executive Branch attempted to achieve their goals legally with the proposal of HR 7321. However, HR 7321 failed in the Legislative Branch. As of this date the Executive Branch has disseminated multiple times it's intentions to circumvent the Legislative Branch's constitutional authority allocating these taxpayer funds to entities other than those specifically defined as "Financial institutions" by the bill itself, thus rendering the Executive Branch's stated future actions clearly unconstitutional. The verbatim language of HR 1424 specifically sections 101 and 102, which clearly define the constitutional scope of the bill as being constitutionally passed for the exclusive benefit of financial institutions and financial institutions only is included in this filing in the Likelihood of Success section. Any appropriation of funds for any purpose other than those specifically authorized jointly by the Legislative and Executive Branches (except for the override of a veto which is not applicable in this case) is clearly unconstitutional as the citizens are deprived the right of representation by their elected representatives, and therefore we petition this court to immediately enjoin The United States Treasury, The Secretary of the Treasury Henry Paulson, and all employees and agents of the United States Treasury from transferring any funds authorized by the passage of HR 1424 to any entity not defined as a "financial institution" as the members of both houses of the Legislative Branch clearly intended and voted in favor of.

We ask the court to specifically prevent the transfer of any and all funds from being transferred from the United States Treasury to any entity not clearly defined as a “financial institution” including but not limited to automobile manufacturers including General Motors Corporation, Chrysler Corporation, and Ford corporation, as any such transfer is a clear violation of the United States Constitution.

II IRREPARABLE HARM IF INJUNCTION NOT GRANTED

The current and future Taxpayers and Citizens of The United States of America will suffer irreparable and irreversible harm if this injunction is not granted. A variety of Automobile analysts including employees of Ford, Chrysler, and General Motors (hereinafter the Big Three) have stated publicly and reported that they have lost staggering sums of money, and most believe without radical reform they will go bankrupt. Most analysts and experts agree that any money transferred from the United States Treasury to any or all of the Big Three would be at a severe risk and act as sort of a “short term band aid” that more than likely would require further cash infusions by the United States Treasury or the amount of money transferred would probably be “lost and non-recoverable. Clearly the American Taxpayer is subject to irreparable financial harm if this injunction is not passed. A far greater irreparable risk exists to the Citizens of the United States if this injunction is not granted. The United States Constitution guarantees certain inalienable rights, protections, procedures, and privileges to all Citizens, and circumventing any of these is considered to be unconstitutional and therefore unenforceable and/or illegal. Specifically Article I Section 9 of the Constitution states the following: “No money shall be drawn from the Treasury, but in consequences of appropriations made by law;”. Congress fully understood this and culminated with it’s intention of providing taxpayer funds to “financial institutions” by lawfully passing HR 1424 which was intended for this purpose. Furthermore Congress fully understood that this is not a blank check to spend as they wish, as any action along these lines would clearly be unconstitutional. Certain members of Congress also wanted to provide Taxpayer funds to various automobile manufacturers and therefore in complete conformity with the Constitution they proposed House Bill HR 7321 which specifically stated it’s purpose was to “To authorize financial assistance to eligible automobile manufacturers, and for other purposes”. After lawful debate on this bill, HR7321 was procedurally defeated on December 11th, 2008 and therefore it did not become law, and therefore any transfer of taxpayer funds from the treasury to any non-financial entity including automobile manufacturers is by definition unconstitutional and must be enjoined. The very actions of both Houses of the Legislative Branch prove unequivocally to this Court that any transfer of taxpayer money to any or all of The Big Three in unconstitutional. If HR1424 could legally be interpreted to provide taxpayer funds to The Big Three, then the Legislative branch would have had no need of attempting passage of HR 7321 as it clearly would have been duplicitous and unnecessary. The Legislative branch clearly followed the Constitution, and this court must see to it that the Executive Branch specifically The Treasury Department and Secretary of the Treasury Henry Paulson is also directed to follow the Constitution and be enjoined from illegally and unconstitutionally transferring any monies from the Treasury to any member of The Big Three. For if this Court allows the Executive Branch to act unilaterally without the Constitutionally required approval of the Legislative Branch on this particular issue, another Court will surely cite this case as a precedent setting Benchmark allowing the Executive Branch to act without proper Constitutional restraints and authorities which will in effect terminate the Constitution that governs us all. This Court must not allow this dangerous and unconstitutional precedent to proceed, as today it’s the unconstitutional misappropriation of taxpayer funds, and tomorrow it might very well become the revocation of our unalienable Constitutional Rights, including the Bill of Rights, with this unconstitutional act becoming the legal precedent cited. This could easily allow any future Chief Executive or the Executive Branch to circumvent the Legislative Branch and deny Constitutional rights to United States Citizens, or engage in any other unconstitutional acts by circumventing the Legislative Branch as Secretary of the Treasury Hank Paulson has stated publicly he intends on doing.

III PUBLIC INTEREST

The legal and proper use of The United States Constitution is the only mechanism that separates the United States Citizenry from being ruled under a democratic system of government as opposed to a totalitarian or authoritarian system of government and therefore the public has an overwhelming interest in seeing that the checks and balances provided in the Constitution are followed. Notwithstanding monetary loss to the American Taxpayer that is likely to occur if the Executive Branch is allowed to unilaterally and unconstitutionally circumvent the will of the Legislative branch and the American people, the damage to the American public will be irreparable on other fronts as well. Specifically the precedent for future cases that would legally be cited if the Executive Branch is permitted to proceed with the transfer of monies to any or all of the “Big Three” even though it was constitutionally denied by the legislative branch. The legal argument is clear. As the Constitution guarantees us all unalienable rights including the right of “free speech” among others, it is clear that an unscrupulous Executive with totalitarian leanings or for political reasons, could in fact prevent certain aspects of free speech from being exercised that the Constitution guarantees, without first taking the legal steps needed to rescind such an inalienable right. This unscrupulous Chief Executive could then decide to unilaterally bypass the Legislative Branch and implement his own definition of freedom of speech. When challenged he would simply cite this precedent setting case which permitted the Executive Branch to disregard the will of the Legislative Branch and the defacto voices of the general public and rule as an autocrat. The founding fathers were cognizant of this, and this is why they wrote The United States Constitution. It is critical to the public interest that this Court immediately enjoin and issue an injunction preventing The United States Treasury, The Secretary of the Treasury, and any and all members of the Executive Branch from transferring any monies to any of “The Big Three” (as they have repeatedly stated they are going to do) until such time as Congress lawfully passes HR 7321 or other similar legislation designed to do just that. Permitting such a transfer in light of the fact that HR 1424 has passed and HR 7321 has failed to pass the Legislative Branch is a clear violation of the United States Constitution, and therefore we petition this Court to issue the appropriate injunction in the clear interest of the general public.

IV LIKELIHOOD OF SUCCESS

We believe that the letter of the law will be upheld, and that the Executive Branches threatened actions circumventing the United States Constitution will ultimately be ruled to be in direct violation of the Constitution and therefore unconstitutional and unlawful. As stated previously Article I, Section 9 of the Constitution states verbatim “No money shall be drawn from the Treasury, but in consequence of appropriations made by law;”. The United States Congress lawfully passed, and President Bush lawfully signed into law HR 1424 appropriating funds to “various financial entities”. HR 1424 intentions are clear as Section 101 of HR 1424 subsection (1) states the following: “(1) AUTHORITY-The Secretary is authorized to establish the Troubled Asset relief Program (or “TARP“), to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution”. The spirit of this law (HR 1424) is totally transparent in that the definition of a financial institution is included in Section (3) Definitions subsection (5) which defines a financial institution as follows: “FINANCIAL INSTITUTION-The term

“Financial Institution” , means any institution , including, but not limited to , any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State.” and it goes on to disqualify any of the above mentioned institutions that are owned by a “foreign government” Clearly the Legislative Branches intentions are clear, and those intentions do not apply to any automobile manufacturer. The actions of Congress itself and the lack of action by the Executive Branch clearly illustrate that the Executive Branch’s stated intentions of circumventing The Legislative Branch and proceeding unilaterally are unconstitutional and the Court must enjoin them from proceeding. Congress lawfully passed HR 1424 and clearly detailed how it was to be applied to financial institutions and financial institutions only. A certain segment of Congress then wanted to authorize expenditures for “The Big Three” and hence they drafted HR 7321 designed specifically for the benefit of the automobile manufactures. It is critical for the Court to recognize the fact that both houses of Congress (roughly 535 different members) is comprised of numerous Attorney’s and former Attorney’s and as such it should be stipulated that the Legislative Branch is extremely well versed in Constitutional law. And yet both Houses of The Legislative Branch confirmed by their own actions, acting on HR 7321, was necessary in order to use the monies of the Treasury for the benefit of any or all of the “The Big Three”. In ratifying this decision to proceed with HR 7321 it must be noted that with all the legal resources available to the Executive Branch, no objection was made to proceed with HR 7321 citing HR 1424’s passage as the Executive Branches authority to transfer the monies of the Treasury to “The Big Three”. Additionally Executives of “The Big Three” were summoned to testify before the Legislative Branch at least two times, prior to HR 7321 being acted on, and never once was objection raised by any member of either branch that the authority to transfer monies was inherit within HR 1424 and therefore the hearings and the subsequent votes regarding HR 7321 were “unnecessary and duplicitous. To the contrary. The action of the Legislative Branch, and the inaction of the Executive branch clearly prove our case, that Constitutional authority was and is needed to transfer any monies from the Treasury to any and all United States automobile manufacturers or other entities not clearly defined in HR 1424 as Financial institutions. The Executive Branch’s intention of circumventing the Legislative Branch and proceeding to transfer monies from the Treasury to “The Big Three is clear, as White house Spokesperson Dana Perino remarked on the record on December 12th, 2008 after learning of the defeat in Congress of HR 7321 the following: “We will consider other options if necessary including use of the TARP program“. Additionally in a live interview on Fox News on December 16th, 2008 Chairman Paulson remarked the following: 1) That the TARP program (HR 1424) sole purpose was for the benefit of “financial institutions”. 2) That he was deeply disappointed that the automobile bailout (HR 7321) failed. And 3) That notwithstanding these facts he was still inclined to use TARP funs to “bailout the automakers”. His statements prove our case, as Secretary Paulson acknowledges that HR 7321 was needed to transfer monies from the Treasury to any of “The Big Three” and that HR 1424 was strictly limited to financial institutions. The TARP program is HR 1424 which has been constitutionally put into law, and clearly forbids the use of funds for any purpose other than clearly defined financial institutions. We therefore ask this Court to act preemptively as the numerous statements of Secretary of the Treasury Henry Paulson and other members of the Executive Branch are clear in that they intend on transferring monies from the Treasury to various members of “the Big Three” even though the opportunity to Constitutionally achieve this objective has failed, with the failure of HR 7321 to be legally and Constitutionally voted into law.