Clifford Johnson
P.O. Box 1009
Gualala, CA 95445-1009.
Tel: 707-884-4066 (fax: call first)
e-mail: clifjohnson@prodigy.net
Plaintiff *pro se*.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

Clifford Johnson,
Plaintiff

v.

United States Department Of The Treasury, and Timothy Geithner, in his official capacity as Secretary of the United States Department of the Treasury,
Defendants

No. CV 11-06684 WHA

PLAINTIFF'S MOTION TO AMEND OR ALTER THE JUDGMENT, SUPPORTING MEMORANDUM

Date: Nov. 1, 2012
Time: 8:00 a.m.
Place: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

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I. INTRODUCTION AND SUMMARY

The motion is extraordinarily brought per the Order Re Johnson's Letters, filed September 17, 2012. For clarity and convenient completeness, the record on which the motion is based is quoted below in larger part than usual. This is fit, proper, and diligent, in the context of this motion, which is made to clarify the judgment, insofar as it and the supporting record is ambiguous re the basic grounds on which the court affirmed the government speech immunity defense. The ambiguities are stated as the captions of points 2, 3, and 4 in the Argument, and in the Conclusion.

II. STATEMENT OF FACTS

1. Pre-Judgment Record: Misrepresentations And Four Consequent Government Speech Immunity Disqualifications Are Alleged

The complaint rests on misrepresentations of categorical fact and multi-billion dollar sums, alleged as deliberately and grossly understated so as to repudiate and suppress public knowledge of the monetary benefits that *automatically* accrue to the government from issuing new United States currency, instead of borrowing Federal Reserve bank notes. In particular, the complaint attacks Treasury-fostered misrepresentations authoritatively published as objective estimates of the net benefit to the government of replacing all Federal Reserve $1 bills with United States $1 coins (complaint ¶ 8(iv)):

> [T]he 2011 GAO report estimates initial *losses* for four years due to start-up costs, and a net benefit after 30 years of only $5.6 billion, if that. In fact, because coins are *United States* currency, the government would also benefit from: **(a)** an early *gain* of $13.75 billion against the debt held by the public, from replacing the present 9.5 billion dollar bills with 150% as many coins; **(b)** a further gain in excess of $30 billion from coins added over the 30 years; and **(c)** a further $14.5 billion gain from 81.5% of the interest relief per note replaced by a coin. Hence, the net government benefit after 30 years would exceed $58 billion, as a matter of accounting fact.

Based wholly on such misrepresentations, four exceptions to government speech immunity are alleged, as follows (complaint, ¶ 11):

> **Government Speech Disqualifications.** Said categorical and financial misinformations ("falsehoods") impair Johnson's right to petition for new issues of United States currency, in violation of the First Amendment, on the following separate and cumulative grounds:
>
> ***(i) Viewpoint Coercion.*** In all public fora, Johnson's viewpoint is repudiated by the abusively induced ignorant recitation of said falsehoods, as concretized by recitations of the 2011 GAO report's financial misinformation in said Chicago-Sun article against H.R. 2911 and S. 2049, and in numerous public comments re these bills submitted through said POPVOX.com public forum.
>
> ***(ii) Independent Unconstitutionality: Tax Power.*** There is no reason to gift massive amounts of tax, or the nation's good faith and credit, to private parties for merely executing mandated or mechanical currency issues, such as the issues proposed by Johnson's petitions. Issuing these parts of the currency as Federal Reserve notes thus violates the constitution's mandate that taxes only be raised "to pay the Debts and provide for the common Defence and *general* Welfare of the United States." U.S. Const., Art. I, Sec. 8. Said falsehoods perpetuate a vast face value seigniorage tax for the welfare of the private banks that own the Federal Reserve.
>
> ***(iii) Independent Unconstitutionality: Fiat Money Power.*** On August 16, 1787, the Framers' final vote on money powers delisted paper money lest it "excite the opposition of the" monopoly-bent "Monied interest," and be used to exploit a general paper-money phobia, so as to altogether exclude it. Before voting, Madison obtained firm agreement that the delisting did "not disabl[e] the government from the use of public notes as far as they could be safe and proper." Said falsehoods impermissibly suppress the use of public notes as far as they can be safe and proper, contrary to the Framers' explicit commitment to secure the sovereign's paper money power against the Monied interest. U.S. Const., Art. I, Sec. 8, Cl. 4, 11; *Notes Of The Federal Convention* (Aug. 16, 1787); *The Debate On The Constitution*, part 2 at 94, 110, 148, 422-423, 476-477, 639-640, 659, 678.
>
> ***(iv) Prima Facie Capture.*** Said falsehoods are the artful product of numerical models and obfuscating mumbo-jumbo designed and promulgated by the Federal Reserve. On their face, said falsehoods secure the one-way bank-government lender-borrower relation inherent in the

> exclusive use of Federal Reserve notes. The borrower is servant to the lender, wherefore this relation per se renders the government subservient to private bank interests. On its face their mumbo-jumbo hijacks the government, as in the 2011 GAO report's rationale, which brazenly asserts that the Federal Reserve *is* the government, so as to palm off the conclusion that there is no overall loss to the government when it pays money in any amount into the Federal Reserve's private account. This outrage boasts the capture of representative government by private banking interests, and loots the Treasury.

At the five-minute April 26, 2012 Case Management Conference, the court conducted an impromptu hearing on the merits. Johnson stressed his reliance on factual misrepresentations (transcript filed September 16, 2012, at 2-3):

> **The Court:** All right. So what is this case about, Mr. Johnson?
>
> **Mr. Johnson (in pro per):** It's about publications by the Treasury saying that there's no difference between United States notes, that's bills, and Federal Reserve notes or bills. They are very different functionally, and the difference is being suppressed by these misrepresentations…My contention is that these are matters of simple fact and accounting fact that are deliberately distorted to suppress public debate on the issue. And I have the right to have my voice not suppressed by authoritarian misrepresentations.

Johnson's opposition to the motion to dismiss *concurred* with the defendants' entire legal argument, but noted that it simply did not apply, since factual misrepresentations were not only unmentioned, but excluded by use of dispositive boilerplate words and phrases, such as policy, personal belief, disagreement, and contradicted merits, but not of a misrepresentation equivalent, such as deceit and fraud. This court should reread the [Corrected] Plaintiff's Memorandum In Opposition to Defendants' Motion to Dismiss, filed May 16, 2012, because it *complains of the ambiguities that the court's subsequent judgment in substance has replicated.* The bulk of the opposition is given over to demonstrating the rock-solid factual grist of the misrepresentations, and their serendipitously easy justiciability/proof, *per the GAO's very own standards of truth*.

The GAO and, standing behind it, the Treasury, are hoisted by their own petard.

2. The Judgment And Order filed June 14, 2012

(i) The Order Upholding The Government Speech Immunity Doctrine

At issue is the clarity of the court's Order Granting Defendants' Motion To Dismiss First Amended Complaint And Vacating Hearing, filed June 14, 2012, insofar as it affirms the government speech immunity doctrine. In full, it does so as follows:

> Clifford Johnson…believes that Federal Reserve notes should be phased out, and, to that end, proposes a pilot program be launched using United States notes to issue Social Security payments. He believes this would save taxpayer's money.
>
> In this lawsuit, he contends that the United States Department of the Treasury has sabotaged his own free speech in support of his proposal by maintaining a website that contradicts the merits of his position. In a David-and-Goliath way, he contends that his own message is being overwhelmed by the more powerful speech of the Treasury and, therefore, his own free speech rights are being suppressed. In this lawsuit, which he has limited to the First Amendment right to petition claims (Opp. Exh. G), he seeks relief in the form of an injunction whereby this Court would regulate what the Treasury can and cannot say on this subject.
>
> This remarkable proposition has no support in the law. Our elected leaders necessarily adopt policy positions. By virtue of their "bully pulpit," they necessarily receive more attention than the rest of us. Nonetheless, it cannot possibly be the law that this circumstance violates anyone's right to say whatever they want about public policy. Nonetheless, it cannot possibly be the law that this circumstance violates anyone's right to say whatever they want about public policy. To rule otherwise would invite thousands of lawsuits by those seeking to regulate through the courts what elected officials and their appointees can and cannot say in support of public policy. This would be an unthinkable result. Mr. Johnson's claim is rejected on the merits.

(ii) The Hearing Vacation And File Closure That Forced Johnson's Letters

The Judgment, filed June 14, 2012, as follows mandated that "The Clerk **SHALL CLOSE THE FILE.**" The accompanying Order Granting Defendants' Motion To Dismiss First Amended Complaint And Vacating Hearing declared: "The next stop for Mr. Johnson is the United States Court of Appeals." Thereafter, Johnson had no proper or respectful way to communicate with

the trial court, except by addressing it directly. This he did by three one-page letters, which the court graciously filed. Excerpts from two of the letters state the motion, in full as follows.

3. The Clarifications Sought Per Johnson's June 23 Letter

Johnson's letter of June 23, 2012, filed June 28, 2012, and construed by the court of appeal as a motion for reconsideration, as follows described the matters of judgment warranting clarification (italics in orig.):

> [B]ecause the complaint raises, apparently for the first time, the question as to whether factual misrepresentations intended to suppress viewpoints are within the compass of the government speech immunity doctrine, further trial court proceedings would not be futile, if only to present the court of appeal with an appropriately clarified record.
>
> As the record stands, there is no indication in the defendant's papers, or in the court's decision, of any awareness that factual misrepresentations are at issue, let alone any indication why misrepresentations *intended to suppress my viewpoint* should qualify for the aforesaid immunity. On the contrary, it appears that the court construes the complaint as directly challenging the Treasury's policy of not issuing United States notes, which it meticulously avoids.
>
> The only policy that the complaint challenges is a policy of deception *intended to suppress all debate re United States notes,* by misrepresenting that there are no functional differences between United States notes and Federal Reserve notes; and it attacks this policy of deception only as manifested by *particularly alleged misrepresentations of fact*, *authoritatively published as objective*.

4. The Appellate Remand By Order Filed August 13, 2012, Especially To Give This Court This Opportunity To Clarify The Judgment.

Acceding to the trial court's injunction to next appeal, Johnson filed the Notice of Appeal on August 13, 2012, within the 60 days allowed after entry of judgment against official United States defendants. Fed. R. App. P., Rule 4(a)(1)(B). But by Order also filed August 13, 2012, the court of appeal remanded the case, as follows:

> The court's records indicate that this appeal was filed during the pendency of a timely-filed Fed. R. App. P. 4(a)(4) motion. The notice of appeal is therefore ineffective until entry of the order disposing of the last such motion outstanding. *See* Fed. R. App. P. 4(a)(4). Accordingly, proceedings in this court shall be held in abeyance pending the district court's resolution

> of the pending June 28, 2012 motion. *See Leader Nat'l Ins. Co. v. Industrial Indemnity Ins. Co.,* 19 F.3d 444 (9th Cir. 1994).
>
> If appellant wishes to challenge the district court's ruling on the pending motion for reconsideration, appellant shall file an amended notice of appeal within 30 days from entry of the district court's ruling on the motion. See Fed. R. App. P. 4(a)(4). A copy of this order shall be served on the district court. See Fed. R. App. P. 3(d).

Thus, the court of appeal, or it's clerk, construed Johnson's post-judgment letter, filed "June 28, 2012," as a timely and pending motion for reconsideration.[1] In other words, the remand was especially to give the trial court this opportunity to clarify the judgment.

5. The Narrow Clarification Sought Per Johnson's September 9 Letter

Johnson's narrower final motion is set forth as follows, in his letter dated September 9, 2012, which the court filed on September 13, 2012 (boldface in orig.):

> I hereby narrow the motion to a request for clarification as to the ground(s) on which the court overruled each of the four exceptions to the government speech doctrine set forth in paragraph 11 of the complaint, comprising viewpoint coercion by tailored misrepresentations; two independent unconstitutionalities; and prima facie institutional capture. In that the court found the exceptions "unthinkable," it appears that the court affirms government speech immunity as absolute, being a natural corollary of the government's "bully pulpit." ***I request that the court clarify whether it reached the merits of the four exceptions separately, and found each unthinkable particularly; and/or whether it overruled them en bloc, on the general ground that government speech immunity is absolute.***
>
> An order clarifying this detail would suffice to satisfy the motion; and it would surely be expedient for the court to issue this small clarification.

[1] Trial court judgments must of course be construed constitutionally, when possible.

I. ARGUMENT

1. The Duty Of The Trial Court Includes Plainly Stating The Basic Legal Grounds For A Dismissal On The Pleadings; And That Duty Is Heightened Where An Appeal Is Held In Abeyance To Provide The Trial Court With The Opportunity To Clarify Its Judgment.

Johnson does not waste this court's time arguing the above-captioned point, since the court already understands it infinitely better than Johnson could ever hope to write it up. A procedural authority re motions for clarification of a judgment "where the court has acted ambiguously" is *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1462 (9th cir. 1992).

2. It Is Not Clear Whether The Court Held That Misrepresentations Intended To Suppress Viewpoints Are Immunized Government Speech, That The Alleged Misrepresentations Are Nonjusticiable, And/Or That The Allegations Fail To State Factual Misrepresentations.

The [Corrected] Plaintiff's Memorandum In Opposition To The Motion To Dismiss, filed May 16, 2012, explains how the complaint rests entirely on "three cherry-picked *misrepresentations*" of categorical and financial fact, giving rise to four exceptions to the government speech immunity doctrine. But to this day, neither the defendants nor the court has anywhere mentioned the alleged misrepresentations, let alone the carefully defined government immunity exceptions based on them.

It needs no argument that the court of appeal should expect a judgment unambiguously setting forth the trial court's basic grounds for deciding any important matter of first impression raised on the face of a complaint—or for not reaching it. Herein, whether the four alleged exceptions to government speech immunity were particularly overruled, and/or were overruled on the ground that the immunity is absolute, and/or were not reached, and why, is basic.

The court's order filed June 14, 2012 emphatically found it "unthinkable" that the attacked government speech would not be immune to First Amendment suits, seeming to hold that the immunity is absolute. In particular, the court's language does not distinguish executive orders

and agency regulations, which are routinely attacked on First Amendment grounds.[2] Thus it seems almost certain that the court did not have in mind government speech in the form of executive orders or agency regulations. In other words, *it seems almost certain that the court had in mind one or more subset(s) of government speech, which it failed to specify*. The record is unnecessarily ambiguous on this most important point of law, concerning as it does the hitherto undefined scope of the government speech immunity doctrine.

Adding to the uncertainties, the court's order understates the complaint as attacking speech that supports policy, on arguable costs savings grounds:

In the entire order, there is no recognition that the complaint attacks Treasury-fostered statements as demonstrably and deliberately false matters of accounting fact, authoritatively issued as objective fact, and designed to preempt and suppress all debate as to the relative benefits of United States and Federal Reserve notes.

Did the court find it "unthinkable" that misrepresentations intended to suppress viewpoints could overcome the government speech immunity? Or did the court find the allegations insufficient to sustain the legal label "misrepresentation"? Or did the court not *reach* the allegations of misrepresentation? Or, over-relying on defendants' papers, did the court not even realize that misrepresentations of a routinely adjudicated factual sort are at issue?

It might be possible to infer at law what the court has necessarily decided, by dismissing the complaint as it did. But such inferences would at best be arguable, and Johnson moves that the record be clarified to save this unnecessary fog and burden on appeal.

One more time. The categorical functions and financial costs put at issue are not arguable matters of belief, policy, or accounting artifice. Meticulously avoiding any attack on

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[2] See, e.g., *Sorrell v. IMS Health, Inc.*, 10-779 (U.S. 6-23-2011), at 24, which analogously distinguishes as arguably actionable contentions of "false or misleading [statements] within the meaning of this court's First Amendment precedents," unredeemed by countervailing prevention of "false and misleading speech."

policy or artifice, *the complaint specifically attacks multi-billion dollar sums certain*, *as deliberately and grossly understated.* And, as pointed out at page 14 of Johnson's opposition:

> Taking the financial allegations as facts, a dismissal might very well open the door to a deceptively induced [versus fairly debated] rejection of the coin-swap bill, S. 2049, for which Johnson petitions (complaint ¶ 8(iii)).

3. It Is Not Clear Whether The Court Held Independent Unconstitutionality Insufficient To Discount Government Speech Immunity, And/Or That The Allegations Failed To State Any Independent Unconstitutionality.

The above-captioned point similarly arises from the total failure of defendants' papers and the court's rulings to indicate any awareness that independent unconstitutionality is alleged.

4. It Is Not Clear Whether The Court Held Prima Facie Institutional Capture Insufficient To Discount Government Speech Immunity, And/Or That The Allegations Failed To State Prima Facie Institutional Capture.

The above-captioned point similarly arises from the total failure of defendants' papers and the court's rulings to indicate any awareness that prima facie institutional capture is alleged.

5. Three anchoring academic papers are exhibited.

The court is openly skeptical of what it casts as a legally "preposterous" and "David-and-Goliath" sort of political shouting match. To Johnson, this is understandable, in light of the systemic and longstanding nature of the misrepresentations alleged, the irrelevance of defendants papers moving for dismissal, and the court's own academic limitations, by which Johnson means the natural limitations imposed by the dominant priorities of trial court drudgery. Johnson taught econometrics at Sussex University from 1972-75, yet was himself deceived until a Bill Still video enlightened him, in 2008. Re Bill Still, see the Declaration filed herewith, ¶¶ 1, 2.

Johnson might be eccentric, but he is far from naive in contending that government speech First Amendment immunity is not absolute. Official misrepresentations are a natural exception to the immunity, when designed to deprive the public of the informed consent that pretty much

defines republican government.[3] Indeed, the primary purpose of the immunity is to free the government to fully inform to the public, *so as to best make sure that it receives sufficient information to inform its consent*. Misrepresentation thus voids "elected" and like political question First Amendment tolerances. See, e.g., *R. J. Reynolds Tobacco Company v. Bonta*, 272 F. Supp. 2d 1085, 1107 (E. D. Cal.), holding that:

> Government speech that 'drowns out' private speech may violate the First Amendment. [Citation.] "[T]he government may not monopolize the marketplace of ideas, thus drowning out private sources of speech." [Citation.] "The government may not speak so loudly as to make it impossible for other speakers to to be heard by their audience. The government would then be preventing the speakers' access to that audience."

Perhaps most telling is the Supreme Court's officially first government speech case, *Rust et al. v. Sullivan*, 500 U.S. 173, 186 (1991), which at 186 singularly recognized the critical role of objective, "reasoned analysis" in GAO reports, because it could be relied on by all sides in political disputes, such as the alleged dispute re pending Senate bill S. 2049. Complaint ¶ 5(iii).

Nor is Johnson naive in contending that United States notes are functionally vastly different from Federal Reserve notes; or in contending that both immediate face-value and delayed interest-relief *dollar amounts certain* automatically accrue to the government by issuing United States currency, in lieu of borrowing Federal Reserve notes.

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[3] See *Simon & Schuster v. Crime Victims Bd.*, 502 U.S. 105, 116 (1991), holding:

> In the context of financial regulation, it bears repeating that the Government's ability to impose content-based burdens on speech raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.

See also *Rosenberger v. Rector And Visitors Of Univ. of VA.*, 515 U.S. 819, 828-829 (1996) and *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642-643 (1995) re the especially egregious nature of viewpoint suppression by impaired rights to petition. See also *Legal Services Corporation v. Velazquez*, 531 U.S. 533, 541, 546 (2001), which also points out that government distortions of fact must often carry over to judicial proceedings.

To so educate the court, Johnson's Declaration filed herewith offers three sample academic papers vindicating the complaint's legal and accounting premises, comprising:

A. *Government Speech in Transition*, a July 2012 working paper by Helen Norton, which provides a five-page academic synopsis of the government speech doctrine.

B. *Lincoln's Populist Sovereignty: Public Finance Of, By, and For the People,* 12 Chap. L. Rev. 561 (2009), by Timothy Canova, which favorably expounds the functionally distinct constitutional option of public financing through issues of United States notes, versus borrowing Federal Reserve notes.

C. *The Chicago Plan Revisited,* IMF WP/12/202, [Introduction only], August 2012, by Jaromir Benes and Michael Kumhof. This favorably expounds a monetary plan including the functionally distinct option of issuing United States notes, whose automatic national-debt dissolving advantages are detailed and validated, *in full coin-swap detail*, as the third of four "major advantages" of the plan, on pages 4 and 6, as follows (emphasis added):

> Third, allowing the government to issue money directly at zero interest, rather than borrowing that same money from banks at interest, would lead to a reduction in the interest burden on government finances and to a dramatic reduction of (net) government debt, given that irredeemable government-issued money represents equity in the commonwealth rather than debt….
>
> The third advantage of the Chicago Plan is a dramatic reduction of (net) government debt. The overall outstanding liabilities of today's U.S. financial system, including the shadow banking system, are far larger than currently outstanding U.S. Treasury liabilities. Because under the Chicago Plan banks have to borrow reserves from the treasury to fully back these large liabilities, the government acquires a very large asset vis-à-vis banks, and government debt net of this asset becomes highly negative. Governments could leave the separate gross positions outstanding, or they could buy back government bonds from banks against the cancellation of treasury credit. Fisher had the second option in mind, based on the situation of the 1930s, when banks held the major portion of outstanding government debt. But today most U.S. government debt is held outside U.S. banks, so that the first option is the more relevant one. The effect on net debt is of course the same, it drops dramatically.

> In this context it is critical to realize that the stock of reserves, or money, newly issued by the government is not a debt of the government. The reason is that fiat money is not redeemable, in that holders of money cannot claim repayment in something other than money. Money is therefore properly treated as government equity rather than government debt, *which is exactly how treasury coin is currently treated under U.S. accounting conventions* (Federal Accounting Standards Advisory Board (2012)).

6. Johnson's letters are not an improper barrage addressed to the court.

The court's Order Re Johnson's Letters, filed September 17, 2012, states that:

Plaintiff's barrage of letters addressed to the court is improper.

Plaintiff objects that this statement is highly inaccurate, in three respects. For a start, three one-page letters over a period of three months do not credibly comprise a "barrage".[4] Second, far from improper, such direct communication was extraordinarily *proper*, because it respected the file closure, which had rendered some such *direct* address the only obedient option. Moreover, Johnson compliantly *did* next appeal.

Johnson is not responsible for the escalating confusions caused by the court's drastic and unexplained vacation of the hearing date set for the motion to dismiss, in conjunction with the premature and immediate closure of the case file, which in substantial part was reversed. Quite the contrary. This necessarily awkward motion with exceptional propriety, appellate authority, and diligence seeks to minimize the confusions caused by the file closure, in order to obtain a trial court record that meets common-sense minimal standards of clarity for purposes of appeal.

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[4] The online Encarta dictionary defines to "barrage" as to "attack somebody continuously, [i.e.] subject somebody to a relentless onslaught." Johnson's letters are discontinuous. The first objected to the file closure. The second was sent some fifty days later. It reasonably objected to a briefing schedule that *began* with the response brief. The third letter objected to a sudden and still mysterious notice of error, seemingly re the remand. Contrast these with Johnson wryly calls a mere *peppering* of himself with increasingly ironic ECF headlines warning in boldface caps that the case file was closed June 14, 2012. The message remains in the court's computer, stuck at the top of every notice of a further filing. The court, not Johnson, filed his letters, *inter alia*.

V. CONCLUSION

To minimally clarify the record for the purposes of appeal, the court should issue a judgment clarifying its decision with respect to the four ambiguities stated as points 2 to 4 in the main argument, as follows:

> It is not clear whether the court held that misrepresentations intended to suppress viewpoints are immunized government speech, that the alleged misrepresentations are nonjusticiable, and/or that the allegations fail to state factual misrepresentations.
>
> It is not clear whether the court held independent unconstitutionality insufficient to discount government speech immunity, and/or that the allegations failed to state any independent unconstitutionality.
>
> It is not clear whether the court held prima facie institutional capture insufficient to discount government speech immunity, and/or that the allegations failed to state prima facie institutional capture.

Respectfully submitted,

September 23, 2012 [/s]_____
Clifford Johnson, Plaintiff pro se