

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK __, __ x

SOCIALIST WORKERS PARTY, et al., :
 Plaintiffs, :

-v-

73 Civ. 3160 (TPG)

ATTORNEY GENERAL OF THE UNITED :
 STATES, et al., Defendants. :

MEMORANDUM IN SUPPORT OF MOTION OF
 RICHARD M. NIXON TO QUASH SERVICE
 OF SUMMONS AND TO DISMISS THE
 COMPLAINT

This memorandum is submitted in support of the motion of Richard M. Nixon, individually and as President of the United States of America, to quash the service of a summons directed to him, strike his name from the caption herein, and dismiss the complaint as to him, on the grounds that the Court lacks jurisdiction over the President of the United States.

In this action, plaintiffs seek injunctive relief and damages payable jointly and severally by several named defendants, including the President of the United States, Richard M. Nixon.

The complaint, in paragraph 23 thereof, purports to be against Mr. Nixon, in both his official capacity as President of the United States and as an individual. Paragraphs 34 and 36, which specifically mention the President and others by name, relate to an alleged agreement to implement and expand a certain plan to deprive plaintiffs of certain alleged rights, while paragraphs 75-76 and 98 allege knowledge of certain activities, power on the part of the President and others to prevent certain alleged occurrences and failure to do so, and concealment of the same. The complaint then seeks amongst other things an injunction against implementation of said plan and damages in excess of \$27 million.

ARGUMENT

SERVICE ON THE PRESIDENT SHOULD
 BE QUASHED AND THE COMPLAINT
 DISMISSED.

It is a fundamental doctrine of our constitutional scheme of separation of powers that the Federal District Courts lack jurisdiction over the President of the United States in the performance of executive and political duties. From this premise it follows that the Court should quash the service of summons directed to the President; that the Complaint be dismissed as to the President; and that the President's name be deleted from all pleadings herein.

Article II of the Constitution vests the executive powers of the United States in the President. It has been well settled since State of Mississippi v. Johnson, 71 U.S. (4 Wall.) 475, 499-501 (1866) that the separation of powers doctrine precludes jurisdiction of the courts over executive and political duties of the President of the United States, either officially, individually or

personally in order to preserve the separation of powers of the executive, judicial and legislative branches of the United States Government. This is true whether a mandatory injunction, or restraint of activity alleged to be unconstitutional is being sought. State of Mississippi v. Johnson, supra, 71 U.S. at 499.

In Marbury v. Madison, 5 U.S. (1 Cr.) 137, 170 (1803) Chief Justice Marshall addressed himself to the problem of the judicial branch enforcing the performance of executive and political duties by the President and characterized it by stating that "(a)n extravagance so absurd and excessive could not have been entertained for a moment." See also, Trimble v. Johnston, 173 F. Supp 651, 654 (D.D.C. 1959) wherein the Court stated that "no suit lies against the Congress or the President."

This fundamental aspect of the separation of powers doctrine has been recently discussed in Reese v. Nixon, 347 F. Supp. 314 (C.D. Cal. 1972). That case involved a complaint for civil damages under 42 U.S.C. 1983 and 1985 wherein Richard M. Nixon, the President of the United States, was a named defendant. The Court in dismissing the complaint stated:

" . . . Only a rudimentary knowledge of the law is required to appreciate this Court's inability to assert jurisdiction over the President of the United States. The executive power is vested in the President by Article II of the United States Constitution, and judicial interference in the exercise of that power is extremely limited, if not constitutionally prohibited, in order to preserve the separation of powers within the Federal government."
Reese v. Nixon, supra at 316-17.

See also, San Francisco Redevelopment Agency v. President Richard M. Nixon, et al. 329 F. Supp. 672 (N.D. Cal 1971) wherein the Court stated that it was "unable to find authority for the proposition that a United States District Court may compel the head of the Executive Branch of government to take any action whatsoever." In National Association of Internal Revenue Employees v. Nixon, 349 F. Supp. 13, 21 (D.C. 1972), the Court emphatically found that it "lacks jurisdiction over the President of the United States either officially or personally for his acts in the performance of his duties. . . ."

While there may be unique circumstances, carefully circumscribed, in which jurisdiction may be obtained over the President, the allegations here do not warrant such an intrusion. Cf., Nixon v. Sirica, F 2d (D.C. Cir., October 12, 1973), which involved a grand jury subpoena for the production of evidence relating to alleged criminal conduct by others, over which the President had "taken the unusual step of assuming personal custody of the Government property sought by the subpoena." Nixon v. Sirica, supra, slip opinion at p. 14.

In the instant case, identical allegations of participation in a plan, power to prevent certain alleged occurrences and failure to act are made against various Government officials other than the President. No particular allegations different from the broad ones made against defendants Ehrlichman, Halderman, Mitchell, Dean,

Hutson and Mardian, have even been made as to the President.

Recognizing that they lack jurisdiction over the President of the United States, Federal District Courts have regularly ordered sua sponte dismissal and quashed service of summons directed to the President. See, e.g. Allen v. Truman, 154 v. 2d 329 (D.C. Cir 1946); Suskin v. Nixon, 304 F. Supp. 71 (N.D. Ill. 1968).

The Court should therefore quash the summons directed to the President, strike the President's name from the caption, and dismiss the complaint as to the President of the United States.

CONCLUSION

For all the above reasons, the within motion on behalf of Richard M. Nixon should be granted in all respected.

Dated: New York, New York
January 7, 1974

Respectfully submitted
Paul J. Curran
United States Attorney for the
Southern District of New York
Attorney for the Defendant
Richard M. Nixon, President
of the United States

STEVEN J. GLASSMAN
Assistant United States Attorney
- of Counsel-

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK _ _ _ _ _ x

SOCIALIST WORKERS PARTY, et al, :
-v- Plaintiffs, :
ATTORNEY GENERAL OF THE UNITED STATES: :
et al, _ _ _ _ _ Defendants _ _ _ _ _

NOTICE OF MOTION TO
QUASH SERVICE OF
SUMMONS AND DISMISS
COMPLAINT AS TO
RICHARD M. NIXON

S I R S:

PLEASE TAKE NOTICE that upon the complaint herein, and upon all papers and proceedings had herein, defendant Richard M. Nixon, individually and as President of the United States of America, will move this Court, before the Honorable Thomas P. Griesa, at a time and place to be set by the Court, for an order quashing the service of a summons directed to him, striking his name from the caption herein, and dismissing the complaint as to him, pursuant to Rule 12 (b), Federal Rules of Civil Procedure, on the grounds that the Court lacks jurisdiction over the President of the United States, and for such other relief as the Court deems proper.

Dated: New York, New York
January 7, 1974

Yours, etc.
Paul J. Curran