

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 06-cv-306 WN KL
	)	
DONALD R. BUSHNELL, individually and	)	
d/b/a Bushnell Contract Labor Service,	)	
	)	
Defendant.	)	
_____	)	

**BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Donald R. Bushnell repeatedly prepares fraudulent federal income tax returns for his customers, and will continue to do so unless he is enjoined. The United States files this motion for preliminary injunction to bar Bushnell from preparing or filing tax returns for others.

**FACTS**

Bushnell prepares federal income tax returns for customers in Kansas City, Missouri and the surrounding area.<sup>1</sup> He operates his return-preparation business through his sole proprietorship, Bushnell Contract Labor Service.<sup>2</sup> From 2002 through the first half of 2005, Bushnell prepared 970 federal income tax returns for customers.<sup>3</sup> A total of 653 of these 970 returns contained a Schedule C, "Income from Self-Employment," which reported a business

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<sup>1</sup> See Exhibit 1, Declaration of Edward Tooey ¶ 2, at 1.

<sup>2</sup> See e.g. Exhibit 2, Collins 2002 Return.

<sup>3</sup> See Exhibit 1, Declaration of Edward Tooey ¶ 3, at 1. Bushnell prepared 138 federal income tax returns in 2002, 259 returns in 2003, 347 returns in 2004, and 226 returns in 2005 through June 6. *Id.*

loss.<sup>4</sup>

Bushnell-prepared returns for these years contained false deductions and expenses on the Schedules C, false dependent deductions, and reported false filing status.<sup>5</sup> The IRS was not always able to detect the falsehoods when the returns were initially processed, and often issued erroneous tax refunds based on these false returns. Thus, the IRS has had to audit Bushnell's customers to ascertain the extent of the loss and begin the process of recovering the erroneous refunds and assessing and collecting the taxes owed.<sup>6</sup> Bushnell's conduct harms the Government not only because of his customers' tax understatements, but also because of the IRS's substantial costs in detecting and recovering the tax losses, and because the IRS may not be able to detect every improper tax return and assess and collect the proper tax.

So far, the IRS has audited 186 Bushnell customers whose returns were prepared from 2002 through June 6, 2005.<sup>7</sup> Every single one of the audited returns misstates the correct tax liability—with an average tax understatement per return of \$4,024.<sup>8</sup> Moreover, as we demonstrate below, these were not minor or innocent errors; they are attributable to Bushnell's blatantly fraudulent preparation.

Although the 2005 return-filing deadline is near, many return preparers obtain filing extensions and continue preparing after April 15. Thus a preliminary injunction preventing

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<sup>4</sup> *Id.* ¶ 4, at 1.

<sup>5</sup> *Id.* ¶¶ 8, 9, at 2, 4.

<sup>6</sup> *Id.* ¶¶ 6-7, at 2.

<sup>7</sup> *Id.* ¶ 5, at 1.

<sup>8</sup> *Id.* ¶ 7, at 2.

Bushnell from preparing tax returns is necessary to stop further damage during the pendency of this case. This fact section contains a description of (A) the returns Bushnell prepares, (B) the harm Bushnell causes the Government, and (C) why Bushnell knows that his actions are wrong.

#### **A. Bushnell Prepares Tax Returns With False Information.**

The IRS has thus far audited 186 Bushnell customers, some of whom were audited for more than one year. In all but three instances, the audited tax return contained a Schedule C reporting a business loss.<sup>9</sup> Further, every audited tax return required an adjustment, with all but one of those adjustments resulting in additional tax owed.<sup>10</sup> The average tax understatement per return was \$4,024 and there were total tax understatements of \$1,347,985 for the audited Bushnell-prepared returns.<sup>11</sup>

The bulk of the tax understatements on Bushnell-prepared returns resulted from false and fraudulent deductions and expenses on the Schedules C (income from self employment).<sup>12</sup> Bushnell either overstated expenses and deductions for customers who had businesses, or fabricated businesses (and business deductions) for customers who did not have a business.<sup>13</sup> Additionally, some of the Bushnell-prepared returns contained false dependent exemptions and reported false filing status.<sup>14</sup> (False filing status can cause tax understatements in several ways.

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<sup>9</sup> *Id.* ¶¶ 5, 6 at 1, 2.

<sup>10</sup> *Id.* ¶ 7, at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶ 8, at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* ¶ 9, at 4.

For example, filing as a “head of household” confers certain tax benefits. To qualify for that filing status a person must (among other things) be single and must provide more than half the cost of providing for a qualifying person in his or her home. Married people or single people who do not qualify may not report that filing status.)

In conjunction with the audits, an IRS Tax Compliance Officer obtained affidavits from 21 of Bushnell’s customers.<sup>15</sup> The affidavits establish that (1) Bushnell failed to advise customers about how their Schedules C were prepared; (2) Bushnell did not ask customers for receipts for Schedule C expenses; and (3) Bushnell fabricated bogus Schedule C businesses for customers who did not have businesses.<sup>16</sup> Sixty-seven percent of the returns Bushnell prepared contained a Schedule C and reported a business loss.<sup>17</sup> The IRS audits discovered that all of the Bushnell-prepared returns with Schedules C contain false and fraudulent deductions and expenses.<sup>18</sup>

Some specific examples of Bushnell’s fraudulent preparation are below:

*1. Dana Collins.*<sup>19</sup>

Bushnell prepared Dana Collins’s federal income tax returns for 2002 and 2003.<sup>20</sup> Bushnell prepared and filed Schedules C and reported business losses of \$23,032 for 2002 and

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<sup>15</sup> See Exhibit 4, Customer Declarations.

<sup>16</sup> *Id.*; see also Exhibit 1, Declaration of Edward Tooey ¶ 10, at 4-5.

<sup>17</sup> *Id.* ¶ 4, at 1.

<sup>18</sup> *Id.* ¶¶ 7, 8, at 2.

<sup>19</sup> See Exhibit 1, Declaration of Edward Tooey ¶ 8a, at 2-3.

<sup>20</sup> See Exhibit 2, Collins 2002 Return; Exhibit 3, Collins 2003 Return.

\$20,144 for 2003.<sup>21</sup> Unbeknownst to Collins, Bushnell overstated Collins's business expenses by approximately \$21,000 in 2002.<sup>22</sup> Also, despite the fact that Collins dissolved her business by 2003, Bushnell, without consulting Collins, fraudulently deducted approximately \$20,000 of business expenses on Collins's tax return for that year.<sup>23</sup> Finally, Bushnell never gave Collins the opportunity to review either tax return before Bushnell filed them with the IRS.<sup>24</sup>

When Collins got an IRS audit notice in the mail, she called Bushnell to ask if he would come with her to the audit and was told by one of Bushnell's receptionists that "it's every man for himself, you'll be fine."<sup>25</sup> Bushnell never provided Collins with a copy of her federal tax return and did not attend the audit with Collins.<sup>26</sup> The IRS disallowed the claimed 2003 business losses because Collins did not have a business in 2003.<sup>27</sup> Also, the IRS disallowed most of the business loss for 2002 because that loss was overstated.<sup>28</sup> As a result of Bushnell's fraudulent return preparation, Collins owes additional taxes, penalties, and interest in the amount of \$5,406.65 for 2002 and \$7,234.06 for 2003.<sup>29</sup>

## 2. *Charles and Tara Cox.*<sup>30</sup>

Bushnell prepared Charles and Tara Cox's federal tax returns for 2002 and 2003.<sup>31</sup>

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<sup>21</sup> See Exhibit 2, Collins 2002 Return, at 3; Exhibit 3, Collins 2003 Return, at 3.

<sup>22</sup> See Exhibit 5, Collins form 4549 and Audit Papers.

<sup>23</sup> *Id.*

<sup>24</sup> See Exhibit 4, Customer Declarations, at 1-2.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See Exhibit 5, Collins Form 4549 and Audit Papers.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See Exhibit 1, Declaration of Edward Tooey ¶ 8b, at 3.

<sup>31</sup> See Exhibit 6, Cox 2002 Return; Exhibit 7, Cox 2003 Return.

Bushnell prepared and filed Schedules C for them, reporting business losses of \$50,095 for 2002 and \$33,550 for 2003.<sup>32</sup> The Coxes, however, never owned a business, never told Bushnell that they owned a business, and did not know that Bushnell had claimed a business loss on their returns.<sup>33</sup> Also, Bushnell never gave the Coxes a copy of their returns.<sup>34</sup> The IRS disallowed the phony business losses and the Coxes owe additional tax, interest and penalties of \$12,979.63 for 2002 and \$8,993.71 for 2003.<sup>35</sup>

### 3. *Hollis Dodson.*<sup>36</sup>

Bushnell prepared Hollis Dodson's 2002 and 2003 federal income tax returns.<sup>37</sup> For both years, Bushnell completed a Schedule C, listing expenses and income for Dodson's purported concrete business.<sup>38</sup> For 2002 Bushnell reported on Dodson's return a Schedule C loss of \$22,721 and for 2003 Bushnell reported on Dodson's return a Schedule C loss of \$18,285. In fact, however, Dodson did not have a concrete business.<sup>39</sup> The IRS disallowed the fabricated business losses and Dodson owes additional tax, interest, and penalties of \$3,854.17 for 2002 and \$2,708.72 for 2003.<sup>40</sup>

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<sup>32</sup> See Exhibit 6, Cox 2002 Return, at 3; Exhibit 7, Cox 2003 Return, at 3.

<sup>33</sup> See Exhibit 4, Customer Declarations, at 3-4.

<sup>34</sup> *Id.*

<sup>35</sup> See Exhibit 8, Cox Form 4549 and Audit Papers.

<sup>36</sup> See Exhibit 1, Declaration of Edward Tooey ¶ 8c, at 3.

<sup>37</sup> See Exhibit 9, Dodson 2002 Return; Exhibit 10, Dodson 2003 Return.

<sup>38</sup> See Exhibit 9, Dodson 2002 Return, at 3; Exhibit 10, Dodson 2003 Return, at 3.

<sup>39</sup> See Exhibit 4, Customer Declarations, at 5-6.

<sup>40</sup> See Exhibit 11, Dodson Form 4549 and Audit Papers.

4. *Benjamin and Kristy Nicely.*<sup>41</sup>

Bushnell prepared Benjamin and Kristy Nicely's federal tax returns for 2002 and 2003.<sup>42</sup> Bushnell prepared and filed Schedules C and reported business losses of \$17,428 for 2002 and \$17,366 for 2003.<sup>43</sup> The Nicelys asked Bushnell to come with them to their IRS audit, but Bushnell refused.<sup>44</sup> When they learned at their audit of the items Bushnell had reported on their returns, the Nicelys were "baffled"<sup>45</sup> because the large expenses Bushnell listed on their returns were vastly overstated.<sup>46</sup> The IRS disallowed the business losses and the Nicelys owe additional tax, interest, and penalties of \$4,213.75 for 2002 and \$2,469.39 for 2003.<sup>47</sup>

5. *Marcio Palacio.*<sup>48</sup>

Bushnell prepared Macio Palacio's federal income tax returns for 2002 and 2003.<sup>49</sup> Bushnell prepared and filed Schedules C and reported business losses of \$13,300 for 2002 and \$10,527 for 2003.<sup>50</sup> Palacio never owned a business, never told Bushnell that he owned a business, and Bushnell never explained to Palacio that Bushnell was reporting business losses on

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<sup>41</sup> See Exhibit 1, Declaration of Edward Tooey ¶ 8d, at 4.

<sup>42</sup> See Exhibit 12, Nicely 2002 Return; Exhibit 13, Nicely 2003 Return.

<sup>43</sup> See Exhibit 12, Nicely 2002 Return, at 3; Exhibit 13, Nicely 2003 Return, at 3.

<sup>44</sup> See Exhibit 4, Customer Declarations, at 7-8.

<sup>45</sup> *Id.*

<sup>46</sup> See Exhibit 14, Nicely Form 4549 and Audit Papers.

<sup>47</sup> See Exhibit 14, Nicely Form 4549 and Audit Papers.

<sup>48</sup> See Exhibit 1, Declaration of Edward Tooey ¶ 8e, at 4.

<sup>49</sup> See Exhibit 15, Palacio 2002 Return; Exhibit 16, Palacio 2003 Return.

<sup>50</sup> See Exhibit 15, Palacio 2002 Return, at 3; Exhibit 16, Palacio 2003 Return, at 3.

Palacio's returns.<sup>51</sup> The IRS disallowed the fabricated business losses and Palacio owes additional tax, penalties, and interest of \$3,716.28 for 2002 and \$3,566.50 for 2003.<sup>52</sup>

### **B. Bushnell's Actions Harm the Government.**

The harm Bushnell's misconduct causes the Government is substantial. The IRS audited 186 Bushnell customers, some of whom were audited for multiple tax years, and, in each case, the audited tax return required an adjustment, with all but one resulting in taxes owed to the Government.<sup>53</sup> The average tax understatement per return was \$4,024 and the total tax deficiency for all of the audited returns was \$1,347,985.<sup>54</sup>

The overall tax loss, however, is likely much larger, considering that substantially all of the audited returns contained tax understatements and Bushnell prepared at least 970 tax returns, not all of which have been audited. The IRS estimates that the tax loss from the Bushnell-prepared returns will total approximately \$2.4 million to \$2.6 million, not including the costs associated with conducting the audits and assessing and collecting the delinquent taxes.<sup>55</sup>

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<sup>51</sup> See Exhibit 4, Customer Declarations, 9-10.

<sup>52</sup> See Exhibit 17, Palacio Form 4549 and Audit Papers.

<sup>53</sup> *Id.* ¶¶ 5, 6, 7, at 1, 2.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* ¶ 11, at 5. Agent Tooey calculated the high end of the estimate by multiplying 653, the number of returns with Schedules C reporting a business loss filed by Bushnell, times the average tax understatement per return of \$4,024 (for a total of approximately \$2.6 million). Agent Tooey calculated the low end of the estimate by multiplying 653 times the average agreed tax understatement per return of \$3,679 (for a total of approximately \$2.4 million). *Id.* An agreed tax understatement is an understatement amount that, after audit, is agreed upon by the taxpayer and the IRS.



### **C. Bushnell Knows That He Is Filing Fraudulent Returns.**

Bushnell knows that his actions violate the Internal Revenue Code. Using false numbers, inventing businesses, and taking improper deductions are clearly wrong and show Bushnell's willful violations of the tax laws.

### **ANALYSIS**

For the protection of both the public fisc and his customers, Bushnell ought not to be acting as a tax preparer. The evidence submitted with this motion establishes that Bushnell continually and repeatedly prepares and files fraudulent returns for customers, sometimes without the customers' knowledge. The Court should preliminarily enjoin Bushnell under §§ 7407 and 7402 of the Internal Revenue Code (I.R.C.; 26 U.S.C.) from preparing or filing tax returns for others.<sup>56</sup> To obtain a preliminary injunction under I.R.C. §§ 7407 or 7402 the United States need only meet the requirements of the particular statute and need not prove the traditional

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<sup>56</sup> Preliminary injunctions enjoining tax return preparation entirely have been issued in the following other cases: *United States v. Shiff*, 379 F.3d 621, 625 (9<sup>th</sup> Cir. 2004) (affirming district court's preliminary injunction order enjoining Shiff from, among other things, preparing federal income tax returns); *United States v. Parker*, 2005 WL 3105339 (M.D.N.C. 2005); *United States v. Binge*, 2004 WL 2600770 (N.D. Ohio 2004); *United States v. Franchi*, 756 F. Supp. 889, 895 (W.D. Pa. 1991); *but see United States v. DeAngelo*, 2003 WL 23311522 (C.D. Cal. 2003) (denying Government's request for a preliminary injunction preventing defendant from preparing taxes).

equitable grounds for an injunction.<sup>57</sup> Nonetheless, as outlined below, the traditional equitable factors are established here as well.

**A. Internal Revenue Code Sections 7407 and 7402.**

*1. Bushnell's Preparation of Fraudulent Returns Violates § 7407.*

Section 7407 authorizes a court to enjoin a person from acting as an income tax return preparer if that person continually or repeatedly engages in conduct subject to penalty under I.R.C. § 6694, and if an injunction simply prohibiting the conduct subject to penalty would not be sufficient to prevent interference with the proper administration of the internal revenue laws.<sup>58</sup>

I.R.C. § 6694(a)<sup>59</sup> penalizes a tax return preparer:

1. who prepares a return or claim for refund that includes an understatement of liability due to a position for which there is not a realistic possibility of being sustained on the merits;
2. the income tax return preparer knew (or reasonably should have known) of such position; and
3. the relevant facts affecting the position were not adequately disclosed on the return (or a statement attached to the return), or the position was frivolous.

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<sup>57</sup> *United States v. White*, 769 F.2d 511, 515 (8<sup>th</sup> Cir. 1985) (“When an injunction is explicitly authorized by statute, proper discretion usually requires its issuance if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purpose.”); *United States v. Shafer*, 2005 WL 1324851 (W.D. Mo. 2005); *Minnesota ex rel. Hatch v. Sunbelt Communications*, 282 F. Supp 2d. 976, 979 (D. Minn. 2002); *see also United States v. Estate Pres. Serv.*, 202 F.3d 1093, 1098 (9<sup>th</sup> Cir. 2000) (noting that traditional requirements for injunctive relief need not be satisfied where injunction is expressly authorized by statute), *but see United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11<sup>th</sup> Cir. 1984), *cert. denied*, 470 U.S. 1050 (1985) (traditional equitable grounds need to be shown for an injunction pursuant to § 7402 only).

<sup>58</sup> 26 U.S.C. § 7407(b).

<sup>59</sup> *Id.* § 6694(a).

Bushnell prepares income tax returns for customers asserting unrealistic positions based on frivolous, fabricated information, and without disclosing the relevant facts on the return or an attached statement. This results in understating customers' tax liabilities. As described above, Bushnell knew or reasonably should have known about these asserted positions and the resulting understatements. Bushnell's actions are subject to penalty under § 6694(a).

Bushnell's repeated misconduct has continued for at least four years, and he shows no signs of stopping. Thus, an injunction simply preventing the prohibited conduct would not be sufficient to prevent interference with the proper administration of the tax laws. Accordingly, a preliminary injunction prohibiting Bushnell from preparing or filing any income tax returns for others is warranted.

2. *Bushnell should be enjoined Under § 7402.*

I.R.C. § 7402(a) authorizes district courts to issue injunctions "as may be necessary and appropriate for the enforcement of the internal revenue laws."<sup>60</sup> The language of § 7402(a) is broad and manifests "a congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws."<sup>61</sup> Moreover, by the statute's own terms, injunctive relief under § 7402(a) is "in addition to and not exclusive of any and all other remedies of the United States . . . ."

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<sup>60</sup> *Id.* § 7402.

<sup>61</sup> *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957); *See also, United States v. First National City Bank*, 568 F.2d 853, 855-56 (2nd Cir.1977).

Bushnell is violating the internal revenue code by preparing and filing fraudulent returns. Also, as outlined in the next section, the traditional equitable factors weigh in favor of the Government and thus support injunctive relief pursuant to § 7402.<sup>62</sup>

### **B. Traditional Equitable Grounds.**

A movant must establish four elements for issuance of a preliminary injunction: (1) the probability that the movant will succeed on the merits; (2) a showing of irreparable harm to the movant should the court deny the injunction; (3) a showing that this harm outweighs any harm that granting the injunction will cause to the defendant; and (4) a showing that the injunction is in the public interest.<sup>63</sup> As outlined below, the United States has met its burden.

#### *1. The Probability that the United States Will Succeed on the Merits.*

From 2002 through the first half of 2005, Bushnell prepared 970 federal income tax returns for customers. A total of 653 of these 970 returns contained a Schedule C, "Income from Self-Employment," which reported a business loss. The IRS audited 186 Bushnell customers, some of whom were audited for more than one year. In all but three instances, the audited tax return contained a Schedule C reporting a business loss. Further, every audited tax return required an adjustment, with all but one of those adjustments resulting in additional tax owed. The average tax understatement per return was \$4,024 and there was a total tax understatement of \$1,347,985 for the audited Bushnell-prepared returns. The overwhelming evidence of

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<sup>62</sup> *United States v. Ernst & Whinney*, 735 F.2d at 1301 (traditional equitable grounds need to be shown for an injunction pursuant to § 7402 only).

<sup>63</sup> *Mid-America Real Estates Co. v. Iowa Realty Co., Inc.*, 406 F.3d 969, 972 (8<sup>th</sup> Cir. 2005).

Bushnell's repeated and clear violations of federal tax laws, *i.e.*, filing fraudulent tax returns, shows that the government will succeed on the merits of this case.

2. *The United States Will Suffer Irreparable Harm if the Relief is Not Granted.*

Without court involvement, Bushnell will doubtless continue to prepare or assist in preparing false and fraudulent returns. Even after April 15<sup>th</sup>, tax preparers continue to prepare returns for customers who have obtained automatic extensions to file. Thus, it is important to stop Bushnell's fraudulent conduct as soon as possible. The irreparable harm to the United States is shown in the costs it will incur if Bushnell is not stopped from preparing returns. Those costs include the taxes that his customers are not reporting and not paying, as well as the costs of detecting and undoing Bushnell's ongoing fraud.

3. *The Balance Between the Harm to the Government and the Harm that Granting the Injunction Will Cause Bushnell.*

The Government seeks an order requiring Bushnell to stop preparing or helping to prepare returns during the pendency of this case. The Government seeks this relief because the evidence shows that all if not virtually all of the returns Bushnell prepares contain inflated if not outright fabricated deductions and other false information. While barring Bushnell from preparing returns is a strong remedy, his repeated and continual misconduct fully warrants strong measures to stop him.

4. *Issuance of a Preliminary Injunction Serves the Public Interest.*

"[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need."<sup>64</sup> The public interest is served when misleading and fraudulent commercial

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<sup>64</sup> *Bull v. United States*, 295 U.S. 247, 259 (1934).

practices are stopped, and when proper taxes are collected. Bushnell has collected fees from his customers and then, through his fraudulent conduct, exposed them not only to having to pay thousands of dollars in taxes once the fraud is detected, but also to paying interest and penalties. In this case, the public interest is clearly served by a preliminary injunction barring Bushnell from preparing tax returns for others. Further, granting a preliminary injunction will prevent further harm to Bushnell's customers.<sup>65</sup>

### **CONCLUSION**

Bushnell's brazen fraud harms the United States, the public interest, and his customers. The Court should preliminarily enjoin him to stop the ongoing fraud.

Respectfully submitted,

BRADLEY J. SCHLOZMAN  
United States Attorney

s/ Hilarie E. Snyder

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this brief and the accompanying exhibits will be hand-delivered to Donald R. Bushnell along with the Complaint.

/s/ Hilarie Snyder

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Hilarie Snyder

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<sup>65</sup> See generally *United States v. First Nat'l. City Bank*, 379 U.S. 378, 385 (1965).