

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
TRUE THE VOTE, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:13-cv-00734-RBW
)	
UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**FEDERAL DEFENDANTS’ RESPONSE TO PLAINTIFF’S NOTICE OF
SUPPLEMENTAL AUTHORITY**

Plaintiff True the Vote has called to the Court’s attention the recent opinion in *Z Street, Inc., v. Koskinen*, No. 12-cv-0401 (KBJ), 2014 U.S. Dist. LEXIS 71638 (D.D.C. May 27, 2014), and suggests that the conclusions in that opinion as to the availability of alternative remedies and the application of the Anti-Injunction Act and the Declaratory Judgment Act in that case provide persuasive authority for the outcome of those issues – should the Court ever reach them – in True the Vote’s case.

The *Z Street* opinion has come about through an unusual procedural posture. The case originated in the United States District Court for the Eastern District of Pennsylvania. After the government’s motion to dismiss was fully briefed, the Pennsylvania Court *sua sponte* transferred the case to the United States District Court for the District of Columbia because the Pennsylvania Court determined that *Z Street*’s case was “best construed as a controversy arising under 26 U.S.C. § 7428, which provides for declaratory judgments in suits related to the classification of organizations under Section 501(c)(3).” *Z Street*, 2014 U.S. Dist. LEXIS 71638 at *7 (quoting

the Pennsylvania Court's Transfer Order). The United States District Court for the District of Columbia, the Court of Federal Claims and the Tax Court are the only courts that have jurisdiction to determine suits that arise under section 7428. In its Transfer Order, the Pennsylvania Court also observed that, even though Z Street raised a challenge as to the constitutionality of the process of the determination of its tax status, Z Street could maintain that challenge under section 7428. *Id.* at *8. The District of Columbia Court, however, had a different view and decided that section 7428 did not apply to Z Street's case, *id.* at *47-48, but went on to decide the case anyway.

True the Vote stands in a different posture from Z Street, including the fact that the IRS already has granted True the Vote's application for tax-exempt status under section 501(c)(3). In the event the Court reaches the issues discussed in the *Z Street* opinion, the federal defendants respectfully disagree with the *Z Street* Court's interpretation of the law, particularly that Court's expansion of *Cohen v. United States*, 650 F.3d 717 (D.C. Cir. 2011). In the alternative, the federal defendants urge that *Z Street* should be limited to its facts, which are largely distinguishable from those in True the Vote's case.

DATED: June 5, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2014, I caused the Federal Defendants' Response to Plaintiff's Notice of Supplemental Authority in the above-captioned matter to be filed with the United States District Court for the District of Columbia via the Court's CM/ECF system.

/s/ Grover Hartt, III
GROVER HARTT, III