11-14617-II

IN THE

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

LINDA C. SCHRENKO,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR APPELLANT- DEFENDANT

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REQUEST FOR ORAL ARGUMENT

Defendant/Appellant, pursuant to Eleventh Circuit Rule 28-1(c) and Federal Rules of Appellate Procedure 34, respectfully request oral argument. Oral argument could assist this Court in consideration of the issues raised herein – expressly, the statute setting a mandatory maximum allowable garnishment and government action circumventing it. Oral argument could assist this Court regarding the record herein.

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STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals has jurisdiction to consider this case pursuant to 28 U.S.C. §1291 and Rule 4 of the Federal Rules of Appellate Procedure. This case involves a direct appeal of a civil matter from the United States District Court for the Northern District of Georgia, Atlanta Division. The Order Denying Appellant's Motion for Return of Garnished Funds was entered on September 19, 2011. The notice of appeal was timely filed on September 30, 2011.

STATEMENT OF THE ISSUES

I. WHETHER THE DISTRICT COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR RETURN OF ILLEGALLY GARNISHED FUNDS ON THE BASIS THAT THE GOVERNMENT HAS EXCEEDED THE MAXIMUM ALLOWABLE GARNISHMENT UNDER U.S. LAW.

II. WHETHER THE DISTRICT COURT ERRED IN NOT RETURNING APPELLANT'S RETIREMENT BENEFIT BASED ON THE FACT THE LIMITATION IS FIXED IN LAW AND CANNOT BE CIRCUMVENTED BY THE GOVERNMENT RELYING ON AN ALLEGED PROCEDURAL DEFECT.

STATEMENT OF THE CASE

Defendant-Appellant, Linda Schrenko, entered a plea of guilty on May 10, 2006, to conspiring to embezzle federal funds and committing a scheme to defraud

the State of Georgia, in violation of 18 U.S.C. § 371; and conspiracy to launder money, in violation of 18 U.S.C. § 1956(h). [Doc. 218]. On July 12, 2006, Appellant Schrenko was sentenced to a term of imprisonment of 96 months, to be followed by supervised release for a period of three years; and ordered to pay restitution in the amount of $414,887.50. [Doc. 268]. She reported to the FCI Tallahassee to begin serving her sentence on September 11, 2006. Appellant is currently scheduled to be released from incarceration on or about August 29, 2013.

On February 26, 2007, some five months *after* Defendant Schrenko was taken into custody of the Attorney General, an Order In Garnishment was entered that directed the Employee's Retirement System of Georgia Pensions to pay to the Clerk of the Court, the entirety of Appellant's monthly state retirement benefits in partial satisfaction of Appellant Schrenko's restitution obligations. [Doc. 358]. Monies in the total amount of $_237,863.71 were in fact so taken by the government from September 26, 2006 to April 1, 2011, when Appellant Schrenko filed a Motion for Return of Illegally Garnished Funds on April 13, 2011. After Appellant Schrenko filed the afore-noted motion for return of those garnished benefits, the District Court scheduled a hearing for September 7, 2011, on that

request for the return of garnished benefits. [Docs. 474 and 480].[1] The District Court furthered directed that Appellant Schrenko, who had been incarcerated at the Federal Correctional Complex-Camp ("FCC") in Coleman, Florida, be produced in Atlanta, Georgia, for the hearing. [Doc. 481].

Appellant Schrenko's motion to contest the garnishment of her retirement benefits was denied by the Honorable Clarence Cooper, United States District Court Judge, on September 19, 2011. [Doc. 493]. This appeal follows.

STATEMENT OF FACTS

On or about September 27, 2006 Counsel for the United States, Assistant United States Attorney Cynthia B. Smith, for and on behalf of the United States Attorney for the Northern District of Georgia, did file an action of Garnishment pursuant to 18 U.S.C. § 3205. The said action in Garnishment purported to serve Linda S. Schrenko, by depositing in the United States mail, postage prepaid on September 27, 2006, a Notice of said Garnishment at an address the government personnel knew was no longer valid; that being an address other than the known

[1] Appellant's counsel made repeated efforts with the U.S. Attorney's Office to raise the issue that the government was garnishing more than what the government was entitled to garnish from Appellant's pension (Letter dated October 6, 2009 to Gentry Shelnutt, which is attached herein) prior to Appellant filing her Motion for Return of Illegally Garnished Funds.

location of Ms. Schrenko as an inmate of the Federal Correctional Institute in Tallahassee, FL. More than two weeks prior, on or about September 11, 2006, pursuant to Order of the United States District Court for the Northern District of Georgia and with full and, at the time, current knowledge of the United States Attorney's Office for the Northern District of Georgia, surrendered to the Custody of the Attorney General of the United States at the Federal Corrections Institute in Tallahassee, Florida.

Thus, more than two weeks before the purported *mailing* of the Notice of Garnishment, Appellant Schrenko was in the custody of the United States Bureau of Prisons, a division of the Department of Justice. The United States Attorney is held to have had knowledge of the surrender pursuant to Court Order. The United States Attorney's Office for the Northern District of Georgia had been notified *prior to* September 27, 2006 that the address to which the purported Notice of Garnishment had been sent was no longer valid, since Ms. Schrenko reported to FCI Tallahassee on September 11, 2006 to begin serving her sentence. The United States is held to the knowledge of the whereabouts of a person *in its custody*, simply based on the theory of *res ipsa loquitur*.

Thus, there was in fact no service of said Notice of Garnishment. The government apparently served a lawyer, but one who no longer represented the

Appellant Schrenko; and the government made no attempt to determine the lawyer's status. That lawyer was Pete Theodocion. Thereafter, the United States District Court for the Northern District of Georgia was incorrectly informed that the said service had been made, purportedly as required by 28 U.S.C. § 3205, and having no Answer to the said Notice of Garnishment, issued an Order to seize the entirety of the Employee Retirement System of Georgia ("ERSGA") account of Linda S. Schrenko, pursuant to 28 U.S.C. § 3205 and the Mandatory Victims Restitution Act (18 U.S.C. §3663A).

The said Order was and is illegal and is in violation of 15 U.S.C. §1673, in that the seizure of the retirement account *in its entirety* violates the express, mandatory provision limiting any such seizure to a maximum of twenty-five percentile (25%) of the amount of each incremental payment as established by 15 U.S.C. § 1673(a)(1). As of September 1, 2011, the aforesaid illegal seizure has amounted to $260,270.09. Each month that number is increasing by about $4,500.00.

The United States, through its offices the United States Department of Justice, the United States Attorney for the Northern District of Georgia, aided and abetted by the ERSGA fund (the Garnishee) and acting in concert, have illegally forwarded, seized, and retained $195,202.57 of Appellant's retirement funds, full

well knowing the law prohibits such seizure and retention; and therefore Appellant Schrenko is entitled to the return of $195,202.57 which is 75% of the total amount seized, as of September 1, 2011. This amount increases by about $3,375.00 each month (75% of $4,500.00)

Importantly, the retirement system in question and from which Appellant's funds have been seized, is *not* a voluntary system, but is involuntary and thus these retirement funds are "wages" within the meaning of the garnishment statute, and therefore subject to the statutory limitation of 25%.

This obligation (the restitution Order) was joint and several with Co-Defendant Stephen Botes, but the United States has made no effort to collect any of the principal from Botes. The United States comes into the United States District Court for the Northern District of Georgia with unclean hands in that no effort of any nature was made to collect from Botes, but only from Defendant Schrenko due to her mandated state retirement contributions, which were seen as "easy pickings" for the government.

SUMMARY OF THE ARGUMENT

At its core this case concerns the U.S. government's illegal garnishing of Appellant Schrenko's pension from the ERSGA. According to U.S. case law,

statutes, and District Court Judge Clarence Cooper, the government is entitled to take only 25% of Appellant Schrenko's wages (or involuntary pension) in order to pay for her restitution; however, the government has deprived Appellant Schrenko of 100% of her pension for more than five years.

The District Court erred in denying the Appellant's Motion for Return of Illegally Garnished Funds on the basis that the Government has exceeded the maximum garnishment they are allowed to take from an involuntary retirement plan under U.S. law. According to U.S. law, the maximum allowable amount of an individual's earnings subject to garnishment is 25%. The government has well-exceeded this amount by taking 100% of Appellant's retirement pension from the ERSGA each month since September 25, 2006. Even though Appellant Schrenko has been incarcerated this entire time, she is still entitled to that portion of her monthly retirement pension from the ERSGA (75%) that exceeds the maximum allowable reachable by the government. The government is not entitled to circumvent the law and confiscate 100% of Appellant's retirement pension, merely because Appellant is incarcerated.

The District Court erred in not returning Appellant's retirement benefit, by ignoring the fact that the limitation is fixed in law, and the law cannot be circumvented by the Government simply based on an alleged procedural defect

(i.e., that Ms. Schrenko did not timely file an objection). The District Court erroneously found that Appellant Schrenko "waived" any objections to her garnishment by falling to raise the arguments in a timely fashion. Ms. Schrenko contests such finding of "waiver," and did so at her hearing on September 7, 2011. However, even assuming arguendo she impermissibly failed to object on a "timely" basis, the government still is not and should not be permitted to ignore the clear requirements of a federal law and commandeer 100% of Appellant's retirement pension.

ARGUMENT AND CITATION OF AUTHORITY

I. WHETHER THE DISTRICT COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR RETURN OF ILLEGALLY GARNISHED FUNDS ON THE BASIS THAT THE GOVERNMENT HAS EXCEEDED THE MAXIMUM ALLOWABLE GARNISHMENT UNDER U.S. LAW.

According to 15 U.S.C. § 1673(a)(1) (section 303 of the Consumer Credit Protection Act), the "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed 25 per centum of [her] disposable earnings for that week." This is the maximum allowable garnishment any individual or organization (including the U.S. government) is allowed by law to collect from a judgment debtor. In addition, the 25% limit was also noted by U.S. District Court Judge Clarence Cooper, the

presiding judge in the above matter. Judge Cooper stated in Ms. Schrenko's Sentencing Proceedings on July 12, 2006, "Any portion of the restitution that is not paid in full at the time of the defendant's sentencing shall become a condition of supervision and be paid at the monthly rate of not less than $250 plus 25 percent of the defendant's monthly income that exceeds $2,000." Doc. 322 – Pg. 6-7.

18 U.S.C. § 3613 (a)(3) states, "The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law, a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. § 1673) shall apply to enforcement of the judgment under Federal law or State law."

"Garnishment is defined by the Consumer Credit Protection Act (CCPA), 15 U.S.C. § 1601 *et seq.*, as any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of any debt. 15 U.S.C. § 1672(c). Section 303 of the CCPA restricts garnishment to twenty-five percent of a debtor's weekly disposable earnings, or the amount by which his other disposable earnings exceed thirty times the federal minimum hourly wage, whichever is less. 15 U.S.C. § 1673(a). No court of the United States or any state,

and no state or officer or agency thereof may make, execute, or enforce any order or process in violation of CCPA §303. 15 U.S.C. § 1673(c)." *United States v. Jaffe*, 417 F.3d 259, 264-265 (2nd Cir. 2005).

In *United States v. DeCay*, 620 F.3d 534 (5th Cir. 2010), the United States moved for writs of garnishment under Federal Debt Collection Procedures Act (FDCPA) seeking seizure of defendants' interests in state-run pension fund. "The parties dispute whether [Defendant's] monthly benefit payments constitute 'earnings' under the CCPA. The CCPA defines 'earnings' as 'compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and *includes periodic payments pursuant to a pension or retirement program*.'" 15 U.S.C. § 1672(a) (emphasis added). *Id*. at 543. The Court in *DeCay* dealt with the question of "whether payments made from an employer's retirement program to an employee are too attenuated to be considered 'earnings' under the CCPA." *Id*.

"The district courts around the country have divided over whether monthly pension-benefit payments constitute 'earnings' under the CCPA. Several district courts have concluded that "once passed to a retirement account or annuity in the hands of the employee, the funds in the account or annuity are not 'earnings' under the CCPA, and thus not subject to the 25% cap…" *Id*. at 543-544.

"However, at least one district court has reached the opposite conclusion and held that periodic payments of retirement benefits are 'earnings' under the CCPA. *United States v. McClanahan*, 2006 U.S. Dist. LEXIS 34042 (S.D. WV May 24, 2006) at *9 (holding that "under clear statutory language, it appears that the Government may garnish only 25% of the Defendant's pension"). *Id*. at 544.

The *DeCay* Court found, "the statutory language unambiguous and [held] that the United States may garnish only twenty-five percent of [Defendant's] monthly pension benefits. The statute explicitly defines 'earnings' to include 'periodic payments made *pursuant to* a pension or retirement program.' 15 U.S.C. § 1672(a)(emphasis added). *Id*.

In *United States of America v. David Charles Wilson*, 2007 U.S. Dist. LEXIS 93494 (S.D. GA Dec. 20, 2007), the United States issued a Writ of Continuing Garnishment upon Defendant's criminal debt. *1. The Court granted the requested Writ of Continuing Garnishment against the Teachers Retirement System of Georgia (the same "Garnishee" as herein). The Garnishee answered said writ, stating that it owes Defendant net retirement benefits of $6,497.58 per month for the remainder of his life. *1-2. The Court in *Wilson* disallowed the 100% garnishment, and went on to state that the amount of funds that may be

garnished is limited to 25% of Defendant's benefits, or $1,624.40 per month. *4. (Simple math proves that $1,624.40 is 25% of $6,497.58.)

To the contrary in the case before this Court, the government has continued to take 100% of Appellant Schrenko's monthly retirement pension. Since September 25, 2006, the government has ordered the ERSGA to send Appellant Schrenko's entire monthly retirement to the U.S. District Court Clerk. As of August 25, 2011, 100% of Appellant Schrenko's monthly retirement has been paid to the government, which has equaled $260,270.09.

As counsel for Appellant Schrenko, Bob Barr, stated in the September 7, 2011 District Court proceeding, "the amount that has been in fact garnished, we believe under the Consumer Credit Protection Act, which is made a part of the 15 U.S.C. §1673, requires that only 25 percent of the payments under that pension plan can in fact be withheld because it is a mandatory plan and because the law, which we believe is well-settled, as we've cited to the Court, and also in a new case, *U.S. v. DeCay*, found at 620 F.3d 534, a Fifth Circuit case from September of last year, 'earning' very clearly does include payments into a mandated, mandatory, or involuntary pension plan and therefore subject to the 25 percent limitation." Doc. 518 – Pg. 5. Counsel further stated to the Court, "Insofar as the government has in fact been taking 100 percent of the net to Ms. Schrenko, we

believe that the additional 75 percent is unlawfully being retained by the government, denied the Plaintiff, and is violative of due process as to the debtor, the judgment debtor, that is, the defendant." Doc. 518 – Pg. 5.

In response, counsel for the United States, Assistant U.S. Attorney Cynthia Beckwith Smith, stated to the Court, "we think it's appropriate for the government to take 100 percent of the pension benefits." Doc. 518 – Pg. 8. Counsel went on to tell the Court that anybody in custody is not entitled to a pension that they've earned, by stating, "once the defendant is in jail the government is entitled to the entire retirement account." Doc. 518 – Pg. 52.

The government has a right under the law to employ garnishment laws as against Appellant Schrenko in order to satisfy her restitution. However, the government cannot violate the law in so doing. The garnishment must still be lawful. 15 U.S.C. §1673 clearly states that the maximum allowable garnishment may not exceed 25%. The law is the law, and the government cannot concoct its own illegitimate law, and decide to take more than what the law allows. The additional 75% of Appellant Schrenko's retirement benefit that the government is taking, is illegal. The government cannot arbitrarily decide on an amount more than what the law allows and then deprive an individual of their property. "The intent of the statute is laid out very clearly in case law, as well as in the legislative

history, is specifically to prevent a person from becoming destitute. And it has nothing to do with whether or not they are in jail during the period of garnishment or not." Doc. 518 – Pg. 19. "There is a statute, and the federal statutes here, whether one looks directly at the Consumer Credit Protection Act or the garnishment statutes themselves, there are certain requirements and limitations on what the government can do, period, end of argument. They can only take 25 percent of earnings, and earnings are defined in federal statute as including a pension plan such as that maintained and paid into involuntarily by this defendant and judgment debtor." Doc. 518 – Pg. 55. "There's no language in any statute or in any of the case law that indicates that simply because a person who paid into such a system is in jail that they're not entitled to it; quite the contrary, there is legislative intent and case law indicating that it is precisely that type of person, so they are not destitute when they leave prison, that the 25 percent limitation has been made to apply by statute." Doc. 518 – Pg. 56-57.

Appellant Schrenko's retirement account is protected beyond the 25% maximum, and in ignoring such limitations, the government and the garnishee have acted illegally for nearly five years.

II. WHETHER THE DISTRICT COURT ERRED IN NOT RETURNING APPELLANT'S RETIREMENT BENEFIT BASED ON THE FACT THE LIMITATION IS FIXED IN LAW AND CANNOT BE CIRCUMVENTED BY THE GOVERNMENT RELYING ON AN ALLEGED PROCEDURAL DEFECT.

"The Due Process Clause of the Fifth Amendment prohibits the United States, [just] as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person of property without 'due process of law.'" *Dusenbery v. U.S.*, 534 U.S. 161, 167 (2002). Fundamental due process requires that "individuals whose property interests are at stake are entitled to notice and an opportunity to be heard." *Id*. In *Dusenbery*, the petitioner was in prison, and the FBI began an administrative process to forfeit cash that officers seized when they executed a search warrant for the residence where petitioner was arrested. The FBI sent such notice by certified mail addressed to petitioner care of the federal correctional institution (FCI) where he was incarcerated; to the address of the residence where he was arrested; and to an address in the town where his mother lived.

The Court held, "the FBI's notice of the cash forfeiture satisfied due process. The Fifth Amendment's Due Process Clause entitles individuals whose property interests are at stake to notice and an opportunity to be heard. The straightforward reasonableness under the circumstances test of *Mullane* v. *Central Hanover Bank*

& Trust Co., 339 U.S. 306, 313 (1950), not the balancing test approach of *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976), supplies the appropriate analytical framework for the due process analysis." *Id*. at 161. "The Due Process Clause…requires only that the government's efforts be 'reasonably calculated' to appraise a party of the pendency of the action." *Id*. at 170.

The key to "reasonable notice" is that the government must clearly take reasonable efforts when they take an action against a defendant. In the case at bar, the government failed this nominal burden; and only sent notice to the attorney who had represented the Appellant in a previous action. The government failed to even take the time to mail notice to the Appellant herself, even though Appellant was in the custody of the government at this time. This clearly fails the test of Due Process.

Appellant Schrenko conceded that the government provided notice of the Writ of Continuing Garnishment to Pete Theodocion, who was Appellant's attorney of record at the time of her trial and sentencing. Attorney Theodocion, however, did not act on that notice. Theodocion did not inform Appellant Schrenko of the garnishment in a timely fashion in order for Appellant Schrenko to have a hearing on the matter in the 20-day time period. Upon information and belief, the government served Theodocion with copies of the garnishment. Doc.

518 – Pg. 8. However, counsel for Appellant Schrenko contests this assertion by the government. Mr. Theodocion testified his representation of Appellant Schrenko terminated after the entering of her plea on May 10, 2006. Doc. 518 – Pg. 21-22. Even if Theodocion had received notice of the writ, notice of the Government's Motion for Final Disposition of the Garnishment, and the Court's order implementing the garnishment, it all happened after Appellant Schrenko entered her plea, which terminated Theodocion's representation of Appellant Schrenko.

The fact is, regardless of any effort by the government to serve her trial attorney, Appellant Schrenko never received actual notice, notwithstanding that she was in the actual, known physical custody of the government. Even though Appellant Schrenko never had actual notice, Appellant Schrenko cannot object to the core of the garnishment; however, Appellant Schrenko can object to the fact the government is violating the law by exceeding the statutory amount which it is entitled to garnish. The government does not have the right simply because Appellant Schrenko's attorney, whose representation had terminated prior to receiving notice of the garnishment, did not notify her of a form of notice, to thereafter fabricate its own illegal law and decide on its own to deprive Appellant Schrenko of an additional 75% of her retirement benefits than the government is

entitled to. The government's logic seems to be that since Appellant Schrenko did not do her due diligence in requesting a hearing, even though she did not know of the garnishment, the government may illegally take more than the law allows.

The law is the law. The government must adhere to the law. Appellant Schrenko's failure to object to the garnishment itself, does not entitle the government to go ahead and take more than the maximum allowable amount set forth in 15 U.S.C. §1673. No person or organization, including the government, is above the law. The Supreme Court wrangled with this idea in *Mississippi v. Johnson*, 71 U.S. 475 (1867) when the Court stated:

> "The President is but the creature of the Constitution, one of the agencies created by it to carry it into practical operation; and it would be strange if he should be permitted to exert his agency in violating that instrument, and then claim exemption from the process of the court whose duty it is to guard it against abuses, because he is the chief executive officer of the government, and especially when he is exerting a mere ministerial duty; for that is all he does exert in executing an act of Congress; he has no discretion in the matter. The Constitution makes no distinction as to parties. The case is the criterion, no matter who is plaintiff or who defendant; and if the President be exempt from the process of the law, he is above the law. . . . Chief Justice Marshall, who tried the case, drew the distinction between the President and the King of England, and held that all officers in this country were subordinate to the law, and must obey its mandate, and, therefore, sustained the application. . . . The Constitution provides, indeed, that all officers may be impeached; but this does not exonerate them from personal liability for acts done under color of office, the President as well as other officers. . . . In this country the

> President is not above the law; it is above him, and hence he must be subject to its restraints." *Id*.

The notion in *Johnson* is implying that if the President of the United States is not above the law, the government is certainly not either. Even as far back as 1776, the notion that no one is above the law was popular during the founding of the United States, for example Thomas Paine wrote in his pamphlet *Common Sense* that "in America the law is king. For as in absolute governments the King is law, so in free countries the law *ought* to be King; and there ought to be no other." The government is not King, and therefore cannot devise its own "law" contrary to U.S. law.

Counsel for the United States correctly stated that 28 U.S.C. § 3205, which allows the Government to obtain a writ of garnishment, also provides the debtor an option to object to the writ. Under 28 U.S.C. § 3205(c)(5) , the judgment debtor may file a written objection to the writ and request a hearing, provided the debtor objects within 20 days after receipt of the answer. To properly place the objection before the court, the objecting party must state the grounds for the objection in writing and serve a copy of the objection, along with a request for a hearing, on all parties. 28 U.S.C. § 3205(c)(5). *United States v.* Crowther, 473 F. Supp. 2d 729, 731 (N.D. TX February 14, 2007). Counsel Smith stated in the September 7th

proceeding that "Section 28 U.S.C. § 3205 says that the defendant has 20 days, after that period the defendant is not allowed to object to the garnishment." Doc. 518 – Pg. 11. However, by failing to request a hearing within the 20-day time period, Appellant Schrenko has only waived her right to contest the garnishment, nothing else. The government simply cannot decide to take 100% of Appellant Schrenko retirement benefits merely because she did not object to the writ itself within 20 days. 28 U.S.C. § 3205(c)(6) states, "If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date."

Appellant Schrenko further objects to the excess amount of which the government is depriving her, because the retirement program with the ERSGA is an involuntary program. Appellant Schrenko had no choice but to have her retirement paid into the ERSGA. Appellant Schrenko did not have a choice of where she could place her retirement. Appellant Schrenko was making mandatory payments to the ERSGA.

O.C.G.A. §47-2-70(a) states "After January 1, 1950, any person who becomes an employee of any employer which operates under a merit system of

personnel administration and which is covered by the retirement system shall become a member of the retirement system as a condition of his or her employment, except as otherwise specifically excluded." This statutory provision under Georgia law mandates employees of the Department of Education must pay into the system.

The Acting Director of ERSGA, James Potvin, signed an Affidavit stating to the effect that the membership in the ERSGA is generally mandatory for all full time employees hired by employers who are covered under the ERSGA. According to the ERSGA records and Mr. Potvin, Appellant Schrenko was such an employee. Doc. 518 – Pg. 45-46.

CONCLUSION

For all the foregoing reasons, Appellant Schrenko respectfully requests that this Court reverse the District Court's Order of September 19, 2011, and return to Appellant Schrenko the amount of her garnishment which has been illegally taken from her. The U.S. government has continued to act illegally for over five years by garnishing 100% of Appellant Schrenko's pension, notwithstanding federal law permits it to garnish a maximum of 25%. The government concocted its own illegal way of depriving Appellant of her own pension which she is deserved

regardless if she is incarcerated or not. There is absolutely no U.S. law or statute that allows the government to do what it has been doing to Appellant Schrenko. The government has made up their own law, and believes that since Appellant Schrenko did not object to their illegally garnishing 100% of her pension at the onset, the government should be entitled to continue their illegal activity. The government should not be allowed to continue to do this activity.

Respectfully submitted, this 12th day of December 2011,

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ADDENDUM TO BRIEF

Attached letter dated October 6, 2009 to Gentry Shelnutt of the U.S. Attorney's Office, noted at footnote 1 on page 3 is attached hereto.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

I hereby certify that my word processing program, Microsoft Word, counted 4,881 words in the foregoing brief, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii).

December 12, 2011 Bob Barr

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2011, I am causing two copies of the foregoing brief to be served by first-class mail, postage pre-paid, to the following attorney of record:

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