

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**THE NATIONAL SPIRITUAL ASSEMBLY )  
OF THE BAHÁ'ÍS OF THE UNITED STATES )  
OF AMERICA UNDER THE HEREDITARY )  
GUARDIANSHIP, INC. )**

**Counter-Defendant, )**

**Civil Action No. 64 C 1878**

**v. )**

**The Honorable Amy J. St Eve**

**THE NATIONAL SPIRITUAL ASSEMBLY )  
OF THE BAHÁ'ÍS OF THE UNITED STATES )  
OF AMERICA, INC. )**

**Counterclaimant. )**

**RESPONSE AND AFFIRMATIVE DEFENSES TO  
NSA'S MOTION FOR RULE TO SHOW CAUSE  
WHY THE REMEYITES (Sic) SHOULD NOT BE HELD IN CONTEMPT  
FILED BY ORTHODOX BAHÁ'Í FAITH RESPONDENTS**

NOW COMES Joel B. Marangella, Franklin D. Schlatter, and The Provisional National Bahá'í Council of the United States ("PNBC"), the Orthodox Bahá'í Faith ("OBF") Respondents, by and through their attorneys Jeffrey A. Goldberg of Goldberg Law Firm, and Marshall N. Dickler and James A. Slowikowski, of Dickler, Kahn, Slowikowski & Zavell, Ltd., as Local Counsel, and hereby respond to the Motion for Rule to Show Cause Why the Remyites<sup>1</sup> [Sic] Should Not Be Held in Contempt brought by the Counterclaimant in the above-captioned matter, the National Spiritual Assembly of the Bahá'ís of the United States ("NSA"), as follows:

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<sup>1</sup> The Respondents object to the term "Remyite" to describe them as it is a term wholly fabricated by the NSA to create the false implication that they are connected with the organization of Charles Mason Remey, when in fact their recognition of his historical claim to the office of the Guardian does not make them related to the Remey organization nor are all such persons somehow a single entity or somehow liable for the conduct of the other so-called Remyites. These Respondents are known as Orthodox Bahá'ís.

1. As to the first paragraph of the Motion, the OBF Respondents deny any and all implication that the Respondents "Second International Bahá'í Council dba Bahá'ís under the Provisions of the Covenant" ("BUPC"), and "Bahá'í Publishers Under the Provisions of the Covenant" are associated with the OBF Respondents, or are associated with what BUPC does or says. There is no relationship or connection between the OBF and BUPC. The BUPC has different beliefs, members, directors, leaders, and teachings. The BUPC was headed by Leland Jensen and came into existence after the Remey NSA. Furthermore, the OBF Respondents deny that the Judgment entered in the above-captioned matter on June 28, 1966 is binding upon them, or that they are the officers, directors, agents, servants, employees, attorneys, or otherwise in active concert or participation with any party to this action, or any party's successors, except the OBF Respondents admit that Franklin D. Schlatter was a member, officer and director of the Counterdefendant National Spiritual Assembly of the Bahá'ís of the United States of America Under the Hereditary Guardianship ("Remey NSA") until the dissolution of that Corporation on December 22, 1966. The OBF Respondents deny that Schlatter acted on behalf of the Remey NSA at any time while he has been an OBF member, whether directly or indirectly, or that any of the OBF Respondents acted in concert or participation with the Remey NSA, and affirmatively state the OBF is completely different from the Remey NSA and was created after dissolution of the Remey NSA. The OBF Respondents deny any connection with the Remey NSA.

2. As to the allegations of the second paragraph of the Motion, the OBF Respondents admit that the PNBC uses the name "National Bahá'í Council" and "Provisional National Bahá'í Council" and was formerly known as "Mother Bahá'í

Council", and admit that the PNBC operates a web site at <http://www.rt66.com/~obfusa/council.htm>. The OBF Respondents admit that Joel B. Marangella owns the domain and operates the web site at <http://www.bahai-guardian.com/>. The OBF Respondents deny that they own the domain or operate the web site at <http://www.truebahai.com/>, admit that it is operated personally and the domain is owned by one of the PNBC's directors, Jeffrey A. Goldberg (who was never a follower of Mason Remey). The OBF Respondents deny that the Respondents own the domain name <http://www.orthodoxbahai.com> but admit the domain name is owned by one of the PNBC's directors, Jeffrey A. Goldberg, and that it points to the web site maintained by the PNBC. The OBF Respondents deny any connection to or responsibility, ownership, or control of, the web sites of the Second International Bahá'í Council, BUPC, UHJ, Bahá'í Faith, Bahá'í Faith – Universal House of Justice, Official Web Site of the Universal House of Justice, bahai-faith.net, bupc.org, bahaullah.net, and uhj.net, and admit that BUPC is solely responsible for the referenced sites.

3. As to the third paragraph of the Motion, the OBF Respondents deny each and every allegation thereof, and any and all implications thereof, and specifically deny that their messages in any way create confusion in the minds of the public as to the entities and their relationships, and denies that the messages can be legally characterized as deceptive, misleading, or damaging to the NSA's reputation and credibility. Although the OBF Respondents believe that the statements that characterize George W. Bush or the Pope as "corrupt" or "demonic" and the United Nations as "the Seat of the Beast" have no actionable legal ramifications, the OBF Respondents deny that they ever have made such statements, but admit that the BUPC, an organization that has no affiliation or

relationship to the OBF Respondents, has made those statements. OBF Respondents deny that they ever applied for federal trademark registrations of marks similar to the NSA's marks or otherwise, nor have they used or attempted registration of "Universal House of Justice" or "Bahá'ís Under the Provisions of the Covenant." The OBF has not attempted to trademark any mark at all.

4-6. The fourth, fifth, and sixth paragraphs of the Motion do not contain factual allegations that require a response.

7. Any and all allegations not expressly admitted herein are DENIED.

#### AFFIRMATIVE DEFENSES

##### **Affirmative Defense One:**

**This Court lacks jurisdiction over the persons of  
Joel B. Marangella and the PNBC of the United States.**

8. The Judgment of June 28, 1966 was entered against the Remey NSA. The Order is not binding upon Joel B. Marangella and the PNBC because, pursuant to FRCP 65(d) the Judgment "is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order," and the said Respondents are not any of these.

9. Joel B. Marangella was not affiliated with the Remey NSA, or with any activity by the U.S. followers of Mason Remey. He has continuously resided in Europe or Australia since 1950 (except for the summer of 1954). He has never been a director or officer of the Remey NSA or the NSA, and he is not otherwise a successor to the Remey NSA.

10. Joel B. Marangella was not an original party to this lawsuit, has no legal connection to this lawsuit, to any party to this lawsuit, or to this District.

11. The PNBC was formed twelve years after the Remey NSA was dissolved, never received assets from the Remey NSA, and is not a successor corporation to the Remey NSA. The PNBC is a completely separate organization with different leaders, members, and beliefs.

12. After the Judgment was entered against the Remey NSA, that corporation was dissolved in 1966. Thereafter, there never was any continuation of the Remey NSA or its operations, nor did anyone become its legal successor. If anyone is the successor to the Remey organization, it would be those who continued to follow Mason Remey until his death in 1974 when they turned to Donald Harvey (appointed by Remey) and who currently follow Jacques Soghomonian as their fourth Guardian (they are not respondents in this proceeding).

13. The OBF Respondents believe that Joel B. Marangella is the third Guardian. They formed a completely separate organization from the Remey NSA, and their activities are completely different from the Remey NSA. They have nothing in common with the Remey NSA. The Judgment's findings of fact and conclusions, to the extent they may be valid, applied to the Remey NSA but not to the OBF Respondents or their activities, which are completely different from those enjoined by the Judgment. The Remey NSA used "Spiritual Assemblies" in referring to its subordinate administrative bodies, but the OBF use the term "Councils" in referring to its administrative bodies at all administrative levels. The Judgment addresses the Remey NSA's imitation of the structure and identifications that are claimed to be proprietary or that create confusion.

The OBF Respondents do not imitate the NSA in any way. There is no confusion or imitation by the OBF.

14. Neither Marangella or the PNBC, or any OBF members, have acted in this District and they are not successors or otherwise affiliated with the Remey NSA and did not act in any manner in concert or participation with the Remey NSA.

**Affirmative Defense Two:**

**There has not been service of process upon the PNBC of the United States.**

15. The PNBC was not served with process, although the NSA has the correct Registered Agent and her correct address.

16. Since the PNBC was not served with process, and it is not a successor to a party in this case, the Court has no jurisdiction over the PNBC.

**Affirmative Defense Three:**

**This Court lacks jurisdiction over the person of Franklin D. Schlatter.**

17. The Judgment is not binding upon Franklin D. Schlatter in his various capacities or activities with OBF or PNBC. because it applied to the activities of the Remey NSA, which is separate from the OBF and PNBC, as asserted above and restated and incorporated herein

18. Franklin D. Schlatter does not reside in this District, has performed no actions in this District, and has had no contacts with anyone in this District with respect to the matters addressed by the NSA's Motion.

19. Schlatter is not a party to this lawsuit. In 1970, he joined the new organization established by Joel B. Marangella, the OBF.

20. At no time did Marangella's organization, the OBF or the PNBC, act in concert with the Remey NSA. As asserted above, there is no connection or nexus between that organization and the Remey NSA.

21. Since Franklin D. Schlatter did not act on behalf of the Remey NSA with respect to any acts asserted herein, the former relationship between Schlatter and the Remey NSA is not sufficient to confer jurisdiction over the claims asserted herein.

**Affirmative Defense Four:**

**The Judgment is unenforceable as dormant.**

22. The Judgment that is the subject of these contempt proceedings was entered on June 28, 1966.

23. The NSA never enforced the Judgment until it brought this Motion in 2006, forty years later.

24. The Judgment never was revived.

25. Illinois law precludes enforcement of any Judgment after seven years, unless revived, pursuant to 735 ILCS 5/12-108.

**Affirmative Defense Five:**

**The Judgment is unenforceable as a violation of the Establishment Clause of the First Amendment to the extent that it decides a religious controversy as opposed to a neutral determination of property rights.**

26. The Judgment makes findings of fact that: in the Bahá'í Faith, there are no separate denominations; that the first Guardian of the Faith, Shoghi Effendi, was the only Guardian of the Faith and that there is no longer a Guardian; that the procedures followed by the Custodians and the succession of authority from Shoghi Effendi to the Universal

House of Justice was in full accordance with the controlling documents and sacred writings and teachings of the Faith; that Mason Remey's claim to the Guardianship was "unilateral"; and there is only one Bahá'í Faith. These findings of fact are a violation of the Establishment Clause of the First Amendment because they decide a religious controversy as opposed to a neutral determination of property rights. The OBF Respondents do not agree with these findings and conclusions that purport to decide religious questions, none of which were necessary to determine the NSA's trademark rights. To enforce the findings would be a denial of the OBF Respondent's right to practice their beliefs. Accordingly, the findings cannot be enforced in this or any other proceeding.

27. The Judgment makes a finding of fact that there are no separate denominations in the Faith. The current facts are at least nine organizations now exist that practice a Bahá'í religion. Clearly, the OBF and the BUPC are separate denominations from the NSA's organization. To enforce the Judgment would be a denial of the existence of other denominations and a prohibition on their religious practices in violation of their constitutional rights.

28. The Judgment makes findings of fact that Shoghi Effendi was the first Guardian and there are no other Guardians. The OBF believes Shoghi Effendi was the first Guardian, and he appointed Charles Mason Remey as the second Guardian, who appointed the third Guardian, Joel B. Marangella. The OBF's teachings are opposed to this finding of the Judgment. To enjoin these beliefs and these teachings would be a violation of the Establishment Clause of the First Amendment because they decide a religious controversy as opposed to a neutral determination of property rights.

29. The organization that is the religious, if not legal, successor to the Remey NSA, now composed of the persons who formerly followed Remey's organization until Remey's death, believe that Charles Mason Remey was the second Guardian, but also believe Donald Harvey was appointed as the third Guardian and Jacques Soghomonian is currently the fourth Guardian. Thus, there is more than one denomination of the Faith that believes the Guardianship has not ended. To enjoin these beliefs and these teachings would be a violation of the Establishment Clause of the First Amendment because they decide a religious controversy as opposed to a neutral determination of property rights.

30. The Judgment makes a finding of fact that the procedures followed by the Custodians and the succession of authority from Shoghi Effendi to the Universal House of Justice was in full accordance with the controlling documents and sacred writings and teachings of the Faith. The OBF believe that, after Shoghi Effendi's death, an Institution of the Faith, the Hands of the Cause of God, met in secret and created from their number a body called the Custodians which ruled the Faith from 1957 until 1963. The Custodians arranged for the election of a Universal House of Justice in 1963 that continues to head the NSA's organization. The OBF do not accept the authority of the Custodians or their Universal House of Justice, and do not believe they followed the proper procedures, do not believe the Custodians or their House have authority in the Faith, and that their Universal House of Justice does not have the Guardian as its sacred head as required by the divinely conceived Document, the Will and Testament of 'Abdu'l-Bahá, the author of the Administrative Order of the Faith. Therefore, the Judgment's findings run contrary to the basic doctrines of the OBF. To enjoin these beliefs and these teachings would be a violation of the Establishment Clause of the First

Amendment because they decide a religious controversy as opposed to a neutral determination of property rights.

31. The Judgment makes a finding of fact that Mason Remey's claim to the Guardianship was "unilateral." The OBF disputes this finding. Remey's claim was on the basis of his appointment by Shoghi Effendi as the President of the embryonic Universal House of Justice created by him in a Proclamation, under date of January 9, 1951, (and titled by him, in its first stage of development, as the International Bahá'í Council). The presidency of the Universal House of Justice, according to the explicit provisions of the Will and Testament of `Abdu'l-Bahá, may only be held by the Guardian of the Faith. In other words, 'Abdu'l-Bahá had identified Guardianship and Presidency of the Universal House of Justice as synonymous terms. Therefore, the Judgment's findings run contrary to the basic doctrines of the OBF. To enjoin these beliefs and these teachings would be a violation of the Establishment Clause of the First Amendment because they decide a religious controversy as opposed to a neutral determination of property rights.

32. The Judgment makes a finding of fact that there is only one Bahá'í Faith. Both the NSA's organization and the OBF's organization believe that there is but one Bahá'í Faith. The NSA believes its organization is that one Faith. The OBF believe that its own organization is the one true Faith. Other groups believe their organization is the one true Faith. That question can only be decided in the hearts and minds of the Bahá'ís, but this question never was properly before this Court. To mandate that one denomination is the one Faith, and to effectively ban all other denominations, would be a violation of the Establishment Clause of the First Amendment.

**Affirmative Defense Six: Enforcement of the Judgment violates the  
Free Exercise Clause and Free Speech Clause of the First Amendment to the  
extent that it stifles legitimate expression of opinion or religious practices.**

33. The web sites of the OBF identified by the NSA in its motion, namely:  
<http://www.rt66.com/~obfusa/council.htm>,  
<http://www.bahai-guardian.com/>,  
<http://www.truebahai.com/>, and  
<http://www.orthodoxbahai.com> set forth the teachings of Joel B. Marangella and the Bahá'í teachings according to his interpretations.

34. The sites truthfully compare the NSA's organization and the OBF's organization to show they are completely different from one another, and the web sites criticize the NSA organization's interpretation of the teachings. The OBF and its teachings are unambiguously different from and opposed to the NSA's organization and do not create confusion as to the distinctions between the OBF with the NSA organization.

35. Teaching the Faith to others, in a manner that is not proselytizing, is a duty of every Bahá'í. The OBF's web sites, being suited to that kind of teaching, are an integral part of the OBF Respondent's religious practices.

36. The Judgment purports to restrict the use of the word "Bahá'í" and other alleged trademarks of the NSA, all of which are religious symbols of the OBF's Faith.

37. The word Bahá'í, meaning "follower of the Glory (of God)" is a variation of the sacred "Greatest Name." Other variations include: a) Yá Bahá'u'l-Abhá, meaning O Thou Glory of the All-Glorious! including a graphical image of the Arabic words

initiated by ‘Abdu’l-Bahá and designed by Mishkín-Qalam, one of the Apostles of Bahá’u’lláh, which along with the Greatest Name ring-stone symbol created by ‘Abdu’l-Bahá, the NSA claims are its trademarks; b) Bahá’u’lláh, meaning Glory of God, the title of the Manifestation of God Who is the Author of the Bahá’i Revelation; c) Allah-u-Abhá, meaning God is the All-Glorious, used as a greeting by Bahá’is; d) Yá Bahá'u'lláhu'l-Abhá, meaning Oh, Glory of God of the All-Glorious; d) Bismi'lláh'il'Bahiyy'el Abhá, meaning In the Name of God the Glorious, The Most Glorious One!

38. Movant has no proprietary right to any of the religious words, phrases, and symbols of the Greatest Name of the Faith, and for this Court to grant such a right would be to deny all others the right to practice their denomination of the Bahá’i religion.

39. All of the variations of the Greatest Name are the most sacred words and symbols of the OBF's Faith. Their use does not create confusion between the various denominations. Therefore, prohibiting their use by the OBF Respondents would be a denial of their right to freely exercise their religious beliefs.

**Affirmative Defense Seven:**

**The NSA may not equitably enforce the Judgment against the OBF Respondents because the doctrines of laches and acquiescence preclude relief.**

40. The NSA has given public permission for persons to use the image of the Greatest Name on their web sites.

41. The Greatest Name and its images are being used by a number of unrelated Bahá’i denominations and organizations, and have been so used for a period of many years.

42. In the case of the OBF Respondents, the NSA has had actual knowledge for the past 36 years that the OBF Respondents have been using the Greatest Name, including use of Bahá'í in their name, the Orthodox Bahá'í Faith and in their advertisements, publications, and domain names.

43. The NSA has been aware of the OBF non-commercial web sites and domains for the past nine years.

44. The OBF Respondents have invested time and money into creating advertisements, literature, publications, web sites and domains, over the years, and about eighty percent of the current membership of the OBF came into that Faith directly (having not been in the NSA's organization or the Remyey NSA's organization prior to joining the OBF). Thus, having operated these many years in reliance upon the NSA's failure to assert its claimed rights, the NSA's long delay was and is detrimental to the OBF Respondents.

**Affirmative Defense Eight:**

**The NSA may not enforce the Judgment**

**against the OBF Respondents because the content of the**

**OBF Respondents' web sites is allowable under the doctrine of fair use**

45. The use by the OBF Respondents of the NSA's asserted trademark in the sacred names and symbols of the Faith is fair use.

46. The OBF Respondents do not use the asserted trademarks for commercial purposes, but use them only generically to describe and practice the religious teachings of their Faith.

47. The web sites, advertisements and publications of the OBF are used by the OBF Respondents to spread and to teach their religious views, and to truthfully compare and contrast their organization and its beliefs with the NSA's organization and beliefs.

48. The OBF does not accept contributions from anyone except declared believers in the OBF, those who have been verified by the PNBC as understanding the teachings of Joel B. Marangella, including the differences between the OBF and the NSA's organization.

49. The OBF does not sell any items including any items bearing the sacred symbols of the NSA's alleged trademarks.

50. The OBF is not infringing upon the NSA's trademarks because it makes fair use of them.

51. The asserted trademarks cannot be proprietary as they are religious symbols and terminology of the OBF, used by all denominations. To allow the trademark and enjoin its use by others would be to enjoin the religious practices of various denominations and organizations.

**Affirmative Defense Nine:**

**The NSA may not equitably enforce the Judgment**

**against unrelated individuals, entities or web sites because the NSA**

**is guilty of unclean hands with respect to its Motion for Rule to Show Cause.**

52. The NSA and its organization have engaged in a pattern of conduct over a period of thirty-six years that constitutes a series of unconscionable attacks and harassment perpetrated against the OBF members, and other critics of the NSA, in an attempt to silence them and prevent them from practicing their religion, including

shunning any friend or family member who might have contact with them, and threatening those who have contact with the OBF members with expulsion if they do not shun the OBF members.

53. Those members of the OBF and other critics who were once a part of the NSA's organization have been subject to having been labeled as covenant-breakers and ex-communicated such that no member of the NSA's organization may have any contact with the OBF members or else they too will be labeled as a covenant-breaker.

54. Two of the web domains the NSA complains about and seeks relief against in its Motion belong to Jeffrey Goldberg, an OBF member and director of the PNBC. Goldberg was once a member of the NSA's organization and was labeled by the NSA and shunned as a covenant breaker since 1997.

55. Goldberg never was affiliated with Remy NSA in any manner whatsoever. He is not the Remy NSA's successor. He was a child at the time of the Judgment's entry and when the Remy NSA was dissolved. He and his web sites are not resident in this District, and he has had no contacts with this District with respect to the matters asserted in the NSA's Motion. This Court has no jurisdiction with respect to him and his web sites, nor has he been named or served in this proceeding.

56. Enforcement of the Judgment indirectly in this manner against Jeffrey Goldberg would be a continuation of the past unconscionable actions taken to silence Goldberg and other critics and to prevent its members from having contact with such critics. Enforcement of the Judgment to restrict Goldberg's web sites and prevent him from practicing his religion and the denomination of his Faith would impermissibly

entangle the Court with the NSA's attempt to silence Goldberg and all other critics and dissenters of the NSA.

WHEREFORE, The OBF Respondents, Joel B. Marangella, Franklin D. Schlatter, and the PNBC, respectfully request that this Court deny the NSA's Motion, and grant such further relief in favor of the Respondents as this Court may deem just and proper.

Respectfully submitted,

/s/ Jeffrey A. Goldberg

Jeffrey A Goldberg

Goldberg Law Firm

Attorney for Respondents Joel B. Marangella,

Franklin D. Schlatter, and the Provisional National

Bahá'í Council of the United States

PO Box 254

Albuquerque, NM 87103-0254

Tel: 505-247-9988

Fax: 505-247-2784

Marshall N. Dickler

James Slowikowski

Local Counsel for Respondents Joel B. Marangella, Franklin D. Schlatter, and

the Provisional National Bahá'í Council of the United States

Dickler, Kahn, Slowikowski & Zavell, Ltd.

85 West Algonquin Road, Suite 420

Arlington Heights, IL 60005

Tel: 847-593-5595

Fax: 847-593-5632