

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-5088

September Term 2009

1:06-cv-00483

1:07-cv-00050-RMU

1:07-cv-00051

1:07-mc-00014-RMU

Filed On: March 11, 2010

Neiland Cohen,

Appellant

v.

United States of America,

Appellee

Consolidated with 08-5093, 08-5174

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of appellee's petition for rehearing en banc, the response thereto, and the vote in favor of the petition by a majority of the judges eligible to participate, it is

ORDERED that the petition be granted. The case will be reheard by the court sitting en banc. It is

FURTHER ORDERED that the portion of the court's August 7, 2009 judgment reversing in part and remanding the cases for further proceedings be vacated. It is

FURTHER ORDERED that oral argument before the en banc court be heard at 9:30 a.m. on Wednesday, September 29, 2010. It is

FURTHER ORDERED that, in addition to filing briefs electronically, the parties file 20 paper copies each of the briefs and the appendix, in accordance with the following schedule:

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Brief for Appellants	June 25, 2010
Appendix	June 25, 2010
Brief for Appellee	July 26, 2010
Reply Brief for Appellants	August 9, 2010

The briefs are to be limited to the following issues:

- (1) Whether the Administrative Procedure Act claims of the plaintiffs are barred at this time under 28 U.S.C. § 2201(a) or 26 U.S.C. § 7421(a);
- (2) Should D.C. Circuit precedent interpreting the Anti-Injunction Act and the Declaratory Judgment Act as “coterminous” be overruled?
- (3) If the Anti-Injunction Act or the Declaratory Judgment Act bars the court from hearing plaintiffs’ APA claims, may plaintiffs still challenge IRS Notice 2006-50 in a refund suit under 26 U.S.C. § 7422?
- (4) Does APA section 702 waive sovereign immunity for plaintiffs’ APA claims?

Because the briefing schedule is keyed to the date of argument, the court will grant requests for extension of time limits only for extraordinarily compelling reasons. The briefs and appendix must contain the date that the case is scheduled for oral argument at the top of the cover. See D.C. Cir. Rule 28(a)(8).

A separate order will issue regarding allocation of oral argument time.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk