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Plaintiffs in FATCA Challenge Seek En Banc Rehearing

Plaintiffs in *Crawford, et al. vs. US Department of Treasury, et al.* have filed a Petition for En Banc Rehearing in their fight against the Foreign Account Tax Compliance Act (“FATCA”) and related provisions after the Sixth Circuit affirmed the lower district court’s ruling that none of the plaintiffs had standing, i.e., sufficient harm to bring a challenge.

Plaintiffs believes consideration by the full court is necessary because the Sixth Circuit decision conflicts with two United States Supreme Court decisions—*Susan B. Anthony List v. Driehaus* (“SBA”) and *Roe v. Wade*.

First, the Sixth Circuit has employed a very restrictive view of standing—requiring a *certain* threat of prosecution to establish standing. But *SBA* recognized standing where there is “an intention to engage in a course of conduct arguably affected with a constitutional interest and . . . there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334 (2014). Here, Plaintiffs have a “credible threat of prosecution,” which, under *SBA*, exists where a statute proscribes an activity one has done or intends to do and there is no evidence the statute is no longer enforced. Thus, Plaintiffs have standing to challenge the law.

Next, the Sixth Circuit attempts to evade *Roe*, which stands for the legal doctrine that coercion against a third party gives a person affected by that coercion standing to challenge the law causing the coercion even if the burdens and/or penalties of the law don’t directly apply to the person asserting standing. So just as coercion against physicians who performed abortions gives standing to women denied an abortion by those physicians because of the coercion, also coercion against foreign financial institutions gives standing to persons denied financial services by those foreign financial institutions because of the coercion. So, Plaintiffs have standing under *Roe* and the Sixth Circuit should reverse its decision.

James Bopp, Jr., lead counsel for the plaintiffs challenging FATCA and related provisions comments as follows: “Numerous Americans overseas are suffering serious difficulties in getting basic banking services where they live as a result of FATCA, as documented by a Democrats Abroad study, yet a panel of the Sixth Circuit says they have no harm. It does so by using erroneous standards that conflict with key U.S. Supreme Court cases. So we are asking the whole Sixth Circuit to examine the case and correct the panel’s errors. We hope that the whole Sixth Circuit will follow controlling Supreme Court precedents.

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