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Association of Accidental Americans Appeals District Court’s Dismissal of Lawsuit Challenging State Department’s Suspension and Delay of Renunciation Services Due to COVID-19

PARIS (September 29, 2022) – The Association of Accidental Americans, a French non-profit society, together with additional individual plaintiffs, have appealed the judgment of the Washington, D.C. federal court which dismissed their lawsuit challenging the U.S. Department of State’s suspension and delay of voluntary renunciation services. Case no. is 1:21-cv-2933 (D.D.C. Sept. 28, 2022).

Plaintiffs, U.S. citizens residing in Europe and Asia, wish to renounce their U.S. citizenship due to the U.S. government’s discriminatory treatment of its citizens residing abroad, especially in the areas of financial privacy and taxation.

Ever since the passage of the Foreign Account Tax Compliance Act (“FATCA”) — a bulk data collection program requiring foreign financial institutions to report to the IRS detailed information about the accounts of U.S. citizens living abroad— U.S. citizens abroad have been treated as financial pariahs by foreign financial institutions. In many countries, banks have closed or frozen accounts maintained by U.S. persons. Elsewhere, banks refuse to provide basic services to U.S. citizens, imposing unreasonable limitations on their ability to carry out their business and daily affairs.

Plaintiffs and the government filed motions for summary judgment and, after extensive briefing, the court issued its 20-page memorandum opinion. At the outset, the court rejected the government’s argument that the court lacked jurisdiction to adjudicate the case. In so ruling, the court concluded that plaintiffs suffered a concrete injury which can be redressed by the court.

On the merits of the case, the Association argued in a case of first impression that the plaintiffs have a fundamental right to renounce their citizenship under the Constitution, which was infringed when the government suspended and delayed renunciation services at consular posts around the globe due to the COVID-19 pandemic. Electing not to resolve this cardinal issue, the court concluded that even if there is a fundamental right to expatriate, there is no authority suggesting that the government must allow citizens to renounce quickly despite the severe hardship U.S. citizenship has caused Accidental Americans.

The court also dismissed plaintiffs claims that were brought under the Administrative Procedure Act. While sensitive to the “serious” plight of Accidental Americans, the court concluded that the Department of State has not acted unreasonably in delaying renunciation services, comparing the waiting times for non-immigrant visa services to those of renunciation services.

The Association of Accidental Americans is also awaiting judgment in a lawsuit challenging the U.S. government's exorbitant \$2,350 fee voluntary renunciation. That case that has been ripe for a decision over a year ago, is also based on the fundamental constitutional right of all U.S. citizens to expatriate.

Statement by Fabien Lehagre, founder and president of the Association of Accidental Americans:

Our fight for the rights of Accidental Americans continues to the appellate level. While disappointed in the ruling, we are happy that the court acknowledged the financial burdens caused by FATCA and related legislation on Accidental Americans. We are also pleased that the court left open for decision by another court our main argument that voluntary expatriation is a fundamental constitutional right, the restrictions of which should be stricken unless they are necessary for a compelling governmental interest.

We have appealed the decision and will raise our arguments before the Court of Appeals. It is our hope that the Court of Appeals will give the right to expatriate the importance it deserves. Our struggle for liberty has just begun.

The Plaintiffs are being represented by L. Marc Zell and Noam Schreiber of the international law firm, Zell & Associates International Advocates, LLC. www.fandz.com.

For further information please contact :

Fabien Lehagre
Association of Accidental Americans
president@americains-accidentels.fr

Marc Zell
Zell & Associates International Advocates, LLC
marc.zell.law@gmail.com