

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

PETITION AND COMPLAINT OF ROBIN HOOD INTERNATIONAL
HUMAN RIGHTS LEGAL DEFENSE FUND

**COMMENTS OF THE UNITED STATES POSTAL SERVICE IN RESPONSE TO
PETITION AND COMPLAINT**
(April 20, 2009)

The United States Postal Service hereby submits Comments in response to the Petition and Complaint of the Robin Hood International Human Rights Legal Defense Fund ("Petitioner"), filed via the Commission's website on April 9, 2009. By filing the instant Comments, the Postal Service does not concede that the Commission is authorized to entertain this Complaint under 39 U.S.C. § 3662. Indeed, the Postal Service submits that the apparent subject matter of the Petition and Complaint does not fall within the Commission's statutory complaint authority. Accordingly, the Postal Service respectfully urges the Commission to take no further action on this matter.

The Postal Accountability and Enhancement Act of 2006, P.L. 109-435, bestowed on the Commission its current authority to hear administrative complaints against the Postal Service. This authority was not free-form, however. Subsection 3662(a) of Title 39, United States Code, limits the Commission's jurisdiction expressly to complaints that "the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions)." Instead of the matters covered by those enumerated provisions, the Petitioner only alleges violations of, or seeks action on the basis of, 39 U.S.C. §§ 401(1), 403(a), 406, 407(b)(1), 409,

412(a), and 416. Because the Commission's complaint jurisdiction does not extend to any of these provisions, the Postal Service respectfully submits that the Petition and Complaint is not properly before the Commission.

To the extent that the Commission might find discussion of the Petition and Complaint's substance helpful, the Postal Service submits the following additional comments.

A. Request for Recognition of Sovereignty

The Petition and Complaint purports to demand that the Commission and the Postal Service, as entities within the executive branch of the United States government, declare United States sovereignty over Taiwan. The Petitioner bases this demand on its belief that the U.S. Court of Appeals' decision in Lin v. United States¹ requires the Executive Branch to make such a declaration. In that decision, however, the Court clearly and repeatedly insists that the political question doctrine prevents it from deciding, or compelling Executive Branch policy on, the sovereignty question.² Instead of issuing a "mandamus" or other command to the Executive Branch, the court explicitly defers to the Executive Branch on whether, when, and how the Executive Branch should make any determinations of sovereignty or recognition. Thus, the Executive Branch is under no legal compulsion to grapple with Taiwan's sovereignty. Even if the Executive Branch were inclined to do so, this policy shift would necessarily be coordinated by the White House, the State Department, and other governmental bodies with competence over foreign affairs, rather than the Postal Service or the Commission.

B. Establishment of Post Offices

¹ ___ F.3d ___, 2009 WL 910994 (D.C. Cir. Apr. 7, 2009).

² Id. at *4, *6 (citations omitted and emphasis added).

The Petition and Complaint requests (or demands) that the Postal Service establish a Post Office on Taiwan, pursuant to 39 U.S.C. §§ 403(a), 406(a), and 409(f)(6) and 39 C.F.R. §§ 235.1(b) and (c) and 235.2(f)(2). None of these provisions requires the Postal Service to establish Post Offices in any particular location. At most, 39 U.S.C. § 403(a) directs the Postal Service to provide postal services and to accept and deliver mail domestically and, to the extent the Postal Service has undertaken in arrangements under 39 U.S.C. §§ 406 and 411, internationally: the Postal Service clearly accomplishes this in its existing arrangements for Taiwan, without political and legal complications of establishing an outpost there. The other cited provisions are either wholly inapposite (39 U.S.C. § 409(f)(6) and the regulatory citations) or subject to Postal Service discretion (39 U.S.C. § 406(a)). In short, the Petition and Complaint points to no actual basis for requiring the Postal Service to establish Post Offices in a given location, much less in Taiwan.

C. Petition for Semipostal Stamp

Section 416(b) leaves issuance of semipostal stamps entirely in the Postal Service's discretion as to whether such issuance would be in the national public interest and appropriate. The process for petitioning the Postal Service for a semipostal stamp is established in 39 C.F.R. Part 551. Among other requirements for submissions under 39 C.F.R. §§ 551.3 and 551.4, the Office of Stamp Services must first publish a request for proposals in the Federal Register, and the applicant's submission must include a letter from an Executive Branch agency or agencies supporting the proposal. The instant Petition and Complaint is not a valid proposal for a semipostal stamp, nor is such a proposal subject to the Commission's jurisdiction, as discussed above.

D. Tort Claim

To the extent that the Petitioner believes that it has a tort claim against the Postal Service, 39 C.F.R. Part 912 establishes the administrative procedure for submitting such a claim to the Postal Service, which must be followed before filing suit under the Federal Tort Claims Act. This process does not involve Commission action.

E. Paragraph 407(b)(1)

As discussed above, 39 U.S.C. § 407 is not subject to the Commission's complaint jurisdiction. Moreover, it is clear that a complaint as to the effect of international agreements concluded by the Secretary of State should be directed to the State Department, not to the Commission.

For all of the reasons discussed above, the Postal Service respectfully submits that the Petition and Complaint falls outside the scope of Commission complaint proceedings.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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